

INTERDISTRICT ATTENDANCE TRANSFERS

Procedural Guidelines

PARTNERSHIP IN BUILDING THE FUTURE

School Districts

Students/Parents

County Office

John A. Carroll

Marin County Superintendent of Schools



Updated 5-18-2023

TABLE OF CONTENTS

Foreword

List of District Representatives

Section One

California Residency Law

- The General Rule
- Definition of Residency

Section Two

Establishing Residency Under Exceptions to the General Rule and Guidelines for Verification of Residency

- Licensed Children's Institution
- Interdistrict Attendance
- Emancipation
- Caregiving Adult
- State Hospital
- Employment
- Charter Schools
- Homeless Children
- Verification of Residency
- Affidavit
- Declaration

Section Three Interdistrict Attendance

- Education Code Sections

Section Four

Appeal Process to the Marin County Board of Education

Section Five

Related Legislation

- Government Code-Residence
- Family Code-Caregiver's Residence
- Education Code Sections

Section Six

Forms

- Interdistrict
- Employment
- Appeal to the Marin County Board of Education

Section Seven CDE Legal Opinions/Advisories

- Verification of Residency - March 3, 1995
- Employment Related Advisory - June 19, 1989
- Residency Requirements for Homeless Children - Nov. 15, 1988
- Transportation for Homeless Children - May 31, 2002
- Attorney General Opinion - November 19, 2001
- Crawford v. Huntington Beach Union S. D.

Section Eight

Questions and Answers

- For District Representatives
- For Parents/Guardians

F O R W A R D

Choosing Your Child's School

California law requires all school boards to inform each student's parents/guardians at the beginning of the school year of the various ways in which they may choose schools for their children to attend other than the ones assigned by school districts. This document provides an overview to districts and parents/guardians of the various provisions, general requirements and limitations regarding intra and interdistrict transfers. Further clarification and emphasis can be found within the various Education Code sections cited. [Education Code Section 48980 (h)]

**MARIN COUNTY SCHOOL DISTRICT
REPRESENTATIVES
INTERDISTRICT TRANSFERS**

DISTRICT	REPRESENTATIVE	TELEPHONE	E-MAIL
Bolinas-Stinson	Johanna Scutt	415-868-1603 x206	jscutt@bolinas-stinson.org
Kentfield	Beth Vogel	415-458-5130 x9	bvogel@kentfieldschools.org
Laguna Joint	Luke McCann/Laura Trahan	415-499-5890	lmccann@marinschools.org
Lagunitas	Liz Wickersham	415-488-4118 x201	lwickersham@lagunitas.org
Larkspur-Corte Madera	Mary Anne O’Keeffe	415-927-6960 x3202	mokeeffe@lcmschools.org
Mill Valley	Stacy Woolley	415-389-7700	swooley@mvschools.org
Miller Creek Elem. District	Julie Chang	415-492-3706	jchang@millercreek.org
Nicasio	Mikki McIntyre	415-662-2184	office@nicasioschool.org
Novato Unified	Karina Leoni	415-493-4250	kleoni@nUSD.org
Reed Union	Keith Woodard	415-381-1112 x 4002	kwoodard@reedschools.org
Ross	Jolie Jacobs	415-457-2705	jjacobs@rossbears.org
Ross Valley	Teresa Machado	415-451-4060	tmachado@rossvalleyschools.org
San Rafael Elementary	Susan Akram	415-492-3233	sakram@srcs.org
San Rafael High	Susan Akram	415-492-3233	sakram@srcs.org
Sausalito Marin City	Jamal Graham	415-332-3190	jgraham@smcsd.org
Shoreline Unified	Christine Bowman	707-878-2225	christine.bowman@shorelineunified.org
Tamalpais Union	Karmela Cleary	415-945-1020	kcleary@tamdistrict.org
MCOE	Jon Lenz	415-499-5801	jlenz@marinschools.org

In the event of a change of contact or policy, please notify the Marin County Office of Education at (415) 499-5801.

Updated 1/23/2023

SECTION ONE

CALIFORNIA RESIDENCY LAW

SECTION ONE

CALIFORNIA RESIDENCY LAW

The General Rule

Students must attend “the school district in which the residency of either the parent or legal guardian is located”. Education Code Section 48200; Attorney General’s Opinion #84-702, November 2, 1984.

Definition of Residency

1. Government Code Section 243 provides as follows:

Every person has, in law, a residence.

2. Government Code Section 244 provides as follows:

In determining the place of residence the following rules shall be observed.

- (a) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.
- (b) There can be only one residence.
- (c) A residence cannot be lost until another is gained.
- (d) The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of such unmarried minor child.
- (e) The residence of an unmarried minor who has a parent living cannot be changed by his or her own act.
- (f) The residence can be changed only by the union of act and intent.
- (g) A married person shall have the right to retain his or her legal residence in the state of California notwithstanding the legal residence or domicile of his or her spouse.

SECTION TWO

**ESTABLISHING RESIDENCY UNDER
EXCEPTION TO THE GENERAL RULE**

AND

**GUIDELINES FOR VERIFICATION OF
RESIDENCY**

SECTION TWO

ESTABLISHING RESIDENCY UNDER EXCEPTIONS

To the

GENERAL RULE

Education Code Section 48204

A. Licensed Children's Institution

A pupil placed within the boundaries of a school district in a regularly established licensed children's institution, or a licensed foster home or a family home pursuant to law is deemed to have complied with the residency requirements for school attendance in that district. [Education Code Section 48204(a)(1)]

B. Interdistrict Attendance

A pupil for whom interdistrict attendance has been approved under Education Code Section 46600. [Education Code Section 48204(a)(2)]

C. Emancipation

A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control and authority through emancipation. [Education Code Section 48204(a)(3)]

D. Caregiving Adult

Residency is established by a "pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district. Execution of an affidavit under penalty of perjury pursuant to Part 1.5 (commencing with Section 6550) of Division 11 of the Family Code by the caregiving adult is a sufficient basis for a determination that the pupil lives in the caregiver's home, unless the school district determines from actual facts that the pupil is not living in the caregiver's home". [Education Code Section 48204(a)(4)]

School and Colleges Legal Service memo No. 16-94 provides further clarification and a sample caregiver's authorization affidavit.

E. State Hospital

A pupil residing in a state hospital located within the boundaries of that school district is deemed to have complied with the residency requirements for school attendance. [Education Code Section 48204(a)(5)]

F. Employment

Notwithstanding Education Code Section 48200, a school district may deem a pupil to have complied with the residency requirement for school attendance in the school district, provided:

One or both of the parents, or legal guardians, is employed within the boundaries of that school district. [Education Code 48204(b)]

Grounds for Prohibiting Transfers

- Nothing requires the school district where the pupil's parents or guardians are employed to admit the pupil to its schools. Districts may not, however, refuse to admit pupils under this subsection on the basis, except as expressly provided, of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.
- Either the district of residence or the district of proposed attendance may prohibit the transfer of the pupil under this subsection if the governing board of either district determines that the transfer would negatively impact the district's court-ordered or voluntary desegregation plan.
- The school district of proposed attendance under this subsection may prohibit the transfer of the pupil if the district determines that the additional cost of educating the pupil would exceed the amount of additional state aide received as a result of the transfer.
- The district of residence may prohibit the transfer if the net transfer of pupils out of the district (calculated as the difference between the number of pupils exiting the district and the number of pupils entering the district) in any fiscal year exceeds the following amounts: (a) 5% of the ADA for districts with ADA of less than 501 for that year; (b) 3% of the ADA, or 25 pupils, whichever is greater, for districts with ADA between 501, and 2500 for that fiscal year; (c) 1% of the ADA or 75 pupils, whichever is greater, for districts with ADA over 2500 for that fiscal year.

General Provisions and Parent's Required Notification

Requests for attendance under the "employment" exception starts with the district of employment first. If approved by the district where employment exists, the district of residence need not approve the transfer but may prohibit the transfer based on Education Code Section 48204(b)(2) or (6).

Unlike interdistrict attendance requests, denial of requests under employment cannot be appealed to the Marin County Board of Education.

Governing Boards prohibiting a transfer pursuant to any reasons listed in “Grounds for Prohibiting Transfers” are encouraged to identify, and communicate in writing to the pupil’s parent or guardian, the specific reasons and are encouraged to accurately record in the minutes of the board meeting that determination and reasons. [Education Code 48204(b)(4)]

Time Period

Once a pupil is deemed to have complied with the residency requirements for school attendance pursuant to this subdivision and is enrolled in a school district whose boundaries include the location where one parent or both parents of a pupil is employed, the pupil shall not have to reapply in the next school year to attend school within that school district and the district governing board shall allow the pupil to attend school through the 12th grade in that district if the parent or guardian so chooses, and if one or both of the pupil’s parents or guardians continue to be employed by an employer situated within the attendance boundaries of the school district, subject to Sub Section 1-6 of Education Code 48204(b). [Education Code 48204(b)(7)]

Verification

District has the right to request verification of employment. Verification could include one or more of the following:

1. Letter/note from employer
2. Payroll Record
3. Location of business, office, or work space with accompanying lease or rental agreement
4. Affidavit of employment
5. Tax documents (W-2 or 1099)
6. Other as determined by district of employment

Districts should define “employment criteria” through their policies. The policy can include verification criteria and “what is employment”. Districts may require that employment be verified each year, or more often if there is a reasonable basis to conclude that employment may have terminated. [See Appendix VII: California State Department of Education Legal Advisory March 3, 1995]

G. Charter Schools

Admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.
[Education Code 47605(d)]

H. Homeless Children

Under the No Child Left Behind Act (NCLB) homeless students may continue to attend school in the district of residence before the child became homeless or in the district in which the homeless student now lives. (Reference: Education for Homeless Children: Non-Regulatory Guidance March 2003, U.S. Department of Education)

SECTION TWO

GUIDELINES FOR VERIFICATION OF RESIDENCY

A. **Verification of Residency**

For purposes of complying with Section 432 of Title 5 of the Code of Regulations, which requires a school district to maintain as a permanent record “an annual verification of the name and address of the parent and the residence of the pupil,” a school district may elect one or more of the following methods of verification of residency:

1. Written Verification:

A written statement signed and dated by a parent or legal guardian with whom the child resides.

2. Further Evidence:

When the district has reason to believe the written verification is not correct, one or more of the following initial methods of verification may be used:

a. Declaration/Affidavit (Forms Attached)

A declaration under penalty of perjury or an affidavit signed by a parent or legal guardian with whom the child resides;

b. Public Records

Public records such as voter registration, property tax bills, and/or DMV records showing name and address.

c. Business Records

Copies of business records such as utility bills, bank, rental, mortgage, or other business records showing the address and name of occupants;

d. Personal Records

1. Copies of personal correspondence received at the address in question over a period of time and addressed to the parent or guardian in question;
2. Copies of complete telephone bills

e. Examples

Examples of business records include:

- (1) A letter from PG&E confirming the date that service

was established at the new address, and verifying the address to which its bills are to be mailed.

- (2) A letter from Pacific Bell confirming the new telephone number, showing the address where bills are to be mailed, and verifying that the new phone number is not being forwarded to any other telephone number.
- (3) Moving bills related to your move from _____ to _____.

Examples of public record include:

Proof that each of you has submitted a change of address to the Department of Motor Vehicles for your driver's licenses.

Examples of personnel records include:

A sworn affidavit, signed by each of you, stating your actions and/or intentions with respect to the property at _____
_____ in _____, with attached
(street address) (city or area)
documents to verify your statements (i.e., a rental/lease agreement or contract for services for the sale of the property).

f. Follow-Up

After an initial verification the District may require proof of continued residency at such intervals (e.g., monthly, quarterly, annually) as may be determined appropriate.

3. Further Circumstances:

In circumstances where no documentary evidence exists or is of questionable authenticity, school officials may assign employees or agents to personally visit the location on one or more occasions to verify residence at that location.

4. Homeless Exception:

These guidelines do not apply to homeless children. For further information on establishing residency for homeless children, see the Legal Advisory (LO:5-88) from the State Department of Education, which is set forth in Section VI (CDE Advisories) of this manual.

AFFIDAVIT

I, _____, declare under the penalty of perjury
(Name)

under the laws of the state of California that:

[set forth facts in support of residency]

This affidavit is made and entered on this _____ day of _____ of 20____
(day) (Month) (Year)

in _____, California.
(Location, City or County)

In making this affidavit I am mindful that it is a felony under Penal Code Sections 115, 132 and 134 to knowingly submit a false document to a public agency.

Signature

State of _____
County of _____

On _____ before me, _____, personally appeared
(Date) (Name and Title of Officer)

_____ ☐ personally known to me – OR – ☐ proved to
(Name(s) of Signature(s))

me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL

Signature of Notary Public

DECLARATION

I, _____, declare under the penalty of perjury
(Name)

under the laws of the state of California that:

[set forth facts in support of residency]

This declaration is made and entered on the ____ day of _____ of 20____
(day) (Month) (Year)

in _____, California.
(Location, City or County)

In making this declaration I am mindful that it is a felony under Penal Code Sections 115, 132 and 134 to knowingly submit a false document to a public agency.

Signature

SECTION THREE

INTERDISTRICT ATTENDANCE **SECTION THREE**

SECTION THREE

INTERDISTRICT ATTENDANCE

Education Code Section 46600

Interdistrict Attendance Agreement by Governing Board:

- (a) The governing boards of two or more school districts may enter into an agreement, for a term not to exceed five school years, for the interdistrict attendance of pupils who are residents of the districts. The agreement may provide for the admission to a district other than the district of residence of a pupil who requests a permit to attend a school district that is a party to the agreement and that maintains schools and classes in kindergarten or any of grades 1 to 12, inclusive, to which the pupil requests admission.

The agreement shall stipulate the terms and conditions under which interdistrict attendance shall be permitted or denied.

The supervisor of attendance of the district of residence shall issue an individual permit verifying the district's approval, pursuant to policies of the board and terms of the agreement, for the transfer and for the applicable period of time. A permit shall be valid upon concurring endorsement by the designee of the governing board of the district of proposed attendance. The stipulation of the terms and conditions under which the permit may be revoked is the responsibility of the district of attendance.

- (b) The district of attendance may revoke a permit under terms and conditions established at each district.

SECTION FOUR

APPEAL PROCESS TO THE MARIN COUNTY BOARD OF EDUCATION

SECTION FOUR

Education Code Section 46601

Attendance Requested For:

Current Term

The person having legal custody may appeal, within 30 calendar days of the failure or refusal to issue a permit, or to enter into an agreement allowing the attendance, to the county board of education.

New Term

Requests for interdistrict attendance for the next term must be made at least 30 calendar days prior to commencement of instruction in that term. If within 14 calendar days after commencement of instruction in that new term a permit has not been issued the person having legal custody may appeal to the county board of education.

Note: 1) Appeals have been exhausted if a district takes action to deny or fails to act within the time periods noted above. 2) A denial of residency, based on employment in the district, is not per se appealable. A parent may, however, then request an interdistrict attendance permit, the denial of which is appealable.

Failure to appeal in writing within the required time is good cause for denial of an appeal.

An appeal shall be accepted only upon verification by the county board's designee that appeals within the districts have been exhausted.

The appeal shall be granted or denied on its merits. The county board of education shall, within 30 calendar days after the appeal is filed, determine whether the pupil should be permitted to attend in the district in which he/she desire to attend and the applicable period of time.

