

APPEALS

The County Board of Education ("County Board") shall serve as an appellate body for Charter School Appeals, Interdistrict Attendance Appeals, and Student Expulsion Appeals in accordance with law and County Board policies. The County Board shall also hear appeals to challenges regarding the content of student records that are maintained by the Solano County Office of Education (SCOE). Following are the County Board's appeal procedures. See Board Policy 9323.4 for information about charter schools, including charter appeals.

I. Interdistrict Attendance Appeals

- A. Authority: The County Board shall hear appeals upon request of the person having legal custody of the affected pupil, where the involved district or districts fail or refuse to enter into an interdistrict attendance agreement, and determine if and for what period of time the pupil will be permitted to attend the district the pupil desires to attend. In instances where the Board rules in favor of an appellant and against the school district, various statutes impose a mandatory duty on the part of the school district to abide by the determination. (See Education Code [E.C.] sections 46601, 46602(a) (interdistrict attendance) ("the pupil shall be admitted to school in the school district without delay"); Ed. Code § 48924 (expulsions) ("[t]he decision of the county board of education shall be final and binding upon...the governing board of the school district"); Ed. Code § 47605(j) (charter schools) ("[a] charter school for which a charter is granted by either the county board of education or the state board based on an appeal pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part".) The decision of the County Board shall be final and binding.
1. If the interdistrict attendance involves school districts located in different counties, the county board of education having jurisdiction over the district denying a permit or refusing or failing to enter into an agreement to allow for the issuance of a permit, shall have jurisdiction for the purposes of an appeal. (E.C. § 46601(c)(4))
 - a. If both districts deny a permit or refuse or fail to enter into an agreement to allow for the issuance of a permit, the county board having jurisdiction over the district of residence shall have jurisdiction for purposes of an appeal and, upon granting a pupil's appeal, shall seek concurrence in the decision by the county board of the other county which shall provide opportunity for the district under its jurisdiction to be heard on the matter before making a decision. If the two county boards do not then concur, the pupil's appeal shall be denied.
- B. Procedure: As a basis for initiating an appeal to the County Board, the following procedure has been adopted by this County Board:
1. A person having legal custody of the student may appeal in writing to the County Board within thirty (30) calendar days of the failure or refusal of either school district governing board to issue a permit or to approve an interdistrict attendance agreement. (E.C. § 46601(c)(1))
 - a. Failure to appeal within the required time is good cause for denial of an appeal. (E.C. § 46601(c)(1))
 - b. An appeal shall be accepted only upon verification by the County Board's designee that appeals within the districts have been exhausted. (E.C. § 46601(c)(1))

Interdistrict Attendance Appeals (Continued)

- c. The County Superintendent's designee shall investigate to determine whether local remedies in the matter have been exhausted and to provide any additional information deemed useful to the County Board in reaching a decision. (E.C. § 46601(c)(3))
2. The County Board shall, within thirty (30) calendar days after the appeal is filed, conduct a hearing and determine whether the pupil should be permitted to attend school in the district of their choice and the applicable period of time. (E.C. § 46601(c)(2))
 - a. If it is impractical for the County Board to comply with the time requirement for the hearing, the County Board or the County Superintendent of Schools, for good cause, may extend the time period for up to an additional five (5) school days. (E.C. § 46601(c)(2))
 - b. The County Board shall provide adequate notice to all parties (i.e., the appellant, the district of residence, and the district of desired attendance) of the date, time, and location of any hearing scheduled and of the opportunity to submit written statements and documentation and to be heard on the matter pursuant to rules and regulations adopted by the County Board. (E.C. § 46601(c)(2))
 - c. For good cause, the County Board may grant a continuance of the hearing. (E.C. § 46601(c)(2))
 - d. If good cause prevents an appearance at the hearing, notification of such good cause shall be given to the County Board at least two hours prior to the hearing time designated. If the parent or legal guardian does not give good cause for failing to appear, in the discretion of the County Board, and fails to appear at the designated time, the appeal shall be deemed withdrawn and the decision of the district board affirmed.

