

# **Expulsion Appeal Handbook**



**ALAMEDA COUNTY OFFICE OF EDUCATION**  
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## Introduction

One of the duties and responsibilities of the Alameda County Board of Education is to hear expulsion appeals from districts under its jurisdiction. These include: Alameda, Albany, Berkeley, Castro Valley, Dublin, Emery, Fremont, Hayward, Livermore, New Haven, Newark, Oakland, Piedmont, Pleasanton, San Leandro, San Lorenzo, and Sunol Glen Unified School Districts, and Mountain House Elementary School District.

In hearing the appeals, the Board is committed to fairness in its deliberations. To achieve fairness, the Board wishes to ensure that Alameda County parents know of their right to appeal, and understand the appeal process so as to be better prepared.

This handbook is intended to provide you with information necessary should you need to consider appealing an expulsion order of your school district governing board of education. While the handbook is both very understandable and informative, it is not a substitute for important original sources such as the California Education Code [EC 48900-48926] or your school district's policies and procedures for suspension and expulsion. You are also entitled to review transcripts of the hearing and consult and engage the services of an advocate or an attorney.



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## When may I file an appeal with the County Board of Education?

1. The pupil, his/her parent, guardian, or attorney may file an appeal of expulsion to the Alameda County Board of Education within **thirty (30) calendar days** after the school district governing board's decision to expel the pupil. Once the thirty days have passed, the Alameda County Board of Education will no longer hear the appeal.

**Thirty days apply even if the school district governing board has allowed the expelled pupil to return to school on probationary status.**

**[EC 48917]**

2. An appeal may be made when the pupil, parent, or guardian feels that one or more of the procedural conditions, as described under "Scope and Limitations of the Hearing," have been violated. **It is helpful if the parties making an appeal understand that an appeal before the County Board is not a rehearing but rather a procedural review to determine if you received a fair hearing.** You are encouraged to carefully review "Scope and Limitations of the Hearing" (page 7) and to contact the County Office with any questions about your case.



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## How do I request a hearing?

The pupil, the person having legal custody of the pupil, or the attorney may file an appeal by submitting a fully completed appeal form or a letter and the hearing transcript to the Alameda County Office of Education in person or by mail to:

Secretary of the Board of Education  
Alameda County Office of Education  
313 West Winton Avenue, Room 150  
Hayward, CA 94544-1198  
Phone (510) 670-4225

The letter requesting an appeal must contain the following information:

1. Name and address of parent or guardian of the pupil and the name and address of the person, if any, representing the pupil.
2. Name of the pupil and school.
3. Grade most recently attended by the pupil.
4. A statement of the basis for the appeal, which relates to one or more of the conditions as, described in "Scope and Limitations of the Hearing."
5. A transcribed copy of the complete record of the hearing which must be certified by the school district's superintendent or designee. Typically, the school district will have a taped record of the hearing, which must be transcribed to a written record for your appeal, and must be provided to you within ten (10) school days of your request to the school district. You must request a copy of the transcript from the District at the same time you file the Notice of Appeal form with ACOE. [EC 48919] You will be responsible for the cost of the transcription. If your appeal is upheld, the district is required to

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afford the costs due to “limited income” or “exceptional necessary expenses,” the transcripts will be provided by the district at no cost. [EC 48921]



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## What happens next?

Once the Alameda County Office of Education has received your letter or expulsion appeal form requesting an appeal from expulsion and the transcribed copy of the hearing, a hearing date for your case will be set. It is your responsibility to see that the transcription is delivered to the County Office. The hearing must be within twenty (20) school days after the County Office receives the expulsion appeal, the transcription from the district expulsion hearing, and all supporting documentation. Both you and the school district will receive notice by certified mail ten (10) calendar days before the hearing regarding the date, time, and place of the hearing.

The notice of the hearing will contain a statement that the County Board intends to hold the hearing in executive (closed) session. The California Education Code requires that the hearing be closed unless you request that the hearing be open or public. If you wish to have open hearing, you must request same in writing no less than five (5) days prior to the hearing date. [EC 48920]

During this period, prior to the hearing, the County Board will also request the local school board/district to provide:

1. Copies of the documentation of the expulsion hearing;
2. The school district's rules and regulations dealing with expulsions; and
3. A statement from the local school district regarding whether there exists relevant evidence, which was excluded or, "in the exercise of reasonable diligence, could not have been produced" during the original hearing.

All of this information is sent to the County Board members for review prior to the scheduled hearing of the appeal.