The county shall provide adequate notice to all parties of the date and time 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 of education.

Students who are under consideration for expulsion or who have been expelled may not appeal interdistrict attendance denials or recisions while expulsion proceedings are pending, or during the term of the expulsion.

COUNTY BOARD POLICY AND PROCEDURES

Board Policy 8610

SOOO *COUNTY* BOARD OF EDUCATION

8600 APPELLATE FUNCTIONS

8610 **INTERDISTRICT ATTENDANCE**

It is the policy of the Marin County Board of Education that, with few exceptions, children should attend school in the district of residence.

The Board shall adopt rules and regulations governing the appellate process when an interdistrict attendance agreement has been denied. These rules and regulations shall include the criteria the Board will consider in rendering its decision.

The district denying an interdistrict attendance permit or, in the absence of an agreement, the district of residence, shall advise the person requesting the permit of the right of appeal to the Marin County Board of Education.

References Education Code 46601

Administrative Regulations 8610.01

MARIN COUNTY BOARD OF EDUCATION REGULATIONS AND PROCEDURES

APPEALS FROM DENIAL OF INTERDISTRICT ATTENDANCE REQUESTS

Legal provisions for interdistrict attendance agreements are contained in California Education Code Sections 46600-46609. Section 4660 I provides, upon a district's refusal to enter into such an agreement, that a person having legal custody of a child may appeal to the County Board of Education. Interpretations by County Counsel indicate that the County Board of Education has broad powers in relation to such an appeal and that its decision is binding on all parties.

The following procedures and criteria have been developed in order to guide the Marin County Board of Education and to provide clarification and explanation to those involved in such an appeal.

1. PROCEDURE

A. CONDITIONS UNDER WHICH AN APPEAL MAY BE MADE

1. Permit sought for current term.

If the governing board of either district neglects or refuses to enter into an interdistrict attendance agreement within 30 calendar days after the person having legal custody of a pupil has requested the board so to do, an appeal may be made to the County Board of Education.

2. Permit sought for subsequent term.

If, at least 30 calendar days prior to the commencement of a new term, the person having legal custody or the pupil requests each of the districts to grant an interdistrict permit and such permit is not granted, an appeal may be made to the County Board of Education within 14 calendar days of the commencement of the new term.

3. An appeal shall be accepted only upon verification by the Marin County Superintendent of Schools, or his/her designee, that appeals within the districts have been exhausted.

9/26/89

Revised -9/17/93, 4/11/95; 7/11/95

B. FILING AN APPEAL

The written appeal should be filed on a form provided by the district office or the County Office of Education within 30 calendar days after either district fails or refuses to issue a permit. Failure to appeal within the required time is good cause for denial of an appeal. The appeal must include at least the following information:

1. Name(s), address and telephone number of the parent(s), guardian(s) or custodian(s) of the student(s).
2. Student(s) name(s), age(s), grade(s) and school(s) currently attending (or previously attended, if request is made when school is not in session).
3. Name of districts involved.
4. Actions taken on the request.
5. Reasons for requesting the interdistrict attendance agreement.

The County Board of Education shall, within 30 calendar days after the written appeal is filed, determine whether the pupil should be permitted to attend in the district in which he/she desires to attend and for what period of time. The County Board of Education or the County Superintendent of Schools may, for good cause, extend the time period for up to five (5) school days.

C. PREPARATION FOR HEARING THE APPEAL

1. Upon receiving the appeal, the County Superintendent, or his/her designee, will inform the person appealing concerning procedures by which the appeal will be heard.
2. The County Superintendent, or his/her designee, shall verify that appeals within the districts have been exhausted.
3. A date will be set for the appeal to be heard. Normally, appeals will be heard at regular meetings and must be filed at least one week prior to a regular meeting in order to be placed on the agenda for that meeting.

4. Both school districts concerned will be informed of the appeal, of the date for the hearing, and of the appeal procedure and will be invited to have representatives at the hearing to speak regarding the appeal, if they so desire.

5. The person appealing may retain private legal counsel, if he/she so desires. The districts involved may also be represented by legal counsel.

D. CONDUCT OF THE HEARING

1. The hearing will be in a public meeting of the Board unless one or both of the following circumstances exists, in which case that portion of the hearing will be in closed session:
 - a. When the case of the person appealing includes allegations against identifiable staff members and/or other identifiable students
 - b. When the case is such that it will require using information of a personal/confidential nature concerning the student(s) for whom transfer is requested and the parent(s), guardian(s) or custodian(s), request a closed session.
2. The Board will consider all evidence presented to it and render its decision in public session.

Strict rules of evidence as required in court proceedings will not be applied. Evidence to be admissible must be related to the issue and be the type of evidence on which responsible persons rely in the conduct of serious affairs. Hearsay is admissible, but cannot be the sole basis for a finding.

Evidence may include witnesses and documentary materials

The Presiding Officer of the Board may recognize any concerned parties at any time during the hearing to ask questions or to add information

9/26/89

Revised -9/17/93; -1/11/95; 7/11/95

3. The procedures shall be substantially as follows:
 - a. The Presiding Officer of the Board will briefly explain the procedures to be followed in the hearing.
 - b. The person appealing will be given an opportunity to speak regarding the appeal.
 - c. The representative of the school district which originally denied the request will be given an opportunity to speak regarding the appeal.
 - d. The representative of the other district involved will be given an opportunity to speak regarding the appeal.
 - e. The Board may call for additional testimony or documentary evidence as it deems necessary. In the event the Marin County Office of Education staff, at the request of the Board, has gathered information on the appeal, this information will be heard at this point.
 - f. The person appealing will be given the opportunity to present a summary and the same opportunity will be offered to the school district representatives.
 - g. The Board will then deliberate the matter and make a decision as to the disposition of the appeal.
 - h. If new evidence or grounds for the request are introduced, the County Board of Education may remand the matter for further consideration by the district or districts.
4. A written statement of the Board's action will be mailed to the person appealing and to each of the districts involved in the request.

9/16/89

Revised -9/7/93; 4/1/95; 7/11/95

II. GUIDELINES AND CRITERIA

With few exceptions, children should attend school in the district of residence. Any request for attending school in another school district should be based upon exceptional circumstances unique to the child concerned.

It is noted that the changing of schools due to family moves often produces anxiety in children. This is viewed as a normal situation that is a natural part of growing up and that often results in positive social and emotional growth. It is not cause, in and of itself, for the granting of an interdistrict attendance request.

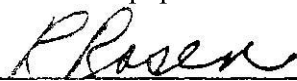
Other frequently stated reasons for requesting out of district attendance includes a parent's perception that one school district is better than another, convenience of transportation, continuance of social contacts and the proximity of a parent's work place. None of these should be cause for granting such a request unless it can be clearly demonstrated that there are exceptional circumstances unique to the child concerned that justify disrupting the normal pattern of school attendance.

It should be noted that each school district establishes its own policy regarding interdistrict attendance requests. In considering appeals, the County Board of Education follows its own policy as stated in this document and not the policies of the districts concerned.

Primary considerations of this Board in acting on an appeal from the denial for a request for interdistrict attendance include

1. Exceptional circumstances regarding the health, safety, emotional development, social development and/or academic development of the child concerned.
2. Exceptional circumstances regarding other family members that are relevant to the child's school attendance.
3. The effect that the granting of the appeal would have upon the districts concerned.
4. The ability of the requested district to meet the stated needs of the child concerned,
5. The child care needs of the pupil.

Approved as to form:


Deputy County Counsel

Ordenanza del Consejo 8610

8000 CONSEJO DE EDUCACION DEL CONDADO

8600 FUNCIONES DE APELACION

8610 ASISTENCIA INTERDISTRITO

La política del Consejo de Educación del Condado de Marin es que, con pocas excepciones, los niños deben asistir a la escuela en los distritos de residencia.

El Consejo debe adoptar reglas y regulaciones que gobiernan el proceso de apelación cuando un acuerdo para asistencia de interdistritos ha sido denegado. Estas reglas y regulaciones deben incluir el criterio que el Consejo considera al entregar su decisión.

El distrito que deniega un permiso de asistencia interdistrito, o en la ausencia de un acuerdo, el distrito de residencia, deberá avisar a la persona que pide el permiso del derecho de apelación al Consejo de Educación del Condado de Marin.

Referencias: Código de Educación 46601

Aprobado para establecer

(hay una firma que se lee R Rosen) Consejero Suplente del Condado

Aprobado por el Consejo de Educación del Condado de Marin 9 /26 /89 Revisado 9/7/93; 4/11/95;
7/11/95

Inrerdistrict Attendance Spanish Translation

REGULACIONES Y PROCEDIMIENTOS ADMINISTRATIVOS DEL CONSEJO DE EDUCACION DEL CONDADO DE MARIN

APELACIONES POR DENEGACION AL PEDIDO DE ASISTENCIA INTERDISTRITO

Las provisiones legales para los acuerdos de asistencia interdistrito están contenidas en el Código de Educación de California Secciones 46600-46609. La Sección 46601 provee, que ante la negativa del distrito de entrar en tal acuerdo, la persona que tenga custodia legal de un/a niño/a podrá apelar al Consejo de Educación del Condado. Las interpretaciones del Consejero del Condado indican que el Consejo de Educación del Condado tiene poderes amplios en relación con dicha apelación y que su decisión es obligatoria para todas las partes.

Los siguientes procedimientos y criterio han sido desarrollados para guiar al Consejo del Condado de Marin y para proveer clarificación y explicación a aquellos interesados en tal apelación.

I. PROCEDIMIENTO

A. CONDICIONES ANTE LAS CUALES SE PUEDE HACER UNA APELACION

1. Pedido de permiso para el termino actual

Si el consejo gubernativo de cualquiera de los distritos deniega o rehusa entrar en un acuerdo de asistencia interdistrito dentro de los 30 días calendarios luego de que la persona que tenga la custodia legal de un/a alumno/a haya pedido al consejo que así lo haga, podrá hacerse una apelación ante el Consejo de Educación del Condado.

2. Pedido de permiso para el termino subsiguiente

Si, al menos 30 días calendarios previos al comienzo de un nuevo termino, la persona que tiene la custodia legal de un/a alumno/a pide a cualquiera de los distritos que le otorgue un permiso interdistrito y tal permiso no es otorgado, se puede hacer una apelacion al Consejo de Educacion del Condado dentro de los 14 días calendarios del comienzo del nuevo termino.

3. Una apelación sera aceptada solo bajo la verificacion por parte del/la Superintendente de las Escuelas del Condado de Marin, su designado/a, de que las apelaciones dentro de los distritos han sido agotadas.

9/26/89

Revisado -9/7/93; 4/11/95; 7/11/95

Administrative Regulations 8610.01 Spanish Translation

B. LLENAR UNA APELACION

La apelacion escrita debera ser llenada en un fonnulario provisto por la oficina del distrito o por la Oficina de Educacion del Condado dentro de los 30 dias calendarios luego de que el distrito no otorgue o rehuse otorgar el penniso. La falta de apelacion dentro de los tenninos establecidos es causa justa para la denegacion de una apelacion. La apelacion debeni incluir al menos la siguiente infonnacion:

1. Nombre (s) direccion y numero de telefono del/los padre/s, guardian/es o custodio/s del/los estudiante/s.
2. Nombre/s de/los estudiantes, edad/es, grado/s y escuela/s de atencion en el presente (que hayan atendido previamente, si el pedido se hace cuando la escuela no esta en sesion).
3. Nombre de los distritos involucrados.
4. Acciones tomadasas sobre el pedido.
5. Razones para el pedido de un acuerdo de asistencia interdistrito.

El Consejo de Educacion del Condado debera, dentro de los 30 dias calendarios luego de que la apelacion escrita es llenada, deteminar si se le pennitira al/la estudiante asistir en el distrito en el cual el/ella desea asistir y por que periodo de tiempo. El Consejo de Educacion del Condado o el/la Superintendente de las Escuelas del Condado pueden, con causa justificada, extender el perfodo de tiempo por hasta cinco (5) dias escolares.

C. PREPARACION PARA LA AUDIENCIA DE APELACION

1. Al recibir la apelacion, el/la Superintendente del Condado o su designado/a, infonnara a la persona apelante lo concemiente a los procedimientos por los medio de los cuales se oira la apelacion.
2. El Superintendente del Condado o su designado/a, verificara que las apelaciones dentro de los distritos han sido agotadas.
3. Se fijani una fecha para que la apelacion sea oida. Nonnalmente, las apelaciones son oidas durante las reuniones regulares y deben ser llenadas al menos una semana previa a la reunion regular para que se anote en la agenda para esa reunion.

9/26/89

Revisado -9/17/93; 4/11/95; 7/11/95

Interdistrict Attendance Appeal-Spanish Translation

4. Ambos distritos escolares involucrados serán informados de la apelación, de la fecha de la audiencia, y de los procedimientos de la apelación, y serán invitados a tener a sus representantes en la audiencia para hablar con respecto a la apelación, si así lo desean.
5. La persona que apela podrá retener consejero/a legal privado/a, si así lo desea. Los distritos involucrados podrán estar representados por consejería legal.

D. CONDUCCION DE LA AUDIENCIA

1. La audiencia será en una reunión pública del Consejo, a menos que una o ambas de las siguientes circunstancias exista, en cuyo caso, esa porción de la audiencia se hará en sesión a puertas cerradas:
 - a. Cuando el caso de la persona que apela incluye alegatos contra miembros indistinguibles del personal y/o estudiantes indistinguibles.
 - b. Cuando el caso es tal que requiera usar información de naturaleza personal/confidencial concierne al/los estudiante/s para quien la transferencia es pedida y el/los padre/s, guardianes o *custodio/s* piden una sesión a puertas cerradas.
2. El Consejo considerará toda la evidencia que se le presente y tomará una decisión en una sesión pública.

No se aplicarán reglas estrictas de evidencia como las requeridas en procedimientos de la corte. La evidencia admisible debe estar relacionada al tema y ser de la clase de evidencia en la cual personas responsables confían como en la conducción de temas serios. Los testimonios son admisibles, pero no podrán ser la (única) base para un fallo.

La evidencia podrá incluir testigos y material documentado.

El oficial que preside el Consejo podrá identificar a cualquiera de las partes involucradas en cualquier momento durante la audiencia para hacerle preguntas o para agregar información.

9/26/89

Revised -917193; 4111195; 7111195

Interdistrict Attendance Appeal-Spanish Translations

APELACIONES DE ASISTENCIA INTERDISTRITO Pitgina 4 de 6

3. Los procedimientos deben ser sustancialmente como sigue:
 - a. El oficial que preside el Consejo explicará brevemente los procedimientos a seguir en la audiencia.
 - b. Se le dará una oportunidad de hablar sobre la apelación a la persona que apela.
 - c. Se le dará una oportunidad de hablar sobre la apelación a los representantes del distrito escolar que originalmente denegó el pedido.
 - d. Se le dará la oportunidad de hablar sobre la apelación a los representantes del otro distrito involucrado.
 - e. El Consejo podrá requerir testimonio adicional o evidencia documental como lo considere necesario. En el evento que el personal de la Oficina del Condado de Educación, a pedido del Consejo, haya reunido información sobre la apelación, esta información deberá ser oída en este momento.
 - f. Se le dará la oportunidad a la persona apelante de presentar un resumen y la misma oportunidad se le ofrecerá a los representantes del distrito escolar.
 - g. El Consejo luego deliberará sobre el tema y hará una decisión sobre la disposición de la apelación.
 - h. Si se introducen nueva evidencia o bases para el pedido, el Consejo de Educación del Condado podrá devolver el caso para consideración adicional del o de los distrito/s.
4. Una declaración escrita de la acción del Consejo deberá ser enviada por correo a la persona apelante y a cada uno de los distritos involucrados en el pedido.