C. Hearing of the Appeal

1. The hearing will be held as a closed hearing unless the parent(s) or guardian(s) submits a written request at least five (5) days prior to the hearing, asking to hold the hearing as an open hearing. All deliberations will be held in closed session.
2. The County Board will hear a statement by the parent(s) or guardian(s) of the student. The County Board will then hear representatives of the district of residence and the proposed district of attendance, if applicable, regarding any reasons they may wish to offer on behalf of the district(s).
3. The parent(s) or guardian(s) of the student and the district representative(s) may present witnesses to the County Board. The witnesses may state any reasons relevant to the appeal.
4. Members of the County Board may ask questions of the parents, district representatives, and witnesses relevant to the appeal.
5. If new evidence or grounds for the request are introduced, the County Board may remand the matter for further consideration by the district or districts. In all other cases, the appeal shall be granted or denied on its merits. (E.C. § 46601(c)(1))

Interdistrict Attendance Appeals (Continued)

6. The County Board will grant or deny appeals based on all information relevant to the case. Factors to be considered shall include, but are not necessarily limited to:
 - a. The educational needs and welfare of the student.
 - b. The requirements of the district, to include legitimate reasons for the denial of the agreement.
 - c. The extent to which denial or granting of the agreement would impose a hardship on either the district or the student.

The County Board will grant appeals only in cases of significant legal, financial, or equitable hardship or deprivation to the student which cannot reasonably be remedied by any other means. In making its decision, the County Board shall also consider the financial and other needs of the district of residence and the requested district of attendance and balance such needs against that of the student.

If the County Board grants an appeal, the student will be required to comply with all conditions of their attendance which would normally be imposed by the requested district of attendance. Interdistrict attendance may be revoked by the district if the student ceases to adhere to these conditions.

7. If the County Board determines that the student should be permitted to attend school in the desired district, the student shall be admitted without delay and shall be permitted to continue attending the desired district through its highest grade level. The decision of the County Board shall be final and binding. (E.C. § 46602)
8. Written notice of the decision by the County Board shall be delivered to the student and the parent or guardian, or person having custody of the student, and to the governing boards of the districts. (E.C. § 46602)

II. Student Expulsion Appeals

- A. Authority: The County Board will hear and determine an appeal of an expulsion order issued against a pupil by a school district within the jurisdiction of the county. In instances where the Board rules in favor of an appellant and against the school district, various statutes impose a mandatory duty on the part of the school district to abide by the determination. (See Education Code [E.C.] sections 46601, 46602(a) (interdistrict attendance) (“the pupil shall be admitted to school in the school district without delay”); Ed. Code § 48924 (expulsions) (“[t]he decision of the county board of education shall be final and binding upon...the governing board of the school district”); Ed. Code § 47605(j) (charter schools) (“[a] charter school for which a charter is granted by either the county board of education or the state board based on an appeal pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part”). The decision of the County Board is final and binding on the pupil and the governing board expelling the pupil. (E.C. §§ 48919, 48924)

Student Expulsion Appeals (Continued)

- B. Definition: "Pupil" includes a pupil's parent or guardian or legal counsel. (E.C. § 48925(e))
- C. Procedure: Regulations for student expulsion appeals according to E.C. § 48900-48925 may be found in the Expulsion Appeal Handbook available as a separate document from the Solano County Superintendent of Schools' office.
1. Appeal of Expulsion
- a. A student expelled by the governing board of a school district or the pupil's parent/guardian may appeal the expulsion to the County Board.
 - b. Appeals must be initiated by filing a written request for an appeal hearing with the Secretary of the Solano County Board of Education (hereinafter referred to as the "Secretary" and the "County Board" respectively), 5100 Business Center Drive, Fairfield, California 94534-1658.
 - c. The expelled student may be represented at all stages of the appeal by an attorney.
 - d. The Pupil must file the appeal within thirty (30) calendar days following the district governing board's decision to expel the student.
 - (1) The period within which an appeal is to be filed shall be determined from the date a district governing board votes to expel even if enforcement of the expulsion action is suspended and the student is placed on probation.
 - (2) A Pupil who fails to appeal the original action of the district governing board within the prescribed time may not later appeal a decision of the district governing board to revoke probation and impose the original order of expulsion.
 - (3) The request for an appeal hearing must contain, but need not be limited to, the following information:
 - (a) The name, address, and telephone number of the student's parent or guardian, if applicable, and attorney, if any.
 - (b) The name, address, and date of birth of the expelled student.
 - (c) The school, district, and grade from which the student was expelled.
 - (d) The date of the school district governing board's decision to expel and the effective date of the expulsion.
 - (e) A brief and clearly stated explanation describing why, in the parents'/guardians' opinion, the decision of the school district governing board should be reversed. The statement must relate to one or more of the conditions described under "Scope and Limitations of the Hearing." (see page 7)
 - (f) A copy of the Notice of Expulsion received from the local school district.
 - (g) If identifying new evidence, a description of such evidence along with a statement as to why the new evidence could not be produced or how it was improperly excluded at the original expulsion hearing must be included.