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## **Scope and limitations of the hearing**

The County Board is required to base its appeal consideration upon the written record of the hearing conducted in the pupil's school district. Only under special circumstances discussed in item 4 (page 8) may the County Board actually consider new evidence. The County Board's charge is to determine if the pupil's due process rights were violated in a manner which resulted in the pupil's receiving an unfair hearing. It is not the charge of the County Board to agree or disagree with the school district's governing board's decision to expel, but to assure that legal procedures were followed and that a fair hearing was conducted. If you keep this in mind, you can better prepare your case by focusing on the four questions listed below:

**1. Did the school district governing board proceed without or in excess of its jurisdiction in expelling the pupil?**

Explanation: The California Education Code [EC 48900, 48900.2, 48900.3, 48900.4, 48900.7, 48915, 48915.5, and 48918] specifies the reasons for which a pupil may be expelled, the timelines that must be honored during expulsion proceedings, and that the act or acts must be related to school activities or attendance.

**2. Was the pupil afforded a fair hearing before the school district governing board?**

Explanation: The school district is required to provide you with a timely notice of a hearing to allow you to hear and examine all evidence submitted and to provide a reasonable opportunity to present your evidence and/or witnesses to deny, explain or mitigate the allegations. [EC 48911(g) and 48918]

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**3. Was there prejudicial abuse of discretion by the school district governing board?**

Explanation: The school district governing board is authorized to expel pupils only for offenses listed in California Education Codes 48900, 48900.2, 48900.3, 48900.4, 48900.7 and 48915. (See “Actions for Which Pupils May Be Suspended or Expelled,” page 20, and “Actions Which Require Recommendation for Expulsion,” page 23.) An expulsion must be based on substantial evidence that the pupil committed an offense. If the violation is not prescribed in the California Education Codes listed above, or the school rules adopted under EC 35291.5, it is not subject to expulsion. The district must also meet procedural requirements and its findings must be supported by the evidence contained in the transcript. [EC 48918]

**4. Is there now relevant and material evidence which, with reasonable diligence, could have been revealed in the hearing before the school district governing board, and was not produced, or was improperly excluded?**

Explanation: Sometimes evidence, which reasonably could have altered the school district governing board’s decision, is not known or available at the time of a hearing. When it is determined that this information could not have been reasonably produced and is deemed significant, or was improperly excluded, the County Board has more options: (1) the case may be remanded (sent back) to the school district governing board for reconsideration, (2) the County Board may overturn the expulsion, or (3) the County Board may conduct its own “hearing de novo” (a new hearing), but only after giving

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appropriate notice of intent to hold such a hearing to both the pupil/parent/guardian and the school district governing board.

**These four items listed above are the only grounds for the County Board to overturn an expulsion.**



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## **What will happen at the hearing?**

Hearings are typically conducted in closed session during regular or special Alameda County Board of Education meetings held at the:

**Alameda County Office of Education  
Room 142, Board Room  
313 West Winton Avenue • Hayward**

When your appeal comes up on the agenda, the Board meeting will be closed and all those not involved in the matter will be excused from the room. You, your representatives, and the representatives of the school district will be asked to take seats at a table in front of the County Board. (You, the district, and the County Board have the right to have legal counsel present.) There will be a microphone at the table to record the hearing. You will appear before up to seven Board members, the superintendent, and members of his/her staff necessary to conduct the meeting. If you request an open meeting, the public may also attend. As mentioned in the section entitled “What Happens Next?” (Page 6), a request for an open hearing must be delivered in writing to the County Superintendent’s office at least five (5) days prior to the hearing date. The hearing is conducted as follows:

1. If any new materials are submitted that the Board has not already received, the members may consider reviewing them. You and the school district are provided with the same written material.
2. The pupil, parent or guardian, or counsel for the pupil will be asked to make a statement.
3. The representative(s) of the school district will be asked to make a statement.
4. The County Board members will question you and the representatives of the district.

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5. When the questioning has been completed, all present will be excused by the County Board President, except the County Superintendent and necessary county staff. The Board will deliberate in closed session on the four questions listed in “Scope and Limitations” (page 7). If, during the deliberation, the Board calls back any party associated with the appeal for further questions, all parties will be called back.
  6. The County Board has up to three (3) days to make a decision; however, a decision is usually made the same meeting. The decision will fit one of four categories:
    - a. Return the matter to the school district governing board for reconsideration of new information, which could not have been reasonably produced during the original hearing, or was improperly excluded; the County Board may order the student reinstated pending the school district governing board’s reconsideration.
    - b. The County Board may conduct its own “hearing de novo,” considering new and original information and render its own decision. If the County Board decides to conduct a “hearing de novo,” it shall notify the pupil and his/her parents/guardian and the school district governing board of the time, date, and place for such a hearing, as well as their procedural rights.
    - c. Uphold the school district governing board’s decision.
    - d. Reverse the school district governing board’s decision.