926/89

Revisado -9/7/93; 4/11/95; 7/11/95

Interdistrict Attendance Appeal-Spanish Translation

II. GUIAS Y CRITERIOS

Con pocas excepciones, los niños deberán asistir a la escuela en el distrito de su residencia. Cualquier pedido para asistir a la escuela en otro distrito escolar deberá estar basado en circunstancias excepcionales únicas al niño/a en cuestión.

Ha sido notado que el cambio de escuelas debido a cambio de domicilio de la familia con frecuencia produce ansiedad en los niños. Esto se ve como una situación normal que es parte del crecer y que con frecuencia resulta en un crecimiento social y emocional positivo. Esta, en sí misma, no es causa para otorgar un pedido de asistencia interdistrito.

Otra razón frecuente para el pedido de asistencia fuera del distrito incluye la percepción de los padres de que un distrito escolar es mejor que otro, la conveniencia del transporte, la continuación de los contactos sociales y la proximidad del lugar de trabajo de los padres. Ninguna de estas debería ser causa para otorgar dicho pedido, a no ser que sea claramente demostrado que existan en circunstancias excepcionales únicas al niño/a en cuestión que justifican la interrupción de un patrón normal de asistencia a la escuela.

Deberá notarse que cada distrito escolar establece su propia política en relación a los pedidos de asistencia interdistrito. Al considerar las apelaciones, el Consejo de Educación del Condado sigue sus propias políticas como se establece en este documento y no las políticas de los distritos involucrados.

Las consideraciones primarias de este Consejo al decidir en una apelación por la denegación de un pedido de asistencia interdistrito incluyen:

1. Circunstancias excepcionales relacionadas con la salud, seguridad, desarrollo emocional, social y/o académico del niño/a en cuestión
2. Circunstancias excepcionales relacionada con otros miembros de la familia que son relevantes a la asistencia escolar del niño/a.
3. El efecto que la otorgación de la apelación tendría en los distritos involucrados.

9/26/89

Revisado -9/7/93; 4/11/95; 7/11/95

Interdistrict Attendance Appeal-Spanish Translation

4. La habilidad del distrito al que se le pide el cambio, de proveer de las necesidades estipuladas del niño/a.
5. Las necesidades de cuidado del niño/a.

Aprobado para establecer:

(hay una firma que se lee R Rosen) Conscjero Suplente del Condado

Aprobado por el Consejo de Educación del Condado de Marin -9/26/89

Revisado -9/7/93; 4/11/95; 7/11/95

Interdistrict Attendance Appeal-Spanish Translation

SECTION FIVE

RELATED LEGISLATION

SECTION FIVE

LEGISLATION PERTAINING TO RESIDENCY, INTERDISTRICT AND INTRADISTRICT ATTENDANCE

GOVERNMENT CODE RESIDENCE

- § 243 Residence
- § 244 Determination of Place of Residence

FAMILY CODE CAREGIVER'S RESIDENCY

- § 6550 Residency Caregivers
- § 6552 Caregiver's Authorization Affidavit

EDUCATION CODE INTRADISTRICT

- § 35160 (b) (1) Open Enrollment Policy
- § 35160 (b) (2) Open Enrollment Policy Elements

EDUCATION CODE INTERDISTRICT ATTENDANCE

- § 46600 Agreement by Governing Board
- § 46601 Appeal to County Board
- § 46602 Admission Without Delay; Notice of Decision
- § 46603 Provisional Attendance
- § 46604 Interdistrict Attendance Computation

EDUCATION CODE CHARTER SCHOOLS

- § 47605(a)(5)(L) Attendance Alternatives

EDUCATION CODE COMPULSORY EDUCATION

- § 48203 Reports of Severance of Attendance of Handicapped
- § 48204 Residency Requirements in Effect Until July 1, 2012
- § 48204 Residency Requirements in Effect July 1, 2012

EDUCATION CODE PUPIL ATTENDANCE ALTERNATIVES

§ 48300	Definitions
§ 48301	Interdistrict Transfers
§ 48302	Current Educational Programs Offered
§ 48303	Additional Costs of Educating the Pupil
§ 48304	Displacement
§ 48305	Uniform Entrance Criteria
§ 48306	Siblings and Children of Military Personnel
§ 48307	Limit of Transfers Out
§ 48308	Application for Transfer
§ 48309	Acceptance of Previous Coursework/Revocation
§ 48310	ADA to District of Choice
§ 48311	Transportation Assistance
§ 48312	Request of Information
§ 48313	Records of Requests for Alternative Attendance
§ 48314	Informed Choice
§ 48315	Date of Repeal

EDUCATION CODE SUSPENSION/EXPULSION

§ 46600(b)	Enrollment of Expelled Student
§ 46601(e)	Effect of Expulsion on Interdistrict Appeals
§ 48915.1	Enrollment in Another School District Following Expulsion
§ 48915.2	Limitations on Enrollment in Another School After Being Expelled
§ 48915.5	Expulsion of Students With Exceptional Needs or Enrolled in Special Education
§ 48916	Readmission Following Expulsion

EDUCATION CODE RESIDENCY

§ 48980	Notification of Parent
§ 48980 (h)	Availability of Employment-Based Attendance
§ 48980 (i)	Attendance and Residency Requirements

Government Code § 243. Residence

Every person has, in law, a residence.

Government Code § 244. Determination of place of residence

In determining the place of residence the following rules shall be observed:

- (a) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.
- (b) There can only be one residence.
- (c) A residence cannot be lost until another is gained.
- (d) The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of such unmarried minor child.
- (e) The residence of an unmarried minor who has a parent living cannot be changed by his or her own act.
- (f) The residence can be changed only by the union of act and intent.
- (g) A married person shall have the right to retain his or her legal residence in the state of California notwithstanding the legal residence or domicile of his or her spouse.

Family Code § 6550. Authorization affidavits; scope of authority; reliance on affidavit

- a. A caregiver's authorization affidavit that meets the requirements of this part authorizes a caregiver 18 years of age or older who completes items 1-4, inclusive, of the affidavit provided in Section 6552 and signs the affidavit to enroll a minor in school and consent to school-related medical care on behalf of the minor. A caregiver who is a relative and who completes items 1-8, inclusive, of the affidavit provided in Section 6552 and signs the affidavit shall have the same rights to authorize medical care and dental care for the minor that are given to guardians under Section 2353 of the Probate Code. The medical care authorized by this caregiver who is a relative may include mental health treatment subject to the limitations of Section 2356 of the Probate Code.
- b. The decision of a caregiver to consent to or to refuse medical or dental care for a minor shall be superseded by an contravening decision of the parent or other person having legal custody of the minor, provided the decision of the parent or other person having legal custody of the minor does not jeopardize the life, health, or safety of the minor.
- c. A person who acts in good faith reliance on a caregiver's authorization affidavit to provide medical or dental care, without actual knowledge of facts contrary to those stated on the affidavit, is not subject to criminal liability or to civil liability to any person, and is not subject to professional disciplinary action, for that reliance if the applicable portions of the affidavit are completed. This subdivision applies even if medical or dental care is provided to a minor in contravention of the wishes of the parent or other person having legal custody of the minor as long as the person providing the medical or dental care has no actual knowledge of the wishes of the parent or other person having legal custody of the minor.
- d. A person who relies on the affidavit has no obligation to make any further inquiry or investigation.
- e. Nothing in this section relieves any individual from liability for violations of other provisions of law.
- f. If the minor stops living with the caregiver, the caregiver shall notify any school, health care provider, or health care service plan that has been given the affidavit. The affidavit is invalid after the school, health care provider, or health care service plan receives notice that the minor is no longer living with the caregiver.
- g. A caregiver's authorization affidavit shall be invalid, unless it substantially contains, in not less than 10-point boldface type or a reasonable equivalent thereof, the warning statement beginning with the word "warning" specified in Section 6552. The warning statement shall be enclosed in a box with 3-point rule lines.
- h. For purposes of this part, the following terms have the following meanings:
 - (1) "Person" includes an individual, corporation, partnership, association, the state, or any city, county, city and county, or other public entity or governmental subdivision or agency, or any other legal entity.

(2) "Relative" means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or "great", or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution.

(3) "School-related medical care" means medical care that is required by state or local governmental authority as a condition for school enrollment, including immunizations, physical examinations, and medical examinations conducted in schools for pupils.

Family Code § 6552. Form of authorization affidavit

The caregiver's authorization affidavit shall be in substantially the following form:

Caregiver's Authorization Affidavit

Use of this affidavit is authorized by Part 1.5 (commencing with Section 6550) of Division 11 of the California Family Code.

Instructions: Completion of items 1-4 and the signing of the affidavit is sufficient to authorize enrollment of a minor in school and authorize school-related medical care. Completion of items 5-8 is additionally required to authorize any other medical care. Print clearly.

The minor named below lives in my home and I am 18 years of age or older.

1. Name of minor: _____.
2. Minor's birth date: _____.
3. My name (adult giving authorization): _____.
4. My home address: _____.
5. ☐ I am a grandparent, aunt, uncle, or other qualified relative of the minor (see back of this form for a definition of "qualified relative").
6. Check one or both (for example, if one parent was advised and the other cannot be located):
☐ I have advised the parent(s) or other person(s) having legal custody of the minor of my intent to authorize medical care, and have received no objection.
☐ I am unable to contact the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.
7. My date of birth: _____.
8. My California's driver's license or identification card number: _____.

Warning: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment, or both.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Dated: _____ Signed: _____

Notices:

1. This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody, and control of the minor, and does not mean that the caregiver has legal custody of the minor.
2. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.
3. This affidavit is not valid for more than one year after the date on which it is executed.

Additional Information:

TO CAREGIVERS:

1. "Qualified relative", for purposes of item 5, means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or "great", or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution.
2. The law may require you, if you are not a relative or a currently licensed foster parent, to obtain a foster home license in order to care for a minor. If you have any questions, please contact your local department of social services.
3. If the minor stops living with you, you are required to notify any school, health care provider, or health care service plan to which you have given this affidavit. The affidavit is invalid after the school, health care provider, or health care service plan receives notice that the minor no longer lives with you.
4. If you do not have the information requested in item 8 (California driver's license or I.D.), provide another form of identification such as your social security number or Medi-Cal number.

TO SCHOOL OFFICIALS:

1. Section 48204 of the Education Code provides that this affidavit constitutes a sufficient basis for a determination of residency of the minor, without the requirement of a guardianship or other custody order, unless the school district determines from actual facts that the minor is not living with the caregiver.
2. The school district may require additional reasonable evidence that the caregiver lives at the address provided in item 4.

TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS:

1. A person who acts in good faith reliance upon a caregiver's authorization affidavit to provide medical or dental care, without actual knowledge of facts contrary to those stated on the affidavit, is not subject to criminal liability or to civil liability to any person, and is not subject to professional disciplinary action, for that reliance if the applicable portions of the form are completed.
2. This affidavit does not confer dependency for health care coverage purposes.

Education Code § 35160.5(b)(1)

(b)(1) On or before July 1, 1994, the governing board of each school district, as a condition for the receipt of school apportionments from the state school fund, shall adopt rules and regulations establishing a policy of open enrollment within the district for residents of the district. This requirement does not apply to a school district that has only one school or a school district with schools that do not serve any of the same grade levels.

Education Code § 35160.5(b)(2)

(2) The policy shall include all of the following elements:

(A) It shall provide that the parent or guardian of each schoolage child who is a resident in the district may select the schools the child shall attend, irrespective of the particular locations of his or her residence within the district, except that school districts shall retain the authority to maintain appropriate racial and ethnic balances among their respective schools at the school districts' discretion or as specified in applicable court-ordered or voluntary desegregation plans.

(B) It shall include a selection policy for a school that receives requests for admission in excess of the capacity of the school that ensures that selection of pupils to enroll in the school is made through a random, unbiased process that prohibits an evaluation of whether a pupil should be enrolled based upon his or her academic or athletic performance. The governing board of a school district shall calculate the capacity of the schools in the district for purposes of this subdivision in a nonarbitrary manner using pupil enrollment and available space. However, school districts may employ existing entrance criteria for specialized schools or programs if the criteria are uniformly applied to all applicants. This subdivision shall not be construed to prohibit school districts from using academic performance to determine eligibility for, or placement in, programs for gifted and talented pupils established pursuant to Chapter 8 (commencing with Section 52200) of Part 28 of Division 4.

(C) It shall provide that no pupil who currently resides in the attendance area of a school shall be displaced by pupils transferring from outside the attendance area.

Education Code § 46600. Agreements for interdistrict attendance; terms and conditions; individual permits verifying district's approval; application

(a) The governing boards of two or more school districts may enter into an agreement, for a term not to exceed five school years, for the interdistrict attendance of pupils who are residents of the districts. The agreement may provide for the admission to a district other than the district of residence of a pupil who requests a permit to attend a school district that is a party to the agreement and that maintains schools and classes in kindergarten or any of grades 1 to 12, inclusive, to which the pupil requests admission.

The agreement shall stipulate the terms and conditions under which interdistrict attendance shall be permitted or denied.

The supervisor of attendance of the district of residence shall issue an individual permit verifying the district's approval, pursuant to policies of the board and terms of the agreement, for the transfer and for

the applicable period of time. A permit shall be valid upon concurring endorsement by the designee of the governing board of the district of proposed attendance. The stipulation of the terms and conditions under which the permit may be revoked is the responsibility of the district of attendance.

(b) In addition to the requirements of subdivision (e) of Section 48915.1, and regardless of whether an agreement exists or a permit is issued pursuant to this section, any district may admit a pupil expelled from another district in which the pupil continues to reside.

Education Code § 46601. Failure to approve interdistrict attendance; appeal

If, within 30 calendar days after the person having legal custody of a pupil has so requested, the governing board of either school district fails to approve interdistrict attendance in the current term, or, in the absence of an agreement between the districts, fails or refuses to enter into an agreement, the district denying the permit, or, in the absence of an agreement, the district of residence, shall advise the person requesting the permit of the right to appeal to the county board of education.

If, within 14 calendar days after the commencement of instruction in a new term in each of the school districts, respectively, when the person having legal custody of a pupil has so requested separately of each district not later than 30 calendar days prior to the commencement of instruction in that term in that district, the governing board of either district fails to approve interdistrict attendance in that term, or, in the absence of an agreement between the districts to permit that attendance, fails or refuses to enter an agreement, the district denying the permit, or, in the absence of an agreement, the district of residence, shall advise the person requesting the permit of the right to appeal to the county board of education.

Notifying districts shall also, in all instances, advise persons making unsuccessful requests for interdistrict attendance of all of the following:

(a) The person having legal custody may appeal, within 30 calendar days of the failure or refusal to issue a permit, or to enter into an agreement allowing the attendance, to the county board of education having jurisdiction over the district of residence of the parent or legal guardian or person having legal custody. Failure to appeal within the required time is good cause for denial of an appeal. An appeal shall be accepted only upon verification by the county board's designee that appeals within the districts have been exhausted. 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.