Student Expulsion Appeals (Continued)

- e. The Pupil must submit a request for a copy of the transcripts and supporting documents from the school district at the same time the request for an appeal hearing is filed with the County Board.
 - (1) The school district must provide the Pupil with the transcripts, supporting documents, and records within ten (10) school days following the Pupil's request.
 - (2) Immediately upon receipt, the Pupil must file suitable copies of these records with the County Board or request that the school district mail a copy directly to the County Board.
 - (3) The cost of the transcript shall be borne by the Pupil except in either of the following situations:
 - (a) Where the Pupil certifies that s/he cannot reasonably afford the cost of the transcript because of limited income or exceptional necessary expenses, or both.
 - (b) In a case in which the County Board reverses the decision of the district governing board, the County Board shall require that the district governing board reimburse the Pupil for the cost of the transcript.
 - (4) The record of proceedings of the district governing board shall include, but need not be limited to, the following information:
 - (a) An accurate written transcription of the proceedings.
 - (b) Any pleadings or letters filed by the parties.
 - (c) All notices and orders issued by the district governing board, including the action to expel.
 - (d) Certified copies of the minutes of the district governing board's meetings of the proceeding.
 - (e) Any exhibits admitted or rejected.
 - (f) Any written evidence or other papers in the case.
2. Scheduling Appeal Hearing
- a. The appeal hearing will be scheduled by the County Board to be held within twenty (20) school days following the filing of a formal request, unless the Pupil or district requests a postponement in writing.
 - b. The Secretary or designee shall notify the Pupil and the school district of the following by personal service or certified or registered mail at least ten (10) calendar days prior to the hearing:
 - (1) The date, time, and place of the expulsion appeal hearing.
 - (2) That the hearing will be a closed hearing unless the Pupil requests in writing at least five (5) days prior to the hearing, that the hearing be conducted as an open hearing.

Student Expulsion Appeals (Continued)

- (3) That the Pupil may be represented by an attorney at the appeal hearing, if so desired.
 - c. A copy of the expulsion appeal hearing request and materials received from the Pupil and school district will be provided to each member of the County Board one week prior to the appeal hearing.
 - d. For good cause, the Pupil may request a continuance of the hearing to a later date and, upon consent of the County Board, the hearing shall be continued to the date requested or to a date fixed by the County Board.
3. Conduct of Expulsion Appeal Hearing

Expulsion appeals are heard by the County Board in a closed hearing unless otherwise requested (See 2.b.(2) above). In the closed hearing, only the parent(s)/guardian(s), representative, student, representatives of the local school district, and essential SCOE staff are permitted in the hearing room with the County Board members. Open hearings are open to any member of the public.

The County Board shall determine the appeal of a student expulsion upon the record of hearing before the district governing board together with such applicable documentation or regulations as may be ordered. No evidence other than that contained in the record of the proceedings of the district governing board may be heard. The record of the proceedings of the district governing board shall include, but need not be limited to, the following information:

- a. An accurate written transcription of the proceedings as provided in E.C. § 48918.
- b. Any pleadings or letters filed by the parties.
- c. All notices or letters filed by the parties.
- d. Certified copies of the minutes of the district governing board, including the action to expel.
- e. Any exhibits admitted or rejected.
- f. Any written evidence or other papers in the case.
 - (1) The following procedural steps will be taken in order:
 - (a) The hearing will be called to order, the parties present will introduce themselves for the record, and the procedures will be reviewed.
 - (b) The Pupil may make an opening statement.
 - (c) The district representative may make an opening statement.
 - (d) The County Board Members may question the Pupil and the representatives of the district.
 - (e) Both the district and the Pupil may make closing statements, with the Pupil having the right to make the last statement.

Both the Pupil and the district must limit their presentations to 30 minutes total.

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- (2) Scope and Limitations of the Hearing: The review by the County Board of the decision of the district governing board shall be limited to the following issues:
- (a) Whether the district governing board acted without or in excess of its jurisdiction. As used in this section, a proceeding without or in excess of jurisdiction includes but is not limited to:
 - A situation where an expulsion hearing is not commenced within the time period prescribed by Education Code, Chapter 6, Article 1, Suspension or Expulsion, commencing with section 48900.
 - A situation where an expulsion order is not based upon one of the acts enumerated in E.C. § 48900.
 - A situation involving acts not related to school activity or attendance.
 - (b) Whether there was a fair hearing before the district governing board.
 - (c) Whether there was a prejudicial abuse of discretion by the school district in completing the expulsion procedures. An abuse of discretion may be established in any of the following situations:
 - If school officials have not met the procedural requirements of E.C. § 48900 *et seq.*
 - If the decision to expel a student is not supported by the findings prescribed in E.C. § 48915.
 - If the findings are not supported by the evidence.