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If the County Board enters this decision, they will determine whether to order the local school district governing board to expunge the record of the pupil and the records of the district of any references to the expulsion action. They will also direct the local school district governing board to reimburse the pupil for any transcription costs paid by the pupil. [EC 48921]

7. After the County Superintendent has read the “Findings of Facts” and the “Order of the Board,” the Board President will call for a motion. A County Board member will make a motion to adopt the Findings and the Order as read and it will be seconded and voted upon.

The Alameda County Board of Education’s decision is final. **There is no further administrative appeal process.** A copy of the County Board’s written decision will be provided to you and the school district governing board by personal service or certified mail. We recommend that you review California Education Code Sections 48919 through 45926 for a more legally detailed description of the hearing.



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## How do I prepare for the hearing?

If you are taking the role of spokesperson, it is useful to prepare your statement in advance. Be as relaxed as possible; the hearing is conducted in a sufficiently informal manner so that no special expertise is necessary and to allow participants to be as relaxed as possible. Your statement should convey the facts of the case from your viewpoint and should focus on the four questions listed in “Scope and Limitations of the Hearing” (page 7). Remember that no matter how compelling your appeal is to you, the County Board can only reverse a decision if it addresses one of these four areas. The County Board will focus on the previous hearing, so your case should be built on that record and any new evidence which could not have been reasonably known or was unfairly excluded during the district’s expulsion hearing.

In preparing your statement, you may wish to review the policies and procedures of your governing district to determine if any procedures or timelines were not adequately met

If your answer to any of the following questions is “No,” you may have cause for an appeal.

- Were you (pupil and parents) informed of school district governing board policies regarding discipline, particularly as they related to the violation which might result in an expulsion? [EC 35291, 35291.5, 48900, and 48918]
- Was the expulsion based on acts listed in Section 48900, 48900.2, 48900.3, 48900.4, 48900.7 and/or 48915 of the California Education Code or school rules adopted under section 35291.5 of the California Education Code? Schools are required to inform parents of these rules annually. [EC 35291]

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- Was the expulsion order based on an act(s) related to school activity, going to or from school, or acts occurring within another district of attendance?
  - Did you receive proper notice regarding hearings and did hearings occur within timelines specified in law? (See “Summary of Time Requirements,” page 19.)
  - Were you invited to appear for all expulsion proceedings?
  - Were all proceedings held in closed session (unless you requested open session) and was confidentiality respected?
  - Was there evidence of guilt of the offense(s) charged against the pupil?
  - Was there a complete record of the expulsion hearing?
  - Were you informed of your right to appeal before the County Board and informed of the date upon which the pupil will be reviewed for re-admission?
  - Were you given the opportunity to hear and/ or examine all evidence submitted against the pupil? [EC 48918(b)]
  - Were you given the opportunity to present evidence and/or witnesses on the pupil’s behalf?
  - Is there now relevant and material evidence which, with reasonable diligence, could not have been revealed or was improperly excluded during the hearing before the school district governing board?



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## **Additional considerations for Special Education pupils**

If the child is a pupil with exceptional needs and was under an Individualized Education Program at the time of the suspension, review the following as it relates to California Education Code Section 48915.5:

- A. Was there a pre-expulsion meeting of the Individualized Education Program team prior to the expulsion hearing? [EC 48915.5(a)]
- B. Were you invited to attend the pre-expulsion meeting at least 48 hours prior to the hearing? [EC 48915.5(d)]
- C. Was it determined during the pre-expulsion meeting that
  - 1. Misconduct was not caused by or is not a direct manifestation of the pupil's identified disability.
  - 2. Pupil was appropriately placed at the time the misconduct occurred. [EC 48915.5(h)]
- D. Was the suspension, pending the expulsion hearing, for more than ten days without either your agreement or order by a court? [EC 48912(a) and 48911(a) through (h)]



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**Right to have  
attorney or  
advocate  
present**

It is the intention of the Alameda County Board of Education to conduct hearings in a manner, which does not require attorneys. However, if you do not thoroughly understand the procedures, or if you are limited-English speaking, or if you have difficulty expressing yourself in a group, you may wish to have legal counsel or a non-attorney advisor. This brochure is an aid to help you understand the hearing process. While attorneys are not required, it is your right, and the right of the County Board and of the governing district to have an attorney present.