(b)(1) The county board of education shall, within 30 calendar days after the appeal is filed, determine whether the pupil should be permitted to attend in the district in which the pupil desires to attend and the applicable period of time. In the event that compliance by the county board within the time requirement for determining whether the pupil should be permitted to attend in the district in which the pupil desires to attend is impractical, the county board or the county superintendent of schools, for good cause, may extend the time period for up to an additional five school days. The county shall provide adequate notice to all parties of the date and time 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 of education. The county board rules may provide for the granting of continuances upon a showing of good cause. The county board of education shall render a decision within three school days of any hearing conducted by the board unless the person who filed the appeal requests a postponement.

(2) In a class 1 or class 2 county, the county board rules may provide for any hearing pursuant to this section to be conducted by a hearing officer pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Title 3 of the Government Code, or by an impartial administrative panel of three or more certificated persons appointed by the county board of education. Section 27722 is applicable to a hearing by any impartial administrative panel and, for purposes of this section, the term “hearing officer” in Section 27722 includes an impartial administrative panel. No member of the impartial administrative panel shall be a member of the county board of education, nor be employed by the school district of residence or the district of desired attendance. The definitions of “class 1 county” and “class 2 county” in subdivision (c) of Section 48919.5 apply to this section. If the hearing officer is not authorized to decide whether the pupil should be permitted to attend in the district in which the pupil desires to attend, the county board of education within 10 days of receiving the recommended decision pursuant to subdivision (b) of Section 27722 of the Government Code shall render a decision.

(c) The county supervisor of attendance, or other designee of the county superintendent of schools, 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.

(d) 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 purposes of an appeal. 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 adequate 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.

(e) Students who are under consideration for expulsion, or who have been expelled pursuant to Sections 48915 and 48918, may not appeal interdistrict attendance denials or recisions while expulsion proceedings are pending, or during the term of the expulsion.

Education Code § 46602. Admission to school without delay upon board approval; counting attendance for revenue purposes; notice of board’s decision

If the county board of education determines that the pupil should be permitted to attend in the district in which he or she desires to attend, the pupil shall be admitted to school in the district without delay and the attendance may be counted by the district of attendance for revenue limit and state apportionment purposes.

Written notice of the decision by the county board of education shall be delivered to the pupil and the parent or guardian, or person having custody of him or her, and to the governing boards of the districts.

Education Code § 46603. Provisional attendance pending appeal on decision regarding interdistrict attendance

For a period not to exceed two school months, the governing board of a school district may provisionally admit to the schools of the district a pupil who resides in another district, pending a decision of the two boards, or by the county board of education upon appeal, regarding the interdistrict attendance.

Regardless of whether the decision on interdistrict attendance is allowed, the provisional attendance may be counted by the district of attendance for revenue limit and state apportionment purposes.

Education Code § 46604. Failure by district of residence to pay tuition charges

If the governing board of a school district in which pupils reside who are lawfully attending in another district fails or refuses to pay, when due, the amount required to be paid to the district of attendance for the education of those pupils under any provision of this code, the county superintendent of schools having jurisdiction over the district of residence shall draw a requisition against the funds of the district of residence in favor of the district of attendance in payment of that amount and transmit the requisition to the governing board of the district of attendance.

Education Code § 47605(a)(5)(L)

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

Education Code § 48203. Reports of severance of attendance of children with exceptional needs or handicapped children; examination; hearings

(a) The superintendent of a school district and the principal of a private school in each county shall, upon the severance of attendance or the denial of admission of any child who is an individual with exceptional needs, as that term is defined in Section 56026, or who is a qualified handicapped person, as that term is defined in regulations promulgated by the United States Department of Education pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), but who is otherwise subject to the compulsory education laws of California, report the severance, expulsion, exclusion, exemption, transfer, or suspension beyond 10 schooldays to the county superintendent of schools. The report shall include names, ages, last known address, and the reason for the severance, expulsion, exclusion, exemption, transfer, or suspension.

(b) It is the duty of the county superintendent to examine those reports and draw to the attention of the county board of education and governing board of a school district any cases in which the interests of the child or the welfare of the state may need further examination.

(c) After a preliminary study of available information in cases referred to it, the county board of education may, on its own action, hold hearings on those cases in the manner provided in Section 48914 and with the same powers of final decision as therein provided.

Education Code § 48204. Residency requirements for school attendance

< Text of section operative until July 1, 2012 >

(a) Notwithstanding Section 48200, a pupil complies with the residency requirements for school attendance in a school district, if he or she is any of the following:

(1) (A) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a commitment or

placement under Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(B) An agency placing a pupil in a home or institution described in subparagraph (A) shall provide evidence to the school that the placement or commitment is pursuant to law.

(2) A pupil for whom interdistrict attendance has been approved pursuant to Chapter 5 (commencing with Section 46600) of Part 26.

(3) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.

(4) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district. Execution of an affidavit under penalty of perjury pursuant to Part 1.5 (commencing with Section 6550) of Division 11 of the Family Code by the caregiving adult is a sufficient basis for a determination that the pupil lives in the home of the caregiver, unless the school district determines from actual facts that the pupil is not living in the home of the caregiver.

(5) A pupil residing in a state hospital located within the boundaries of that school district.

(b) A school district may deem a pupil to have complied with the residency requirements for school attendance in the district if at least one parent or the legal guardian of the pupil is physically employed within the boundaries of that district.

(1) This subdivision does not require the school district within which at least one parent or the legal guardian of a pupil is employed to admit the pupil to its schools. A school district shall not, however, refuse to admit a pupil under this subdivision on the basis, except as expressly provided in this subdivision, of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.

(2) The school district in which the residency of either the parents or the legal guardian of the pupil is established, or the school district to which the pupil is to be transferred under this subdivision, may prohibit the transfer of the pupil under this subdivision if the governing board of the district determines that the transfer would negatively impact the court-ordered or voluntary desegregation plan of the district.

(3) The school district to which the pupil is to be transferred under this subdivision may prohibit the transfer of the pupil if the district determines that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer.

(4) The governing board of a school district that prohibits the transfer of a pupil pursuant to paragraph (1), (2), or (3) is encouraged to identify, and communicate in writing to the parents or the legal guardian of the pupil, the specific reasons for that determination and is encouraged to ensure that the determination, and the specific reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made.

(5) The average daily attendance for pupils admitted pursuant to this subdivision is calculated pursuant to Section 46607.

(6) Unless approved by the sending school district, this subdivision does not authorize a net transfer of pupils out of a school district, calculated as the difference between the number of pupils exiting the district and the number of pupils entering the district, in a fiscal year in excess of the following amounts:

(A) For a school district with an average daily attendance for that fiscal year of less than 501, 5 percent of the average daily attendance of the district.

(B) For a school district with an average daily attendance for that fiscal year of 501 or more, but less than 2,501, 3 percent of the average daily attendance of the district or 25 pupils, whichever amount is greater.

(C) For a school district with an average daily attendance of 2,501 or more, 1 percent of the average daily attendance of the district or 75 pupils, whichever amount is greater.

(7) Once a pupil is deemed to have complied with the residency requirements for school attendance pursuant to this subdivision and is enrolled in a school in a school district the boundaries of which include the location where at least one parent or the legal guardian of a pupil is physically employed, the pupil does not have to reapply in the next school year to attend a school within that district and the district governing board shall allow the pupil to attend school through grade 12 in that district if the parent or legal guardian so chooses and if at least one parent or the legal guardian of the pupil continues to be physically employed by an employer situated within the attendance boundaries of the district, subject to paragraphs (1) to (6), inclusive.

(c) This section shall become inoperative on July 1, 2012, and as of January 1, 2013, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

Education Code § 48204. Residency requirements for school attendance

< Text of section operative July 1, 2012 >

Notwithstanding Section 48200, a pupil complies with the residency requirements for school attendance in a school district, if he or she is:

(a) (1) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a commitment or placement under Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(2) An agency placing a pupil in the home or institution described in paragraph (1) shall provide evidence to the school that the placement or commitment is pursuant to law.

(b) A pupil for whom interdistrict attendance has been approved pursuant to Chapter 5 (commencing with Section 46600) of Part 26.

(c) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.

(d) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district. Execution of an affidavit under penalty of perjury pursuant to Part 1.5 (commencing with Section 6550) of Division 11 of the Family Code by the caregiving adult is a sufficient basis for a determination that the pupil lives in the home of the caregiver, unless the school district determines from actual facts that the pupil is not living in the home of the caregiver.

(e) A pupil residing in a state hospital located within the boundaries of that school district.

(f) This section shall become operative on July 1, 2012.

Education Code § 48300. Definitions

For purposes of this article, the following definitions apply:

(a) "School district of choice" means a school district for which a resolution is in effect as described in subdivision (a) of Section 48301.

(b) "School district of residence" means the school district that a pupil would be directed by this chapter to attend, except as otherwise provided by this article.

Education Code § 48301. Interdistrict transfers; acceptance by governing board; restrictions upon pupil transfers; communications to parents or guardians; compliance review

(a) The governing board of any school district may accept interdistrict transfers. A school district that receives an application for attendance under this article is not required to admit pupils to its schools. If, however, the governing board elects to accept transfers as authorized under this article, it may, by resolution, elect to accept transfer pupils, determine and adopt the number of transfers it is willing to accept under this article, and ensure that pupils admitted under the policy are selected through a random, unbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based upon his or her academic or athletic performance. Any pupil accepted for transfer shall be deemed to have fulfilled the requirements of Section 48204. If the number of transfer applications exceeds the number of transfers the governing board elects to accept under this article, approval for transfer pursuant to this article shall be determined by a random drawing held in public at a regularly scheduled meeting of the governing board of the school district.

(b) Either the pupil's school district of residence, upon notification of the pupil's acceptance to the school district of choice pursuant to subdivision (c) of Section 48308, or the school district of choice may prohibit the transfer of a pupil under this article or limit the number of pupils so transferred if the governing board of the district determines that the transfer would negatively impact any of the following:

(1) The court-ordered desegregation plan of the district.

(2) The voluntary desegregation plan of the district.

(3) The racial and ethnic balance of the district.

(c) The school district of residence may not adopt policies that in any way block or discourage pupils from applying for transfer to another district.

(d) Communications to parents or guardians by districts electing to enroll pupils under the choice options provided by this article shall be factually accurate and not target individual parents or guardians or residential neighborhoods on the basis of a child's actual or perceived academic or athletic performance or any other personal characteristic.

(e) A school district of choice, at its expense, shall ensure that the auditor who conducts the annual audit pursuant to Section 41020, at the same time that he or she is conducting that annual audit, reviews compliance with the provisions in this section regarding a random, unbiased selection process and appropriate communications. The compliance review specified in this subdivision is not subject to the requirements in subdivision (d) of Section 41020. The school district of choice shall notify the auditor regarding this compliance review specified in this subdivision prior to the commencement of the annual audit. The governing board of the school district of choice shall include a summary of audit exceptions, if any, resulting from the compliance review conducted pursuant to this subdivision in the report it provides pursuant to subdivision (b) of Section 48313.

Education Code § 48302. Informational hearings on current educational programs

School districts are encouraged to hold informational hearings on the current educational program the district is offering so that parents may provide input to the district on methods to improve the current program and so that parents may make informed decisions regarding their children's education.

Education Code § 48303. Rejection of pupil transfer; criteria; discriminatory practices prohibited

(a) The school district of choice may not prohibit a transfer of a pupil under this article based upon a determination by the governing board of that school district that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer. A school district may reject the transfer of a pupil if the transfer of that pupil would require the district to create a new program to serve that pupil, except that a school district of choice shall not reject the transfer of a special needs pupil, including an individual with exceptional needs, as defined in Section 56026, and an English learner.

(b) This section is intended to ensure that special education, bilingual, English learner, or other special needs pupils are not discriminated against by the school district of choice because of the costs associated with educating those pupils. Pupils with special needs may take full advantage of the choice options available under this section.

Education Code § 48304. Application approval conditions

An application of any pupil for transfer may not be approved under this article if the transfer would require the displacement, from a school or program conducted within any attendance area of the school district of choice, of any other pupil who resides within that attendance area or is currently enrolled in that school.

Educational Code § 48305. Entrance criteria; school district authority

School districts of choice may employ existing entrance criteria for specialized schools or programs if the criteria are uniformly applied to all applicants.

Educational Code § 48306. Entrance priority for siblings and children of military personnel

(a) A school district of choice shall give priority for attendance to siblings of children already in attendance in that district.

(b) A school district of choice may give priority for attendance to children of military personnel.

Educational Code § 48307. Annual outbound transfers of pupils; school district limits

(a) A school district of residence with an average daily attendance greater than 50,000 may limit the number of pupils transferring out each year to 1 percent of its current year estimated average daily attendance.

(b) A school district of residence with an average daily attendance of less than 50,000 may limit the number of pupils transferring out to 3 percent of its current year estimated average daily attendance and may limit the maximum number of pupils transferring out for the duration of the program authorized by this article to 10 percent of the average daily attendance for that period.

(c) A school district of residence that has a negative status on the most recent budget certification completed by the county superintendent of schools in any fiscal year may limit the number of pupils who transfer out of the district in that fiscal year.

(d) Notwithstanding any prior or existing certification of a school district of residence pursuant to Article 3 (commencing with Section 42130) of Chapter 6 of Part 24, only if the county superintendent of schools determines that the district would not meet the standards and criteria for fiscal stability specified in Section 42131 for the subsequent fiscal year exclusively due to the impact of additional pupil transfers pursuant to this article in that year, the district may limit the number of additional pupils who transfer in the upcoming school year pursuant to this article up to the number that the county superintendent identifies beyond which number of additional transfers would result in a qualified or negative certification in that year exclusively as a result of additional transfers pursuant to this article.

(e) If a school district of residence limits the number of pupils who transfer out of the district pursuant to subdivision (c) or (d), pupils who have already been enrolled or notified of eligibility for enrollment, including through the random, public selection process prior to the action by the district to limit transfers shall be permitted to attend the school district of choice.

(f) Notwithstanding any other provision of this article, a pupil attending a school district of choice or a pupil who received a notice of eligibility to enroll in a school district of choice, including a pupil selected by means of a random selection process conducted on or before June 30, 2009, pursuant to this article, as it read on June 30, 2009, shall be permitted to attend the school district of choice.

Education Code § 48308. Applications; deadlines; exception for children of relocated military personnel; form; acceptance or rejection; annual renewal of final acceptance

(a) (1) An application requesting a transfer pursuant to this article shall be submitted by the parent or guardian of a pupil to the school district of choice that has elected to accept transfer pupils pursuant to Section 48301 prior to January 1 of the school year preceding the school year for which the pupil is requesting to be transferred. This application deadline may be waived upon agreement of the school district of residence of the pupil and the school district of choice.

(2) The application deadline specified in paragraph (1) does not apply to an application requesting a transfer if the parent or guardian of the pupil, with whom the pupil resides, is enlisted in the military and was relocated by the military within 90 days prior to submitting the application.

(b) The application may be submitted on a form provided for this purpose by the department and may request enrollment of the pupil in a specific school or program of the school district.