The County Board may not reverse the decision of a district governing board to expel a pupil upon a finding of an abuse of discretion unless the County Board also determines that the abuse of discretion was prejudicial.
 - (d) Whether there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the district governing board.
- (3) The hearing will be held as a closed hearing unless the Pupil submits a written request at least five (5) days prior to the hearing, asking to hold the hearing as an open hearing. (E.C. § 48920) The County Board's deliberations will be held in closed session, and its decision shall be limited as follows:
- (a) Where the County Board finds that relevant evidence exists which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the district governing board, it may:
 - Remand the matter to the district governing board for reconsideration and may, in addition, order the student reinstated pending such reconsideration.
 - Grant a hearing *de novo* upon reasonable notice thereof to the

Student Expulsion Appeals (Continued)

Pupil and to the district governing board. Such hearing shall be conducted in conformance with the procedures set forth in Section 4, Hearing *De Novo*, below.

- (b) Where the County Board determines that the governing board's decision is not supported by findings required to be made by E.C. § 48915, but evidence supporting such findings exists in the record of the proceedings, the County Board shall remand the matter to the governing board for adoption and inclusion of the required findings.
- (c) In all other cases, the County Board shall enter an order either affirming or reversing the decision of the district governing board.
 - In any case in which the County Board enters a decision reversing the decision of the district governing board, the County Board may direct the district governing board to expunge the record of the student and the records of the district of any references to the expulsion action and such expulsion shall be deemed not to have occurred.
 - In any case in which the County Board reverses the decision of the district governing board, the County Board shall require that the district governing board reimburse the Pupil for the cost of the transcript.
- (4) The decision of the County Board must be rendered within three (3) school days of the hearing. The action shall be taken by roll call vote and shall be final and binding upon the Pupil and upon the governing board of the school district following the deliberation and vote.
 - (a) The final order of the County Board shall be in writing and copies thereof shall be delivered to the Pupil and to the district governing board by personal service or by certified mail.

A final decision by the County Board may be appealed to the Solano County Superior Court.

4. Hearing *De Novo*

In the event the County Board grants the Pupil a hearing *de novo* in accordance with Section (3)(a) above, the hearing shall be conducted as follows:

- a. The procedural rules set forth in this Section 4 shall govern the hearing.
- b. The president of the County Board shall preside, or they shall appoint another member of the County Board to preside. In either case, the presiding officer shall have the right to vote on the matter.

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- c. All of the proceedings of the hearing before the County Board shall be recorded in full and transcribed upon the direction of the County Board, or the request of the Pupil, or the district representative.
 - (1) Unless otherwise ordered by the County Board, the party requesting that the record be transcribed shall pay for the transcription.
- d. The County Counsel, or his/her designated deputy, will act as legal advisor to the County Board at the hearing.
- e. The following procedural steps will be taken in order:
 - (1) The Secretary (or, acting as advisor to the County Board, County Counsel) will read the written request for a hearing which was received from the Pupil, describe the purpose of the hearing, and introduce the parties.
 - (2) The district representative may make an opening statement.
 - (3) The Pupil may make an opening statement.
 - (4) The district representative may introduce evidence and call witnesses to testify in support of the expulsion.
 - (5) The Pupil may make an opening statement, if s/he has not previously done so, and may introduce evidence and call witnesses to testify in support of his/her case.
 - (6) Both the district and the Pupil may make closing statements with the Pupil having the right to make the last statement. Both parties may submit written arguments.
- f. Any witness called shall be administered the following oath by the Secretary prior to testifying:

"Do you solemnly swear (or affirm, as the case may be) that the evidence you shall give in this matter shall be the truth, the whole truth, and nothing but the truth, so help you God?"
- g. Any witness called shall be subject to cross, redirect, and recross examination, and may be questioned by members of the County Board.
 - (1) Strict rules of evidence as required in court will not be used.
 - (2) To be admissible, evidence must be related to the issue, and be the type of evidence which reasonable persons rely upon in the conduct of serious affairs.
 - (3) Hearsay is admissible but cannot be the sole basis for a finding.
 - (4) Written statements shall be in the form of affidavits or declarations under penalty of perjury.
 - (5) Witnesses who are not actually testifying may be excluded from the hearing room by the presiding officer of the County Board.
 - (6) The decision of the County Board must be supported by substantial evidence.