Should you not know of one, you may call the Alameda County Lawyer Referral Service at (510) 893-7160, Monday through Friday, 8:30 a.m. to 5:00 p.m. They will provide you with the name of an attorney.

**You may contact the legal agencies below for assistance:**

***Law Center for Families***

510-451-9261

***Bay Area Legal Aid***

800-551-5554 or

510-663-4744

**Websites**

***The Alameda County Lawyer Referral Service***

[http://www.acbanet.org/lrs\\_public.asp](http://www.acbanet.org/lrs_public.asp)

***Bay Area Legal Aid***

<http://www.baylegal.org/index.html>

***Law Center for Families***

<http://www.lcff.org>



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**What are parental options/responsibilities if expulsion is upheld?**

When a pupil, age 6 to 18 years, is expelled, a parent or guardian is still responsible for ensuring that the pupil attends a school or alternate educational placement specified by the expelling school district governing board. The following options are available upon expulsion:

1. The expelled pupil must be given a written notice of the alternate placement from the school district governing board. Pupils who have been expelled for reasons relating to controlled substances or alcohol abuse may be required to enroll in a county-sponsored drug rehabilitation program before returning to school, pending parental consent.
2. Contact your school district governing board and ask for a copy of its procedures to review and re-admit the expelled pupil.
3. If you move to another school district, you may apply for enrollment and you are required by law to notify the new district of the expulsion or any pending expulsion. Students expelled for serious offenses (see “Actions Which Require Recommendation for Expulsion,” page 23) may only attend a county community school, juvenile court school, or community day school during the period of expulsion.
4. You may seek an opportunity to enroll in another school district. You may apply directly to the desired district, and you must inform its staff of the expulsion order or any pending expulsion, and serious offense placement shall apply.
5. You may apply for admission to a private school, and you must inform its staff of the expulsion order.

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6. You may employ a credentialed teacher to instruct your child in the appropriate grade level (home tutoring).
  7. You may request placement in a county community school pursuant to approval by the Alameda County Office of Education, or to a juvenile court school with the approval of a Juvenile Court Judge.
  8. Upon final action of the school district governing board, when an expulsion is ordered, a date shall be set for student review for re-admission to a school within the district. For a student expelled for possessing a firearm, brandishing a knife at another person, or selling a controlled substance, the date shall be one (1) year from the date the expulsion occurred. For a student expelled for other acts, this date shall be no later than the last day of the semester following the semester in which the expulsion occurred.
    - Additionally, at the time of the expulsion order, the school district governing board shall recommend a plan for the student's rehabilitation which may include the following:
      - Periodic review, as well as assessment of the student at the time of review for re-admission;
      - Recommendations for improved academic performance, tutoring, special education assessments, job training, counseling, employment, community service, and other rehabilitative programs.



# SUMMARY OF TIME REQUIREMENTS IN EXPULSION PROCEEDINGS

Step	Time Requirement
Determination of Conduct in Violation of EC 48900, 48900.2, 48900.3, 48900.7 and/or 48915	Day 1
Suspension	Not more than five (5) school days. [EC 48911]
Recommendation for Expulsion	No specific time requirement, but generally occurs within the five- (5) school days determination of misconduct. [EC 48915 and 48911(g)]
Extension of Suspension	Generally occurs within five (5) school days of the initial suspension. [EC 48911(g)]
Notice of Expulsion Hearing	At least ten (10) calendar days prior to hearing. [EC 48918(b)]
Pupil Request for Public (Open) Hearing	Within five (5) calendar days prior to expulsion hearing. [EC 48818©]
District Extension of Hearing Date	Up to five (5) School days “for good cause” during the regular school year or up to 20 school days during a summer recess of more than two (2) weeks. [EC 48918(a)]
Pupil Postponement	Entitled to not more than thirty (30) calendar days – additional days at school district’s discretion.
<b>HEARING</b>	<b>To be conducted within thirty (30) school days of determination of pupil violation, without pupil-requested postponement or district extension of hearing date. [EC 48918(a)]</b>
Administrative Panel or Hearing Officer Recommendation	Within three (3) school days. [EC 48918(e)]
Decision of Governing Board	Within ten (10) school days following the hearing, or 40 <sup>th</sup> day without pupil-requested postponement. [EC 48918(l)]
Re-admission/Rehabilitation Plan	At the time of the decision to expel the pupil. [EC 48916]
Appeal to County Board	Within thirty (30) calendars following district governing Board’s decision. [EC 48919]
Appellate Hearing	Within twenty (20) school days (or weekdays during summer) following filing of formal request. [EC 48919]

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**Actions for which pupils may be suspended or expelled**