(c) (1) Not later than 90 days after the receipt by a school district of an application for transfer, the governing board of the school district may notify the parent or guardian in writing whether the application has been provisionally accepted or rejected or of the placement of the pupil on a waiting list. Final acceptance or rejection shall be made by May 15 preceding the school year for which the pupil is requesting to be transferred.

(2) (A) Notwithstanding paragraph (1), the governing board of a school district shall, not later than 90 days after receipt of an application submitted according to paragraph (2) of subdivision (a), make a final acceptance or rejection of that application. A pupil may enroll in a school in the school district immediately upon his or her acceptance.

(B) If an application submitted according to paragraph (2) of subdivision (a) is submitted less than 90 days prior to the beginning of the school year for which the pupil seeks to be transferred, the governing board of the school district shall accept or deny the application prior to the commencement of the school year. A pupil may enroll in a school in the school district immediately upon his or her acceptance.

(3) If the application is accepted, the notice required by this subdivision may be provided to the school district of residence. If the application is rejected, the district governing board may set forth in the written notification to the parent or guardian the specific reason or reasons for that determination, and may ensure that the determination, and the specific reason or reasons therefor, are accurately recorded in the minutes of a regularly scheduled board meeting in which the determination was made.

(d) Final acceptance of the transfer is applicable for one school year and will be renewed automatically each year unless the school district of choice through the adoption of a resolution withdraws from participation in the program and no longer will accept any transfer pupils from other districts. However, if a school district of choice withdraws from participation in the program, high school pupils admitted under this article may continue until they graduate from high school.

Education Code § 48309. Transfer of completed coursework, attendance and other academic progress; revocation of acceptance

(a) Any school district of choice that admits any pupil under this section may accept any completed coursework, attendance, and other academic progress credited to that pupil by the school district or districts previously attended by that pupil, and may grant academic standing to that pupil based upon the district's evaluation of the academic progress credited to that pupil.

(b) Any school district of choice that admits a pupil under this section may revoke the pupil's transfer if the pupil is recommended for expulsion pursuant to Section 48918.

Education Code § 48310. Average daily attendance; state aid apportionment; computations

(a) The average daily attendance for pupils admitted by a school district of choice pursuant to this article shall be credited to that district pursuant to Section 46607. The attendance report for the school district of choice may include an identification of the school district of residence.

(b) Notwithstanding other provisions of law, state aid for categorical education programs for pupils admitted under this article shall be apportioned to the school district of choice.

(c) For any school district of choice that is a basic aid district, the apportionment of state funds for any average daily attendance credited pursuant to this section shall be 70 percent of the district revenue limit calculated pursuant to Section 42238 that would have been apportioned to the district of residence. For purposes of this subdivision, the term "basic aid district" means a school district that does not receive from the state, for any fiscal year in which the subdivision is applied, an apportionment of state funds pursuant to subdivision (h) of Section 42238.

(d) The average daily attendance of pupils admitted by a school district of choice pursuant to this article shall be credited to that school district for the purposes of any determination under Article 2 (commencing with Section 17010) of Chapter 12 of Part 10 that utilizes an average daily attendance calculation.

Education Code § 48311. Transportation assistance

Upon request of the pupil's parent or guardian, each school district of choice that admits a pupil under this section to any school or program of the district may provide to the pupil transportation assistance within the boundaries of the district to that school or program, to the extent that the district otherwise provides transportation assistance to pupils.

Education Code § 48312. Information regarding programs, policies and procedures; availability to interested persons

Each school district may make information regarding its schools, programs, policies, and procedures available to any interested person upon request.

Education Code § 48313. Districts accepting transfers; recordkeeping requirements; reporting requirements; information to be made available by Legislative Analyst

(a) Pursuant to this article, each school district electing to accept transfer pupils shall keep an accounting of all requests made for alternative attendance and records of all disposition of those requests that shall include, but are not limited to, all of the following:

(1) The number of requests granted, denied, or withdrawn. In the case of denied requests, the records shall indicate the reasons for the denials.

(2) The number of pupils transferred out of the district pursuant to this article.

(3) The number of pupils transferred into the district pursuant to this article.

(4) The race, ethnicity, gender, self-reported socioeconomic status, and the school district of residence of each of the pupils described in paragraphs (2) and (3).

(5) The number of pupils described in paragraphs (2) and (3) who are classified as English learners or identified as individuals with exceptional needs, as defined in Section 56026.

(b) The information maintained pursuant to subdivision (a) shall be reported to the governing board of the school district at a regularly scheduled meeting of the governing board. No later than May 15th of each year, the school district shall report the information maintained pursuant to subdivision (a) in addition to information regarding the district's status as a school district of choice in the upcoming school year to each school district that is geographically adjacent to the district electing to accept transfer pupils, the county office of education in which the district is located, the Superintendent, and the Department of Finance. The Department of Finance shall make the information reported to it pursuant to this subdivision available upon request to the Legislative Analyst.

(c) The Legislative Analyst annually shall make all of the following information available to the Governor and the appropriate fiscal and policy committees of the Legislature:

(1) The number and characteristics of pupils who use the school district of choice option pursuant to this article.

(2) The Academic Performance Index scores of schools in school districts of residence and school districts of choice.

(3) The graduation rates of school districts of residence and school districts of choice.

(4) The enrollment of school districts of residence and school districts of choice for the previous five years.

(5) The fiscal health of school districts of residence and school districts of choice, including, but not limited to, both of the following:

(A) Increasing or declining enrollment.

(B) Whether a school district received a negative or qualified rating pursuant to Section 42131.

(6) Whether a school district has exceeded the transfer limits specified in Section 48307.

(7) Other information the Legislative Analyst deems appropriate.

(d) As necessary and practicable, the Legislative Analyst shall survey school districts of residence and school districts of choice to gather the information described in subdivision (c).

Education Code § 48314. Legislative intent regarding informed parental choice

It is the intent of the Legislature that every parent in this state be informed of their opportunity for currently existing choice options under this article regardless of ethnicity, primary language, or literacy.

Education Code § 48315. Duration of article

This article shall become inoperative on July 1, 2016, and, as of January 1, 2017, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2017, deletes or extends the dates on which it becomes inoperative and is repealed.

Education Code § 46600(b)

In addition to the requirements of subdivision (e) of Section 48915.1, and regardless of whether an agreement exists or a permit is issued pursuant to this section, any district may admit a pupil expelled from another district in which the pupil continues to reside.

Education Code § 46601(e)

Students who are under consideration for expulsion, or who have been expelled pursuant to Sections 48915 and 48918, may not appeal interdistrict attendance denials or recisions while expulsion proceedings are pending, or during the term of the expulsion.

Education Code § 48915.1 Expelled individuals; enrollment in another school

(a) If the governing board of a school district receives a request from an individual who has been expelled from another school district for an act other than those described in subdivision (a) or (c) of Section 48915, for enrollment in a school maintained by the school district, the board shall hold a hearing to determine whether that individual poses a continuing danger either to the pupils or employees of the school district. The hearing and notice shall be conducted in accordance with the rules and regulations governing procedures for the expulsion of pupils as described in Section 48918.

A school district may request information from another school district regarding a recommendation for expulsion or the expulsion of an applicant for enrollment. The school district receiving the request shall respond to the request with all deliberate speed but shall respond no later than five working days from the date of the receipt of the request.

(b) If a pupil has been expelled from his or her previous school for an act other than those listed in subdivision (a) or (c) of Section 48915, the parent, guardian, or pupil, if the pupil is emancipated or otherwise legally of age, shall, upon enrollment, inform the receiving school district of his or her status with the previous school district. If this information is not provided to the school district and the school district later determines the pupil was expelled from the previous school, the lack of compliance shall be recorded and discussed in the hearing required pursuant to subdivision (a).

(c) The governing board of a school district may make a determination to deny enrollment to an individual who has been expelled from another school district for an act other than those described in subdivision (a) or (c) of Section 48915, for the remainder of the expulsion period after a determination has been made, pursuant to a hearing, that the individual poses a potential danger to either the pupils or employees of the school district.

(d) The governing board of a school district, when making its determination whether to enroll an individual who has been expelled from another school district for these acts, may consider the following options:

(1) Deny enrollment.

(2) Permit enrollment.

(3) Permit conditional enrollment in a regular school program or another educational program.

(e) Notwithstanding any other provision of law, the governing board of a school district, after a determination has been made, pursuant to a hearing, that an individual expelled from another school district for an act other than those described in subdivision (a) or (c) of Section 48915 does not pose a danger to either the pupils or employees of the school district, shall permit the individual to enroll in a school in the school district during the term of the expulsion, provided that he or she, subsequent to the expulsion, either has established legal residence in the school district, pursuant to Section 48200, or has enrolled in the school pursuant to an interdistrict agreement executed between the affected school districts pursuant to Chapter 5 (commencing with Section 46600).

Education Code § 48915.2. Expelled pupil; enrollment during and after period of expulsion

(a) A pupil expelled from school for any of the offenses listed in subdivision (a) or (c) of Section 48915, shall not be permitted to enroll in any other school or school district during the period of expulsion unless it is a county community school pursuant to subdivision (c) of Section 1981, or a juvenile court school, as described in Section 48645.1, or a community day school pursuant to Article 3 (commencing with Section 48660) of Chapter 4 of Part 27.

(b) After a determination has been made, pursuant to a hearing under Section 48918, that an individual expelled from another school district for any act described in subdivision (a) or (c) of Section 48915 does not pose a danger to either the pupils or employees of the school district, the governing board of a school district may permit the individual to enroll in the school district after the term of expulsion, subject to one of the following conditions.

(1) He or she has established legal residence in the school district, pursuant to Section 48200.

(2) He or she is enrolled in the school pursuant to an interdistrict agreement executed between the affected school districts pursuant to Chapter 5 (commencing with Section 46600) of Part 26.

Education Code § 48915.5. Suspension or expulsion of pupils with exceptional needs; schools; schoolbuses

(a) An individual with exceptional needs, as defined in Section 56026, may be suspended or expelled from school in accordance with Section 1415(k) of Title 20 of the United States Code, the discipline provisions contained in Sections 300.530 to 300.537, inclusive, of Title 34 of the Code of Federal Regulations, and other provisions of this part that do not conflict with federal law and regulations.

(b) A free appropriate public education for individuals with exceptional needs suspended or expelled from school shall be in accordance with Section 1412(a)(1) of Title 20 of the United States Code and Section 300.530(d) of Title 34 of the Code of Federal Regulations.

(c) If an individual with exceptional needs is excluded from schoolbus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent or guardian provided that transportation is specified in the pupil's individualized education program.

Education Code § 48916. Expulsion orders; readmission date; rehabilitation plan

(a) An expulsion order shall remain in effect until the governing board, in the manner prescribed in this article, orders the readmission of a pupil. At the time an expulsion of a pupil is ordered for an act other than those described in subdivision (c) of Section 48915, the governing board shall set a date, not later than the last day of the semester following the semester in which the expulsion occurred, when the pupil shall be reviewed for readmission to a school maintained by the district or to the school the pupil last attended. If an expulsion is ordered during summer session or the intersession period of a year-round program the governing board shall set a date, not later than the last day of the semester following the summer session or intersession period in which the expulsion occurred, when the pupil shall be reviewed for readmission to a school maintained by the district or to the school the pupil last attended. For a pupil who has been expelled pursuant to subdivision (c) of Section 48915, the governing board shall set a date of one year from the date the expulsion occurred, when the pupil shall be reviewed for readmission to a school maintained by the district, except that the governing board may set an earlier date for readmission on a case-by-case basis.

(b) The governing board shall recommend a plan of rehabilitation for the pupil at the time of the expulsion order, which may include, but not be limited to, periodic review as well as assessment at the time of review for readmission. The plan may also include recommendations for improved academic performance, tutoring, special education assessments, job training, counseling, employment, community service, or other rehabilitative programs.

(c) The governing board of each school district shall adopt rules and regulations establishing a procedure for the filing and processing of requests for readmission and the process for the required review of all expelled pupils for readmission. Upon completion of the readmission process, the governing board shall readmit the pupil, unless the governing board makes a finding that the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district. A description of the procedure shall be made available to the pupil and the pupil's parent or guardian at the time the expulsion order is entered.

(d) If the governing board denies the readmission of an expelled pupil pursuant to subdivision (c), the governing board shall make a determination either to continue the placement of the pupil in the alternative educational program initially selected for the pupil during the period of the expulsion order or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school.

(e) The governing board shall provide written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying the pupil readmittance into the regular school district program. The written notice shall also include the determination of the educational program for the expelled pupil pursuant to subdivision (d). The expelled pupil shall enroll in that educational program unless the parent or guardian of the pupil elects to enroll the pupil in another school district.

Education Code § 48980. Notice at beginning of term of rights and responsibilities; required content

(a) At the beginning of the first semester or quarter of the regular school term, the governing board of each school district shall notify the parent or guardian of a minor pupil regarding the right or responsibility of the parent or guardian under Sections 35291, 46014, 48205, 48207, 48208, 49403, 49423, 49451, 49472, and 51938 and Chapter 2.3 (commencing with Section 32255) of Part 19 of Division 1 of Title 1.

(b) The notification also shall advise the parent or guardian of the availability of individualized instruction as prescribed by Section 48206.3, and of the program prescribed by Article 9 (commencing with Section 49510) of Chapter 9.

(c) The notification also shall advise the parents and guardians of all pupils attending a school within the school district of the schedule of minimum days and pupil-free staff development days, and if minimum or pupil-free staff development days are scheduled thereafter, the governing board of the district shall notify parents and guardians of the affected pupils as early as possible, but not later than one month before the scheduled minimum or pupil-free day.

(d) The notification also may advise the parent or guardian of the importance of investing for future college or university education for their children and of considering appropriate investment options, including, but not limited to, United States savings bonds.

(e) The notification shall advise the parent or guardian of the pupil that each pupil completing grade 12 is required to successfully pass the high school exit examination administered pursuant to Chapter 9 (commencing with Section 60850) of Part 33. The notification shall include, at a minimum, the date of the examination, the requirements for passing the examination, and shall inform the parents and guardians regarding the consequences of not passing the examination and shall inform parents and guardians that passing the examination is a condition of graduation.

(f) Each school district that elects to provide a fingerprinting program pursuant to Article 10 (commencing with Section 32390) of Chapter 3 of Part 19 of Division 1 of Title 1 shall inform parents or guardians of the program as specified in Section 32390.

(g) The notification also shall include a copy of the written policy of the school district on sexual harassment established pursuant to Section 231.5, as it relates to pupils.

(h) The notification shall advise the parent or guardian of all existing statutory attendance options and local attendance options available in the school district. This notification component shall include all options for meeting residency requirements for school attendance, programmatic options offered within the local attendance areas, and any special programmatic options available on both an interdistrict and intradistrict basis. This notification component also shall include a description of all options, a description of the procedure for application for alternative attendance areas or programs, an application form from the district for requesting a change of attendance, and a description of the appeals process available, if any, for a parent or guardian denied a change of attendance. The notification component also shall include an explanation of the existing statutory attendance options, including, but not limited to, those available under Section 35160.5, Chapter 5 (commencing with Section 46600) of Part

26, and subdivision (b) of Section 48204. The department shall produce this portion of the notification and shall distribute it to all school districts.

