

## Representing Students at Expulsion Hearings

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For many students, fall represents football season and the time to start focusing on college applications. But for a growing minority of students, fall also represents the time when school expulsion hearings begin in earnest. Without speculating on the reasons, it seems that schools are referring more students for expulsion for less serious behaviors than ever before (and at younger ages than ever before). Remarkably, often times the students facing expulsion have little or no history of prior discipline problems at school.

Despite numerous due process protections, students are not provided counsel at expulsion hearings. Yet being represented by an attorney can make all the difference for a student facing expulsion. And while the procedures for the hearing and grounds for expulsion are clearly outlined in the Education Code, my experience representing students at these hearings shows that school districts often overlook these important procedural safeguards and disregard the high showing necessary before recommending expulsion for a student.

Local school districts usually empanel three school administrators or Student Services employees to conduct expulsion hearings. A representative of the student's school will make an oral and written presentation about the student and circumstances of the incident forming the basis for the expulsion recommendation. The student is entitled to put on affirmative oral and written evidence about the incident, the student's character, and the student's overall record at the school. The panel should summarize all the evidence in a "Finding of Fact" which will also contain the panel's recommendation for the local School Board's approval at its next-scheduled meeting. Because this record will form the basis of any appeal, it is imperative that a student make a thorough record during the hearing.

If the recommendation is to expel, a student should request to be heard at the School Board's meeting. No new evidence will be presented to the School Board; rather, the argument will generally be confined to whether the hearing. Findings of Fact and ultimate recommendation can be justified under the Education Code. If the local School Board affirms the expulsion recommendation, a student is entitled to appeal this decision to the County Board of Education. While the student's family may have to bear the cost of a hearing transcript

for the County Board members (based on an ability to pay), this money will be refunded to the family if the student prevails at the County level.

Appeals to the local School Board and County Board of Education can take a couple of months. During this time, expelled students are generally not attending school at their regular school. Thus, it is in a student's best interest to try to win the hearing before the initial three-member panel. Preparation and knowledge of the Education Code are critical. The procedures for expulsion hearings can be found at Education Code Section 48900 et seq. These provisions explain the following:

- Grounds for an expulsion recommendation are found at Ed. Code §48900, §48900.2-.4 and .7;

- Students can be referred for expulsion for behaviors that not only occur on campus, but also that occur while going to or coming from campus or a school-sponsored activity (Ed. Code § 48900(r)(1));

- Expulsion recommendations by a school's principal are either discretionary or mandatory, depending on the seriousness of the underlying behavior (Ed. Code §48915 (although note the language of the "mandatory" expulsion recommendation still leaves wiggle room for the student));

- A local school board's expulsion of a student is also either discretionary or mandatory, depending on the seriousness of the underlying behavior (Ed. Code §48915);

- Generally speaking, an expulsion decision can only be justified if other means of correction are not feasible or have failed to bring about proper conduct or if the student's presence causes a danger to self or others (Ed. Code §48915);

- Hearsay can be used during the hearings but cannot be the sole basis for a finding (Ed. Code §48918); and

- Students with special needs are given further protections during expulsion proceedings (not discussed here).

For young students or students with no prior discipline issues at school, it can be difficult for schools to justify an expulsion. A little advocacy at the expulsion hearing emphasizing the school's failure to demonstrate dangerousness or that other means of correction are not feasible can often times result in the student's reinstatement.

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