1. Caused, attempted to cause, or threatened to cause physical injury to another person. [EC 48900(a)(1)]
2. Willfully used force or violence upon the person of another except in self-defense. [EC 48900(a)(2)]
3. Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object unless, in the case of possession of any such object, the pupil had obtained written permission to possess the item from a certificated school employee, with the principal or principal's designee concurrence. [EC 48900(b)]
4. Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind. [EC 48900(c)]
5. Unlawfully offered, arranged, or negotiated to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant. [EC 48900(d)]
6. Committed or attempted to commit robbery or extortion. [EC 48900(e)]
7. Caused or attempted to cause damage to school property or private property. [EC 48900(f)]

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- 8.** Stole or attempted to steal school property. [EC 48900(g)]
  - 9.** Possessed or used tobacco, or any products containing tobacco or nicotine products, including but not limited to cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products. [EC 48900(h)]
  - 10.** Committed an obscene act or engaged in habitual profanity or vulgarity. [EC 48900(i)]
  - 11.** Unlawfully possessed, offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11364 of the Health and Safety Code. [EC 48900(j)]
  - 12.** Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties. [EC 48900(k)]
  - 13.** Knowingly received stolen school property or private property. [EC 48900(l)]
  - 14.** Possessed an imitation firearm; i.e., a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm. [EC 48900(m)]
  - 15.** Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the California Penal Code or committed a sexual battery in Section 243.4 of the California Penal Code. [EC 48900(n)]
  - 16.** Harassed, threatened, or intimidated a pupil who is a complaining witness or witness in a

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school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both. [EC 48900(o)]

- 17.** Committed sexual harassment as defined in California Education Code 212.5. [EC 48900.2]
- 18.** Caused, attempted to cause, threatened to cause, or participated in an act of hate violence as defined in California Education Code 33032.5. [EC 48900.3]
- 19.** Intentionally harassed, threatened, or intimidated a student or group of students to the extent of having the actual and reasonably expected effect of materially disrupting class-work, creating substantial disorder, and invading students' rights by creating an intimidating or hostile educational environment. [EC 48900.4]
- 20.** Made terroristic threats against school officials, school property, or both. [EC 48900.7]



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**Actions which  
require  
recommendation  
for expulsion**

1. Causing serious physical injury to another person, except in self-defense. [EC 48915(a)]
2. Possession of any knife as defined in Education Code 48915(g), explosive, or other dangerous object of no reasonable use to the student. [EC 48915(a)]
3. Unlawful possession of any controlled substance, as listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the possession of not more than one (1) ounce of marijuana, other than concentrated cannabis. [EC 48915(a)]
4. Robbery or extortion. [EC 48915(a)]
5. Assault or battery, as defined in Section 240 and 242 of the California Penal Code, upon any school employee. [EC 48915(a)]
6. Possessing, as verified by a district employee, or selling, or otherwise furnishing a firearm, unless the student has obtained prior written permission to possess the item from a certificated school employee, with the principal or principal's designee's concurrence. [EC 48915(c)]
7. Brandishing a knife as defined in Education Code 48915(g) at another person. [EC 48915(c)]
8. Unlawfully selling a controlled substance listed in Health and Safety Code 110530-110580. [EC 48915(c)]



# ALAMEDA COUNTY BOARD OF EDUCATION

	<b>TRUSTEE AREA</b>	<b>BOARD MEMBER</b>	<b>YEAR TERM EXPIRES</b>
#1	Albany, Berkeley, Emeryville, Piedmont and portions of Oakland that include North Oakland and Chinatown/Central	JOAQUIN RIVERA	2018
#2	Alameda and portions of Oakland that include West Oakland, East Oakland, Elmhurst, and Millsmont south to Sheffield Village	AMBER CHILDRESS	2020
#3	Oakland hills from Claremont south to Redwood Road in the northeast, to portions of Chinatown Central, San Antonio, Fruitvale, and East Oakland in the South	KEN BERRICK	2020
#4	San Leandro and the western unincorporated communities of Ashland, Castro Valley, Cherryland, San Lorenzo, and Fairview	AISHA KNOWLES	2018
#5	Hayward, Union City, and the unincorporated areas of Mt. Eden and Hayward Acres	FRED SIMS	2020
#6	Newark and the northern and western portions of Fremont	EILEEN McDONALD	2020
#7	Tri-Valley cities of Dublin, Pleasanton, Livermore, the unincorporated community of Sunol, and the southeastern portions of Fremont	YVONNE CERRATO	2018

NOTE: Citations such as "E.C. 48900" refer to sections in the California Education Code.