(i) It is the intent of the Legislature that the governing board of each school district annually review the enrollment options available to the pupils within its district and that the districts strive to make available enrollment options that meet the diverse needs, potential, and interests of the pupils of California.

(j) The notification shall advise the parent or guardian that a pupil shall not have his or her grade reduced or lose academic credit for any absence or absences excused pursuant to Section 48205 if missed assignments and tests that can reasonably be provided are satisfactorily completed within a reasonable period of time, and shall include the full text of Section 48205.

(k) The notification shall advise the parent or guardian of the availability of state funds to cover the costs of advanced placement examination fees pursuant to Section 52244.

(l) The notification to the parent or guardian of a minor pupil enrolled in any of grades 9 to 12, inclusive, also shall include the information required pursuant to Section 51229.

Assembly Bill No. 97

CHAPTER 21

An act to amend Section 56836.155 of, and to add and repeal Article 7 (commencing with Section 48300) of Chapter 2 of Part 27 of, the Education Code, relating to public schools, and declaring the urgency thereof. to take effect Immediately.

[Approved by Governor March 4, 2004. Filed with Secretary of State March 5, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 97, Nation. Public schools.

(1) Existing law requires each person between the ages of 6 and 18 years. not otherwise exempt, to attend the public full-time day school in the district in which their parent or guardian is a resident.

This bill would authorize the governing board of any school district to admit pupils residing in another school district to attend any school in that district, as specified. The bill would authorize each school district that elects to accept transfers to adopt a resolution to determine the number of transfers it will accept and to ensure that the pupils admitted under the policy are selected through a random, unbiased selection **process**.

The bill would authorize the district of residence or the district of choice to prohibit a transfer upon a determination that the transfer would negatively impact that district's court-ordered or voluntary desegregation plan or that district's racial and ethnic balance and would place additional conditions upon the administration of the transfers. The bill would authorize districts of residence to limit the number of pupils newly transferring out each year, as specified.

The bill would require that an application for transfer be submitted by January 1 of the school year preceding the school year for which the pupil is to be transferred, unless the deadline is waived.

The bill would authorize a school district that has elected to accept transfer pupils to approve or reject each application for transfer between districts within 90 days after receiving the application. This bill would require that transfers be granted for the entire school year and be automatically renewed for each succeeding year, unless the school district of choice, through the adoption of a resolution, withdraws from participation in the program and no longer accepts any transfer pupils from other districts. The bill would also specify that high school transfers would be automatically renewed even if a school district of choice withdraws from participation in the program. The bill would permit school districts of choice to revoke the transfer of any pupil who **is recommended for expulsion**.

The bill would credit the district of choice, as to pupils admitted to a school district under this authority, with a corresponding increase in average daily attendance for state apportionment purposes and for purposes of certain computations under the Leroy F. Greene State School Building Lease-Purchase Law of 1976, including computations affecting allowable building area for school construction projects. The bill would require that state aid for categorical education programs for the pupil be apportioned to the school district of choice. The bill would authorize the admitting district, at the request of the pupil's parent or guardian, to provide pupil transportation within the district, to the extent the district otherwise provides transportation assistance to pupils.

The bill would authorize each school district to annually report to the Superintendent of Public Instruction regarding pupil applications and transfers between districts pursuant to the above authority and would require the superintendent to summarize and report that information to the Legislature.

The bill would repeal those provisions on July 1, 2008.

(2) Existing law, in order to recognize the distribution of pupils with severe and costly disabilities among special education local plan areas, requires the State Department of Education, in conjunction with the Office of the Legislative Analyst, to calculate an incidence multiplier for each special education local plan area and requires the Department of Finance to approve the final incidence multiplier for each special education local plan area. Existing law requires the Superintendent of Public Instruction to calculate in the 1998-99 fiscal year and each fiscal year thereafter to and including the 2002-03 fiscal year, an adjusted entitlement for the incidence of disabilities for each special education local plan area using the incidence multiplier for each special education local plan area, as specified.

This bill would extend the requirement that the superintendent perform that calculation, as specified, through the 2003-04 fiscal year.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION I. Article 7 (commencing with Section 48300) is added to Chapter 2 of Part 27 of the Education Code, to read:

Article 7. Pupil Attendance Alternatives

48300. For purposes of this article, the following definitions apply:

(a) "School district of choice" means a school district for which a resolution is in effect as described in subdivision (a) of Section 48301.

(b) "School district of residence" means the school district that a pupil would be directed by this chapter to attend, except as otherwise provided by this article.

48301. (a) The governing board of any school district may accept interdistrict transfers. A school district that receives an application for attendance under this article is not required to admit pupils to its schools. If, however, the governing board elects to accept transfers as authorized under this article, it may, by resolution, elect to accept transfer pupils, determine and adopt the number of transfers it is willing to accept under this article, and ensure that pupils admitted under the policy are selected through a random, unbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based upon his or her academic or athletic performance. Any pupil accepted for transfer shall be deemed to have fulfilled the requirements of Section 48204.

(b) Either the pupil's school district of residence, upon notification of the pupil's acceptance to the school district of choice pursuant to subdivision (c) of Section 48308, or the school district of choice may prohibit the transfer of a pupil under this article or limit the number of pupils so transferred if the governing board of the district determines that the transfer would negatively impact any of the following:

(1) The court-ordered desegregation plan of the district.

(2) The voluntary desegregation plan of the district.

(3) The racial and ethnic balance of the district.

(c) The school district of residence may not adopt policies that in any way block or discourage pupils from applying for transfer to another district.

48302. School districts are encouraged to hold informational hearings on the current educational program the district is offering so that parents may provide input to the district on methods to improve the current program and so that parents may make informed decisions regarding their children's education.

48303. (a) The school district of choice may not prohibit a transfer of a pupil under this article based upon a determination by the governing board of that school district that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer. However, a school district may reject the transfer of a pupil if the transfer of that pupil would require the district to create a new program to serve that pupil.

(b) This section is intended to ensure that special education, bilingual, or other special needs pupils are not discriminated against by the school district of choice because of the costs associated with educating those pupils. Pupils with special needs may take full advantage of the choice options available under this section.

48304. An application of any pupil for transfer may not be approved under this article if the transfer would require the displacement, from a school or program conducted within any attendance area of the school district of choice, of any other pupil who resides within that attendance area or is currently enrolled in that school.

48305. School districts of choice may employ existing entrance criteria for specialized schools or programs if the criteria are uniformly applied to all applicants.

48306. Each school district of choice shall give priority for attendance to siblings of children already in attendance in that district.

48307. (a) A school district of residence with an average daily attendance greater than 50,000 may limit the number of pupils transferring out each year to 1 percent of its current year estimated average daily attendance.

(b) A school district of residence with an average daily attendance of less than 50,000 may limit the number of pupils transferring out to 3 percent of its current year estimated average daily attendance and may limit the maximum number of pupils transferring out for the duration of the program authorized by this article to 10 percent of the average daily attendance for that period.

48308. (a) Any application for transfer under this article shall be submitted by the pupil's parent or guardian to the school district of choice that has elected to accept transfer pupils pursuant to Section 48301 prior to January 1 of the school year preceding the school year for which the pupil is to be transferred. This application deadline may be waived upon agreement of the pupil's school district of residence and the school district of choice.

(b) The application may be submitted on a form provided for this purpose by the department and may request enrollment of the pupil in a specific school or program of the district.

(c) Not later than 90 days after the receipt by a school district of an application for transfer, the governing board of the district may notify the parent or guardian in writing whether the application has been provisionally accepted or rejected or of the pupil's position on any waiting list. Final acceptance or rejection shall be made by May

15 preceding the school year for which the pupil is to be transferred. In the event of an acceptance, that notice may be provided also to the school district of residence. If the application is rejected, the district governing board may set forth in the written notification to the parent or guardian the specific reason or reasons for that determination, and may ensure that the determination, and the specific reason or reasons therefor, are accurately recorded in the minutes of a regularly scheduled board meeting in which the determination was made.

(d) Final acceptance of the transfer is applicable for one school year and will be renewed automatically each year unless the school district of choice through the adoption of a resolution withdraws from participation in the program and no longer will accept any transfer pupils from other districts. However, if a school district of choice withdraws from participation in the program, high school pupils admitted under this article may continue until they graduate from high school.

48309. (a) Any school district of choice that admits any pupil under this section may accept any completed coursework, attendance, and other academic progress credited to that pupil by the school district or districts previously attended by that pupil, and may grant academic standing to that pupil based upon the district's evaluation of the academic progress credited to that pupil.

(b) Any school district of choice that admits a pupil under this section may revoke the pupil's transfer if the pupil is recommended for expulsion pursuant to Section 48918.

48310. (a) The average daily attendance for pupils admitted by a school district of choice pursuant to this article shall be credited to that district pursuant to Section 46607. The attendance report for the school district of choice may include an identification of the school district of **residence**.

(b) Notwithstanding other provisions of law, state aid for categorical education programs for pupils admitted under this article shall be apportioned to the school district of choice.

(c) For any school district of choice that is a basic aid district, the Superintendent of Public Instruction shall calculate for that basic aid district an apportionment of state funds that provides 70 percent of the district revenue limit calculated pursuant to Section 42238 that would have been apportioned to the school district of residence for any average daily attendance credited pursuant to this section. For purposes of this subdivision, the term "basic aid district" means a school district that does not receive from the state, for any fiscal year in which the subdivision is applied, an apportionment of state funds pursuant to subdivision (h) of Section 42238.

(d) The State Allocation Board shall develop procedures to ensure that the average daily attendance of pupils admitted by a school district of choice pursuant to this article shall be credited to that school district for the purposes of any determination under Article 2 (commencing with Section 17010) of Chapter 12 of Part 10 that utilizes an average daily attendance calculation.

48311. Upon request of the pupil's parent or guardian, each school district of choice that admits a pupil under this section to any school or program of the district may provide to the pupil transportation assistance within the boundaries of the district to that school or program, to the extent that the district otherwise provides transportation assistance to pupils.

48312. Each school district may make information regarding its schools, programs, policies, and procedures available to any interested person upon request.

48313. (a) Pursuant to this article, each school district electing to accept transfer pupils may keep an accounting of all requests made for alternative attendance and records of all disposition of those requests that may include, but are not to be limited to, all of the following:

- (1) The number of requests granted, denied, or withdrawn. In the case of denied requests, the records may indicate the reasons for the denials.
- (2) The number of pupils transferred out of the district.
- (3) The number of pupils transferred into the district.

(b) The information maintained pursuant to subdivision (a) may be reported to the governing board of the school district at a regularly scheduled meeting of the governing board. If the information is reported to the governing board of the school district, the information shall be reported to the Superintendent of Public Instruction annually, and the superintendent shall make the information available to the Governor, the Legislature, and the public.

48314. It is the intent of the Legislature that every parent in this state be informed of their opportunity for currently existing choice options under this article regardless of ethnicity, primary language, or literacy.

48315. This article shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 56836.155 of the Education Code is amended to read:

56836.155. (a) On or before November 2, 1998, the department, in conjunction with the Office of the Legislative Analyst, shall do the following:

- (1) Calculate an "incidence multiplier" for each special education local plan area using the definition, methodology, and data provided in the final report submitted by the American Institutes for Research pursuant to

Section 67 of Chapter 854 of the Statutes of 1997.

(2) Submit the incidence multiplier for each special education local plan area and supporting data to the Department of Finance.

(b) The Department of Finance shall review the incidence multiplier for each special education local plan area and the supporting data, and report any errors to the department and the Office of the Legislative Analyst for correction.

(c) The Department of Finance shall approve the final incidence multiplier for each special education local plan area by November 23, 1998.

(d) For the 1998-99 fiscal year and each fiscal year thereafter to and including the 2003-04 fiscal year, the superintendent shall perform the following calculation to determine each special education local plan area's adjusted entitlement for the incidence of disabilities:

(1) The incidence multiplier for the special education local plan area shall be multiplied by the statewide target amount per unit of average daily attendance for special education local plan areas determined pursuant to Section 56836.11 for the fiscal year in which the computation is made.

(2) The amount determined pursuant to paragraph (1) shall be added to the statewide target amount per unit of average daily attendance for special education local plan area determined pursuant to Section 56836.11 for the fiscal year in which the computation is made.

(3) Subtract the amount offunding for the special education local plan area determined pursuant to paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b) of Section 56836.08, as appropriate for the fiscal year in which the computation is made, or the statewide target amount per unit of average daily attendance for special education local plan areas determined pursuant to Section 56836.11 for the fiscal year in which the computation is made, whichever is greater, from the amount determined pursuant to paragraph (2). For the purposes of this paragraph for the 2002-03 and 2003-04 fiscal years, the amount, if any, received pursuant to Section 56836.159 shall be excluded from the funding level per unit of average daily attendance for a special education local plan area. If the result is less than zero, the special education local plan area may not receive an adjusted entitlement for the incidence of disabilities.

(4) Multiply the amount determined in paragraph (3) by either the average daily attendance reported for the special education local plan area for the fiscal year in which the computation is made, as adjusted pursuant to subdivision (a) of Section 56836.15, or the average daily attendance reported for the special education local plan area for the prior fiscal year, as adjusted pursuant to subdivision (a) of Section 56826.15, whichever is less.

(5) If there are insufficient funds appropriated in the fiscal year for which the computation is made for the purposes of this section, the amount received by each special education local plan area shall be prorated.

(e) For the 1997-98 fiscal year, the superintendent shall perform the calculation in paragraphs (1) to (3), inclusive, of paragraph (d) only for the purposes of making the computation in paragraph (1) of subdivision (d) of Section 56836.08, but the special education local plan area may not receive an adjusted entitlement for the incidence of disabilities pursuant to this section for the 1997-98 fiscal year.

(f) On or before March 1, 2003, the Office of the Legislative Analyst, in conjunction with the Department of Finance and the department, shall submit to the Legislature a new study of the incidence multiplier, with recommendations as to the necessity of continuing to adjust the funding formula contained in this chapter for the purposes of this section to the extent that funding is provided for this purpose. The Office of the Legislative Analyst may contract for this study. It is the intent of the Legislature to provide funding for this study in the Budget Act of 2002.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that laws regarding pupil attendance, including those laws regarding pupils with special needs, are enacted at the earliest possible time, it is necessary that this act take effect immediately.

Senate Bill No. 140
CHAPTER 529

An act to amend Section 51747.3 of. to amend. add, and repeal Section 48204 of, and to add Section 46601.5 to, the Education Code, relating to school attendance, and declaring the urgency thereof. to take effect immediately.

[Approved by Governor September 24,2003. Filed with Secretary of State September 25,2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 140, Denham. Education: school attendance requirements.

(1) Existing law required any 2 school districts entering into an agreement for interdistrict attendance to give consideration to the child care needs of the pupil and required any district that entered into an agreement for interdistrict attendance to allow the pupil to remain continuously enrolled in the school district of choice, subject to certain requirements. Existing law made these provisions operative until July 1, 2003. This bill would reenact those provisions, would additionally prohibit a school district from requiring a pupil in kindergarten or any of grades I to 6, inclusive, attending the school pursuant to an interdistrict attendance agreement originally executed on or after the effective date of the act to reapply for interdistrict attendance in that school district, unless the pupil ceased to receive child care in the district, and would encourage a school district to allow any pupil to remain continuously enrolled in the school district of choice if the parent or guardian so chooses. This bill would extend the operative date of those provisions until July 1,2007.