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- h. At the conclusion of the hearing, the presiding officer of the County Board will declare the hearing to be closed, and the members of the County Board will then retire to a closed session to deliberate their decision.
- i. Upon the conclusion of the deliberations, the County Board will reconvene and take action to sustain or deny the appeal of the student expulsion within three (3) school days of the close of the hearing. The action shall be taken by a roll call vote and considered final and binding following that vote. A majority of the members of the County Board present and voting by roll call vote shall be required to order the expulsion set aside and the student re-enrolled.
- j. The decision of the County Board of Education shall be final and binding upon the pupil and the parent or guardian of the pupil, and upon the governing board of the school district at the conclusion of the County Board's vote.
 - (1) The final order of the County Board shall be in writing and copies thereof shall be delivered to the Pupil and to the district governing board by personal service, certified mail (E.C. § 48924), and/or by electronic mail as allowed by law.
 - (2) The order shall become final when verbally rendered following the deliberation and vote.

III. Appeals Challenging Student Records

- A. Authority: Upon request of the parent or guardian having legal custody of the affected pupil, the County Board of Education shall hear and determine appeals challenging the content of student records that are maintained by the Solano County Office of Education (SCOE). (E.C. §§ 49061(d) & 49070) In instances where the Board rules in favor of an appellant and against the school district, various statutes impose a mandatory duty on the part of the school district to abide by the determination. (See Education Code [E.C.] sections 46601, 46602(a) (interdistrict attendance) (“the pupil shall be admitted to school in the school district without delay”); Ed. Code § 48924 (expulsions) (“[t]he decision of the county board of education shall be final and binding upon...the governing board of the school district”); Ed. Code § 47605(j) (charter schools) (“[a] charter school for which a charter is granted by either the county board of education or the state board based on an appeal pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part”). The decision of the County Board shall be final and binding.
- B. Procedure: As a basis for initiating an appeal to the County Board, the following procedure has been adopted by this County Board:
 - 1. The parent/guardian of the student, or former student, may appeal in writing to the County Board within thirty (30) calendar days of the County Superintendent of Schools' or designee's denial of the allegations and written refusal to correct or remove from his/her child's records any information concerning the child which s/he alleges to be any of the following: (E.C. § 49070(a))
 - a. Inaccurate

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- b. An unsubstantiated personal conclusion or inference
 - c. A conclusion or inference outside of the observer's area of competence
 - d. Not based on the personal observation of a named person with the time and place of the observation noted
 - e. Misleading
 - f. In violation of the privacy or other rights of the student
2. Within thirty (30) days of receiving an appeal pursuant to E.C. § 49070(b), the County Board shall conduct a closed hearing with the parent/guardian and the certificated employee who recorded the information in question, if practicable, or the County Superintendent's designee if the employee is not presently employed by SCOE, to determine whether to sustain or deny the allegations. (E.C. § 49070(c))
- C. Hearing the Appeal:
- 1. To assist in making its determinations, the County Board may convene a hearing panel, pursuant to E.C. § 49071, provided that the parent has given written consent to release information from the student's records to the panel members.
 - 2. If the County Board sustains any or all of the allegations, it shall order the County Superintendent to immediately correct or remove and destroy the information in question from the written records of the pupil, and so inform the parent/guardian in writing.
 - a. The County Board shall not order a pupil's grade to be changed unless the teacher who determined the grade is, to the extent practicable, given an opportunity to state orally, in writing, or both, the reasons for which the grade was given and is, to the extent practicable, included in all discussions relating to the changing of the grade. (E.C. § 49066)
 - 3. If the final decision of the County Board is unfavorable to the parent/guardian, or if the parent/guardian accepts an unfavorable decision by the County Superintendent or designee, the parent/guardian shall be informed and shall have the right to submit a written statement of their objections to the information. This statement shall become a part of the pupil's school record until the information objected to is corrected or removed. (E.C. § 49070(d))
 - 4. Records of the administrative proceedings shall be maintained in a confidential manner and shall be destroyed one year after the County Board's decision, unless the parent/guardian initiates legal proceedings relative to the disputed information within the prescribed period.

SCOE Administrative Policy Cross-Reference: 5125 Student Records
5125.3 Challenging Student Records

Solano County Board of Education Policy Cross-Reference:
9323.4 Charter Schools