(2) Existing law provides that a pupil is deemed to have complied with the residency requirements for school attendance in a school district, provided the pupil meets one of the specified requirements.

This bill would additionally authorize the school district in which the pupil's parent or guardian is employed to allow the pupil to attend the school through the 12th grade if the parent or guardian so chooses, as specified.

This bill would make those provisions authorizing the school district in which the pupil's parent or guardian is employed to allow the pupil to attend the school through the 12th grade inoperative on and after July 1, 2007, and would repeal the provisions on January 1, 2008.

(3) This bill would make other technical and conforming changes.

(4) This bill would become operative only if AB 97 is enacted and takes effect.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 46601.5 is added to the Education Code, to read:

46601.5. (a) The governing boards of any two school districts that have been requested by a pupil's parent or legal guardian to enter into an agreement for interdistrict attendance pursuant to Section 46600 are encouraged to, in considering that request, give consideration to the child care needs of the pupil.

(b) The governing board of any school district that has entered into an agreement for the interdistrict attendance of a pupil based on that pupil's child care needs may not require those pupils in kindergarten or any of grades 1 to 6, inclusive, to reapply for an interdistrict transfer originally granted pursuant to an agreement executed on or after the effective date of this section unless the pupil ceases to receive child care in the district and is encouraged to allow any pupil to remain continuously enrolled in the school district of choice if the parent or guardian so chooses. subject to paragraphs (1) to (6), inclusive, of subdivision (b) of Section 48204.

(c) The governing board of any high school district whose feeder elementary school has entered into an agreement with another school district for the interdistrict attendance of a pupil based on that pupil's child care needs is encouraged to allow that pupil to continue to attend school through the 12th grade in the same district if the parent or guardian so chooses, subject to paragraphs (1) to (6), inclusive, of subdivision (b) of Section 48204.

(d) This section shall remain in effect only until July 1,2007, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 2007, deletes or extends that date.

SEC. 2. Section 48204 is added to the Education Code, to read:

48204. (a) Notwithstanding Section 48200, a pupil is deemed to have complied with the residency requirements for school attendance in a school district, if he or she is any of the following:

(1) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a commitment or placement under Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

An agency placing a pupil in a home or institution described in this subdivision shall provide evidence to the school that the placement or commitment is pursuant to law.

(2) A pupil for whom interdistrict attendance has been approved pursuant to Chapter 5 (commencing with Section 46600) of Part 26.

(3) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.

(4) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district. Execution of an affidavit under penalty of perjury pursuant to Part 1.5 (commencing with Section 6550) of Division II of the Family Code by the caregiving adult is a sufficient basis for a determination that the pupil lives in the caregiver's home, unless the school district determines from actual facts that the pupil is not living in the caregiver's home.

(5) A pupil residing in a state hospital located within the boundaries of that school district.

(b) A school district may deem a pupil as having complied with the residency requirements for school attendance in the school district if one or both the parents or legal guardians of the pupil is employed within the boundaries of that school district.

(1) This subdivision does not require the school district within which the parents or guardians of a pupil are employed to admit the pupil to its schools. Districts may not, however, refuse to admit pupils under this subdivision on the basis, except as expressly provided in this subdivision, of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.

(2) The school district in which the residency of either the parents or guardians of the pupil is established, or the school district to which the pupil is to be transferred under this subdivision, may prohibit the transfer of the pupil under this subdivision if the governing board of the district determines that the transfer would negatively impact the court-ordered or voluntary desegregation plan of the district.

(3) The school district to which the pupil is to be transferred under this subdivision may prohibit the transfer of the pupil if the district determines that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer.

(4) The governing board of a school district that prohibits the transfer of a pupil pursuant to paragraph (1), (2), or (3) is encouraged to identify, and communicate in writing to the parents or guardians of the pupil, the specific reasons for that determination and is encouraged to ensure that the determination, and the specific reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made.

(5) The average daily attendance for pupils admitted pursuant to this subdivision is calculated pursuant to Section 46607.

(6) Unless approved by the sending district, this subdivision does not authorize a net transfer of pupils out of any given district, calculated as the difference between the number of pupils exiting the district and the number of pupils entering the district, in any fiscal year in excess of the following amounts:

(A) For any district with an average daily attendance for that fiscal year of less than 501, 5 percent of the average daily attendance of the district.

(B) For any district with an average daily attendance for that fiscal year of 501 or more, but less than 2,501, 3 percent of the average daily attendance of the district or 25 pupils, whichever amount is greater.

(C) For any district with an average daily attendance of 2,501 or more, 1 percent of the average daily attendance of the district or 75 pupils, whichever amount is greater.

(7) Once a pupil is deemed to have complied with the residency requirements for school attendance pursuant to this subdivision and is enrolled in a school in a school district whose boundaries include the location where one or both parents of a pupil is employed, or where the legal guardian of the pupil is employed, the pupil does not have to reapply in the next school year to attend a school within that school district and the district governing board shall allow the pupil to attend school through the 12th grade in that district if the parent or guardian so chooses and if one or both of the pupil's parents or guardians continues to be employed by an employer situated within the attendance boundaries of the school district, subject to paragraphs (1) to (6), inclusive.

(c) This section is inoperative on and after July 1, 2007, and as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 48204 of the Education Code, as amended by Section 19.5 of Chapter 299 of the Statutes of 1997, is amended to read:

48204. Notwithstanding Section 48200, a pupil is deemed to have complied with the residency requirements for school attendance in a school district, if he or she is:

(a) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a commitment or placement under

Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

An agency placing a pupil in the home or institution shall provide evidence to the school that the placement or commitment is pursuant to law.

(b) A pupil for whom interdistrict attendance has been approved pursuant to Chapter 5 (commencing with Section 46600) of Part 26.

(c) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.

(d) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district. Execution of an affidavit under penalty of perjury pursuant to Part 1.5 (commencing with Section 6550) of Division II of the Family Code by the caregiving adult is a sufficient basis for a determination that the pupil lives in the caregiver's home, unless the school district determines from actual facts that the pupil is not living in the caregiver's home.

(e) A pupil residing in a state hospital located within the boundaries of that school district.

(f) This section is operative on and after July 1, 2007. SEC. 4. Section 51747.3 of the Education Code is amended to read: 51747.3. (a) Notwithstanding any other provision of law, a local educational agency, including, but not limited to, a charter school, may not claim state funding for the independent study of a pupil, whether characterized as home study or otherwise, if the agency has provided any funds or other thing of value to the pupil or his or her parent or guardian that the agency does not provide to pupils who attend regular classes or to their parents or guardians. A charter school may not claim state funding for the independent study of a pupil, whether characterized as home study or otherwise, if the charter school has provided any funds or other thing of value to the pupil or his or her parent or guardian that a school district could not legally provide to a similarly situated pupil of the school district, or to his or her parent or guardian.

(b) Notwithstanding paragraph (1) of subdivision (d) of Section 47605 or any other provision of law, community school and independent study average daily attendance shall be claimed by school districts, county superintendents of schools, and charter schools only for pupils who are residents of the county in which the apportionment claim is reported, or who are residents of a county immediately adjacent to the county in which the apportionment claim is reported.

(c) The Superintendent of Public Instruction shall not apportion funds for reported average daily attendance, through full-time independent study, of pupils who are enrolled in school pursuant to subdivision (b) of Section 48204.

(d) In conformity with Provisions 25 and 28 of Section 2.00 of the Budget Act of 1992, this section is applicable to average daily attendance reported for apportionment purposes beginning July 1, 1992. The provisions of this section are not subject to waiver by the State Board of Education, by the State Superintendent of Public Instruction, or under any provision of Part 26.8 (commencing with Section 47600).

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to maintain the status of existing law governing school district attendance, it is necessary that this act take effect immediately. SEC. 6. This act shall become operative only if Assembly Bill 97 is enacted and takes effect.

SECTION SIX

FORMS

REQUEST FOR INTERDISTRICT TRANSFER
MARIN COUNTY, CALIFORNIA

PLEASE PRINT

USE A SEPARATE FORM FOR EACH CHILD

STUDENT'S NAME _____ Date of Birth _____

PART A: Parent/Guardian completes this section and returns to DISTRICT OF RESIDENCE

☐ **New Request** ☐ **Renewal** (continuing transfer) School year _____ Grade Level _____
(for year requested) (for year requested)

I am requesting the transfer:

FROM: _____
Name of District of Residence Name of School Currently Attending Grade

TO: _____
Name of District of Desired Attendance School Requested (District retains right to assign any school)

Each school district in Marin County has a policy with locally determined criteria for accepting/denying/revoking interdistrict transfers which may or may not include the reasons listed below. After reviewing your local district policy, check the reason for requesting the transfer, and attach written supporting explanation and/or documentation, if necessary. District policy may allow for revocation of a permit for interdistrict enrollment based on such criteria as student behavior, attendance and academic performance. District policy may also allow for conditional approval, dependent on program capacity or class size limits.

Check reason:

- ☐ Complete current school year
- ☐ Child care _____
Name and address of provider
- ☐ Specific Program Needs such as independent study (please describe) _____
- ☐ Sibling Attending (Name, Grade Level & School) _____
- ☐ Other _____

Is this student currently under an "Expulsion Order"? ☐ Yes ☐ No If yes, please attach Expulsion Order.

Has student been expelled in the past? ☐ Yes ☐ No

Has the expulsion been expunged? ☐ Yes ☐ No If no, please attach expulsion order.

Is your child currently under an order of suspension? ☐ Yes ☐ No If yes, please attach order of suspension.

I DECLARE UNDER PENALTY OF PERJURY THAT THE INFORMATION PROVIDED ABOVE, INCLUDING THE REASON FOR REQUEST, IS TRUE AND ACCURATE. I UNDERSTAND THAT THIS COMPLETED FORM MAY BE RELEASED BY THE DISTRICT OF RESIDENCE TO THE DISTRICT OF DESIRED ATTENDANCE AND TO THE MARIN COUNTY OFFICE OF EDUCATION. I UNDERSTAND THAT THIS INFORMATION MAY BE VERIFIED, AND INACCURATE OR FALSE INFORMATION MAY SUBJECT MY REQUEST TO DENIAL OR REVOCATION. I ALSO UNDERSTAND THAT THE INTERDISTRICT TRANSFER REQUEST MUST BE RENEWED ANNUALLY. I UNDERSTAND THAT BOARD POLICY OF THE DISTRICT OF RESIDENCE MAY CONDITION CONTINUING APPROVAL OF THIS REQUEST ON STUDENT BEHAVIOR, ATTENDANCE AND ACADEMIC PERFORMANCE.

PLEASE PRINT Parent/Guardian Names: _____ Date _____

Residence Address _____
Street City State Zip

Mailing Address (if different from residence) _____
Street City State Zip

Home phone _____ Work phone _____ Cell phone _____ Email _____

PART B: District completes

SIGNATURE OF PARENT/GUARDIAN

ACTION OF DISTRICT OF RESIDENCE

☐ Approved ☐ Conditional Approval ☐ Denied

Reason: _____

By: _____
Authorized Representative Date

Title: _____

ACTION OF DISTRICT OF DESIRED ATTENDANCE

☐ Approved ☐ Conditional Approval ☐ Denied

Reason: _____

By: _____
Authorized Representative Date

Title: _____

Terms of Conditional Approval: _____

Please Note: Both districts must identify the length of the approval period, which may be for a period of one to five school years, and make specific reference to board policies that set forth the terms and conditions under which the permit shall be granted or denied, revoked, or not renewed.

Distribution: White (original) - District of Attendance
Pink - Marin County Office of Education

Yellow - District of Residence
Goldenrod - Parent/Guardian

MCOE Business Form No. 9/04
Updated: Aug. 2017

PARENT'S RIGHTS

Relating to Interdistrict Attendance Agreement Requests

As a parent, or legal guardian, you have a right to:

- Request an interdistrict attendance permit from your district of residence to the district you desire your child to attend.
- Receive a written copy of local school board policy relating to interdistrict attendance agreement requests from both the district of your residence and the district you desire to attend.
- Whether you may appeal an adverse decision from either the district superintendent or designee to the local school board is subject to local school board policy.
- Receive written notice of local board action or superintendent's decision acting on behalf of the board within a period of time specified by local policy.
- Appeal a denial or failure to take timely action on your request to the Marin County Board of Education, after both the district of residence and the district of intended enrollment, appeals have been exhausted. Please call (415) 499-5801 for appeal procedures.

NOTE:

Completed Request for Interdistrict Transfer form is to be returned to the District of Residence. District of Residence returns the completed NCR form (Pink Copy) to the Marin County Office of Education.

Jan. 2016

SOLICITUD DE TRANSFERENCIA ENTRE DISTRITOS
CONDADO DE MARIN, CALIFORNIA

ESCRIBA EN LETRA DE MOLDE

Use un formulario por separado para cada niño

NOMBRE DEL ESTUDIANTE: _____

PARTE A: El padre o tutor completa esta sección y la devuelve al DISTRITO DE RESIDENCIA

☐ **Nueva solicitud** ☐ **Renovación** (transferencia continuada) Año escolar _____ Grado _____
(para el año solicitado) (para el año solicitado)

Yo estoy solicitando la transferencia:

DE			
	Nombre del distrito de residencia	Nombre de la escuela a la que asiste en el presente	Grado
A			
	Nombre del distrito al que desea asistir	Escuela solicitada (El distrito retiene el derecho de asignar cualquier escuela)	

Marque la razón:

Cada distrito escolar del condado de Marin tiene una política con criterios determinados a nivel local para aceptar/negar/revocar las transferencias entre distritos, que puede o no incluir las razones siguientes. Después de revisar la política de su distrito escolar, marque el motivo de solicitar la transferencia y si es necesario, adjunte una explicación de apoyo por escrito y/o documentación. La política del distrito puede permitir la revocación de un permiso para inter-inscripción en base a criterios tales como el comportamiento, la asistencia y el rendimiento académico. La política del distrito también puede permitir la aprobación condicional, dependiendo de la capacidad del programa o los límites del tamaño de las clases.

☐ Año escolar completo actual
☐ Cuidado de niños _____

Nombre y dirección del proveedor

☐ Necesidad de programa específico tal como el de estudio independiente (por favor describa) _____
☐ Hermanos/as que asisten (Nombre, nivel de grado y escuela) _____
☐ Otra _____

¿Está el estudiante ahora bajo una "Orden de Expulsión"? ☐ Si ☐ No Si marcó Si, por favor adjunte la Orden de Expulsión

¿Ha sido el estudiante expulsado en el pasado? ☐ Si ☐ No

¿Ha sido cancelada la expulsión? ☐ Si ☐ No Si marcó No, por favor adjunte la Orden de Expulsión

DECLARO BAJO PENA DE FALSO TESTIMONIO QUE LA INFORMACION PROPORCIONADA ANTERIORMENTE, INCLUYENDO EL MOTIVO DE LA SOLICITUD, ES EXACTA Y VERDADERA. ENTIENDO QUE ESTE FORMULARIO PUEDE SER LIBERADO POR EL DISTRITO DE RESIDENCIA AL DISTRITO DE ASISTENCIA DESEADO Y A LA OFICINA DE EDUCACION DEL CONDADO DE MARIN, ENTIENDO QUE ESTA INFORMACION PUEDE SER VERIFICADA, Y QUE LA INFORMACION INEXACTA O FALSA PUEDE SOMETER MI SOLICITUD A SU NEGACION O REVOCACION. TAMBIEN ENTIENDO QUE LA SOLICITUD DE TRASLADO ENTRE DISTRITOS DEBE SER RENOVADA ANUALMENTE. ENTIENDO QUE LA POLITICA DEL DISTRITO DE APROBACION PUEDE CONDICIONAR LA APROBACION CONTINUADA DE ESTA SOLICITUD AL COMPORTAMIENTO, ASISTENCIA Y RENDIMIENTO ACADEMICO DEL ESTUDIANTE.

¿Está su hijo/a ahora bajo una Orden de Suspensión? ☐ Si ☐ No Si marcó Si, por favor adjunte la Orden de Suspensión.

Nombre del padre o tutor: _____ Fecha _____

Dirección _____
Domicilio (Not P.O. Box) _____ Ciudad _____ Estado _____ Código postal _____

Teléfono de la casa _____ Teléfono del trabajo _____ Dirección electrónica _____

FIRMA DEL PADRE O TUTOR

PARTE B: El distrito la completa

ACCION DEL DISTRITO DE RESIDENCIA

☐ Aprobada ☐ Aprobación condicional ☐ Negada

Razón: _____

Por: _____

Representante autorizado Fecha

Título: _____

ACCION DEL DISTRITO DE ASISTENCIA DESEADA

☐ Aprobada ☐ Aprobación condicional ☐ Negada

Razón: _____

Por: _____

Representante autorizado Fecha

Título: _____

Términos de la aprobación condicional:

distritos deben identificar la longitud del período de aprobación, que puede ser de uno a cinco años escolares, y hacer una referencia específica a las políticas del consejo que establecen los términos y condiciones en que el permiso será concedido o negado, revocado o no revocado.

Por favor note: Ambos

Distribución:

Blanco (original) - Distrito de asistencia

Rosado - Oficina de Educación del Condado de Marin

Amarillo claro - Distrito de residencia

Amarillo oscuro - Padre/tutor

MCOE Business Form No. 9/04

Actualizado: Agosto 2017

DERECHOS DE LOS PADRES

Acuerdo en relación a solicitudes de asistencia entre distritos

Como padre, madre o tutor legal, usted tiene derecho a:

- Solicitar un permiso de asistencia interdistrital de su distrito de residencia al distrito que usted desea que su hijo asista.
- Recibir una copia escrita de la política del consejo escolar en relación con los acuerdos de solicitudes de asistencia entre distritos de ambos, el distrito de su residencia y el distrito al que se desea asistir.
- Si usted desea apelar una decisión adversa del superintendente o persona designada del distrito ante el consejo de educación local, está sujeto a la política del consejo escolar.
- Recibir una notificación por escrito del consejo local o de la decisión del superintendente que actúa en nombre del consejo de educación en un plazo de tiempo estipulado por la política local.
- Apelar una negación o falta de acción oportuna de su solicitud al Consejo de Educación del Condado de Marin, después de que las apelaciones tanto al distrito de residencia como al distrito de inscripción deseado se hayan agotado. Por favor llame al (415) 499-5801 para los procedimientos de apelación.

NOTA:

El formulario completo de Petición de Transferencia Interdistrital debe devolverse al distrito de residencia. El distrito de residencia devuelve el formulario completo de NCR (copia rosada) a la Oficina de Educación del Condado de Marin.

**EMPLOYMENT RELATED REQUEST FOR TRANSFER
OF A SCHOOL PUPIL**

[Pursuant to Education Code Section 48204(b) (see reverse)]

PART A: Parent/Guardian fill out this section and *RETURN TO DISTRICT OF EMPLOYMENT*:

School Year Requested _____ District of Residence _____

District of Employment _____ Parent/Guardian _____

Email Address _____ Residence Address (Not P.O. Box) _____ City _____ Zip _____

Grade Level (for year requested) _____ Home Phone _____ Work Phone _____

_____, of whom I am the parent or legal guardian, is a student in the _____
Student's Name _____ School District. I request transfer of this pupil under the
provisions of Education Code Section 48204(b). **Employment must be verified annually.**

I am employed by:

_____ (name of employer)

_____ (employment address)

_____ (employment phone)

Place of employment located in the _____ School District.

Contact district for specific employment verification requirements.

VERIFICATION OF EMPLOYMENT MUST BE ATTACHED

I declare under penalty of perjury that the information provided above, including the reason for request, is true and accurate. I understand that this information may be verified, and inaccurate or false information, may subject my request to denial or revocation.

Parent/Guardian Signature: _____ Date: _____
(Parent – Do not write below this line.)

PART B: Action by District of Parent Employment: Date received by district: _____

[] Employment of parent/guardian in this district has been verified and the governing board of this district has **conditionally* approved** the requested transfer.

[] The request for transfer is **denied** pursuant to a determination by the governing board as recorded in the minutes of the board meeting on _____ (meeting date). The reasons for this determination are attached.

By: _____ District: _____
Authorized Representative

Title: _____ Date: _____

* Approval is contingent upon a determination as to whether the additional costs of educating the pupil would exceed the amount of additional state aid received as a result of the transfer.

PART C: Notification to District of Residence

Notification to district of residence for purposes of determination under Education Code 48204(b), (6), (A), (B) or (C).

California Education Code 48204(b): Residency Requirements

Notwithstanding Section 48200, a pupil shall be deemed to have complied with the residency requirements for school attendance in a school district, provided he or she is any of the following:

(b) A school district may deem a pupil as having complied with the residency requirements for school attendance in the school district if one or both the parents or legal guardians of the pupil is employed within the boundaries of that school district.

(1) This subdivision does not require the school district within which the parents or guardians of a pupil are employed to admit the pupil to its schools. Districts may not, however, refuse to admit pupils under this subdivision on the basis, except as expressly provided in this subdivision, of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.

(2) The school district in which the residency of either the parents or guardians of the pupil is established, or the school district to which the pupil is to be transferred under this subdivision, may prohibit the transfer of the pupil under this subdivision if the governing board of the district determines that the transfer would negatively impact the court-ordered or voluntary desegregation plan of the district.

(3) The school district to which the pupil is to be transferred under this subdivision may prohibit the transfer of the pupil if the district determines that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer.

(4) The governing board of a school district that prohibits the transfer of a pupil pursuant to paragraph (1), (2) or (3) is encouraged to identify, and communicate in writing to the parents or guardians of the pupil, the specific reasons for that determination and is encouraged to ensure that the determination, and the specific reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made.

(5) The average daily attendance for pupils admitted pursuant to this subdivision is calculated pursuant to Section 46607.

(6) Unless approved by the sending district, this subdivision does not authorize a net transfer of pupils out of any given district, calculated as the difference between the number of pupils exiting the district and the number of pupils entering the district, in any fiscal year in excess of the following amounts:

(A) For any district with an average daily attendance for that fiscal year of less than 501, 5 percent of the average daily attendance of the district.

(B) For any district with an average daily attendance for that fiscal year of 501 or more, but less than 2,501, 3 percent of the average daily attendance of the district or 25 pupils, whichever amount is greater.

(C) For any district with an average daily attendance of 2,502 or more, 1 percent of the average daily attendance of the district or 75 pupils, whichever amount is greater.

(7) Once a pupil is deemed to have complied with the residency requirements for school attendance pursuant to this subdivision and is enrolled in a school in a school district whose boundaries include the location where one or both parents of a pupil is employed, or where the legal guardian of the pupil is employed, the pupil does not have to reapply in the next school year to attend a school within that school district and the district governing board shall allow the pupil to attend school through the 12th grade in that district if the parent or guardian so chooses and if one or both of the pupil's parents or guardians continues to be employed by an employer situated within the attendance boundaries of the school district, subject to paragraphs (1) to (6), inclusive.

(c) This section is inoperative on and after July 1, 2007, and as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed. *(Added by Stats. 2003, c.529 (S.B. 140), § 2, eff. Sept. 25, 2003.)*

INFORMATION:

1. Completed Employment Related Request for Interdistrict Transfer of a School Pupil starts with the district of employment. If approved at that level, forward to district of residence.
2. There are no appeal provisions to the Marin County Board of Education on employment related requests.

**SOLICITUD DE TRANSFERENCIA DE UN ALUMNO
RELACIONADA CON EL EMPLEO**

[De conformidad con la Sección 48204(b) del Código de Educación (vea el reverso)]

PARTE A: El padre o tutor llena esta sección y la devuelve AL DISTRITO DE EMPLEO:

Año escolar solicitado _____

Distrito de residencia

Distrito de empleo

Padre o tutor

Dirección electrónica

Domicilio (Not P.O. Box)

Ciudad

Código Postal

Nivel de grado (para el año solicitado) _____

Teléfono de la casa

Teléfono del trabajo

_____, de quien yo soy el padre o tutor legal, es un alumno en el
(Nombre del estudiante)

Distrito Escolar _____. Yo solicito la transferencia de este
alumno de conformidad con la sección 48204(b) del Código de Educación. **El empleo debe ser verificado
anualmente.**

Soy empleado de:

(nombre del empleador)

(dirección del empleo)

(teléfono del empleo)

Lugar de empleo ubicado en el Distrito Escolar _____.

Comuníquese con el distrito para los requisitos específicos de verificación de empleo.

SE DEBE ADJUNTAR LA VERIFICACION DE EMPLEO

Declaro bajo pena de perjurio que la información proporcionada anteriormente, incluyendo los motivos de la solicitud, es verdadera y exacta. Yo entiendo que esta información puede ser verificada, y la información inexacta o falsa puede causar la denegación o revocación de mi solicitud.

Firma del padre o tutor: _____ Fecha: _____
(Padre – No escriba debajo de esta línea.)

PARTE B: Acción del Distrito de empleo del padre: Fecha recibida por el distrito: _____

[] El empleo del padre o tutor en este distrito ha sido verificado y el consejo de educación del distrito ha **aprobado condicionalmente*** la transferencia solicitada.

[] La solicitud de transferencia es **negada** en virtud de una determinación por parte del consejo de educación como consta en el acta de la reunión del consejo de _____ (fecha de la reunión). Se adjuntan las razones de esta determinación.

Por: _____ Distrito: _____

Representante autorizado

Título: _____ Fecha: _____

* La aprobación está condicionada a una determinación en cuanto a si los costos adicionales de la educación del alumno superarían el importe de las ayudas estatales que se reciban como resultado de la transferencia.

PARTE C: Notificación al Distrito de Residencia

Notificación al distrito de residencia a efectos de la determinación bajo la sección 48204(b) del Código de Educación, (6), (A), (B) o (C).

Código de Educación de California 48204(b): Requisitos de residencia

No obstante la Sección 48200, se considerará que un alumno ha cumplido con los requisitos de residencia para asistir a la escuela en un distrito escolar, siempre y cuando él sea uno de los siguientes:

(b) Un distrito escolar puede considerar que un alumno ha cumplido con los requisitos de residencia para asistir a la escuela en el distrito escolar si uno o ambos padres o tutor legal del alumno se emplea dentro de los límites de este distrito escolar.

(1) Esta subdivisión no requiere que el distrito escolar en el que los padres o tutores de un alumno se emplean admitan a los alumnos a la escuela. Los distritos no pueden, sin embargo, negarse a admitir a los alumnos bajo esta subdivisión en base a, con excepción de lo expresamente dispuesto en este inciso, la raza, etnia, sexo, ingreso de los padres, rendimiento escolar, o cualquier otra consideración arbitraria.

(2) El distrito en el que se establece la residencia de los padres o tutores del alumno, o el distrito escolar para el que el alumno va a ser transferido bajo esta subdivisión, puede prohibir la transferencia del alumno bajo esta subdivisión si el consejo escolar del distrito determina que la transferencia tendría un impacto negativo en el plan de integración ordenado por la corte o voluntario del distrito.

(3) El distrito escolar al que el alumno va a ser transferido bajo esta subdivisión puede prohibir la transferencia del alumno si el distrito determina que el costo adicional para educarlo supera el importe de las ayudas estatales recibidas como resultado de la transferencia.

(4) Se anima al consejo de educación de un distrito escolar que prohíbe el traslado de un alumno de conformidad con el párrafo (1), (2), o (3), a identificar y comunicar por escrito a los padres y tutores del alumno las razones específicas de la determinación, y se anima a asegurarse que la determinación y las razones específicas se precisen en el acta de la reunión del consejo en la que se dictó la resolución.

(5) El promedio de asistencia diaria de los alumnos admitidos de conformidad con esta subdivisión se calcula conforme a la Sección 46607.

(6) A menos que sea aprobado por el distrito de origen, esta subdivisión no autoriza una transferencia neta de alumnos de un distrito determinado, calculada como la diferencia entre el número de alumnos que salen del distrito y el número de alumnos que ingresan al distrito, en cualquier año fiscal, en exceso de las siguientes cantidades:

(A) Para cualquier distrito con una asistencia diaria promedio para un año fiscal de menos de 501, el 5 por ciento del promedio de asistencia diaria del distrito.

(B) Para cualquier distrito con una asistencia diaria promedio para ese año fiscal de 501 o más, pero menos de 2.501, un 3 por ciento del promedio de asistencia diaria del distrito, o 25 alumnos, la cantidad que sea mayor.

(C) Para cualquier distrito con una asistencia diaria promedio de 2.502 o más, un 1 por ciento del promedio de asistencia diaria del distrito, o 75 alumnos, la cantidad que sea mayor.

(7) Una vez considerado que un alumno ha cumplido con los requisitos de residencia para la asistencia escolar de conformidad con esta subdivisión, y está inscrito en una escuela de un distrito escolar cuyos límites incluyen el lugar donde uno o ambos padres o tutor legal es empleado, el alumno no tiene que volver a solicitar al siguiente año escolar asistir a una escuela dentro del distrito escolar, y el consejo directivo del distrito permitirá al alumno asistir a la escuela hasta el grado 12° en ese distrito si el padre o tutor así lo decide y si uno o ambos padres o tutor del alumno sigue siendo empleado por un empleador situado en la zona de asistencia del distrito escolar, sujeto a los párrafos (1) a (6) inclusive.

(c) Esta sección no es operativa a partir del 1° de julio, 2007, y a partir del 1° de enero, 2008, se deroga, a menos que una ley promulgada posteriormente, que tenga vigencia antes del 1° de enero, 2008, elimine la extensión de las fechas en que se vuelve inoperante y se derogue (*Added by Stats. 2003, c.529 (S.B. 140), § 2, eff. Sept. 25, 2003.*)

INFORMACION:

1. La solicitud completada relacionada con el empleo para el traslado entre distritos de un alumno se inicia en el distrito de empleo. Si es aprobada a ese nivel, se continúa en el distrito de residencia.
2. No existen disposiciones de apelación ante el Consejo de Educación del Condado de Marin relacionadas con peticiones de empleo.

**ROMERO BILL/OPEN ENROLLMENT REQUEST FOR TRANSFER
OF A SCHOOL PUPIL**

[Pursuant to Education Code Section 48354, 48356 (see reverse)]

PART A: Parent/Guardian fill out this section and *RETURN TO DISTRICT OF REQUESTED ENROLLMENT*:

School Year Requested _____ District of Residence _____

Parent/Guardian _____

Home Address _____ City _____ Zip _____

Grade Level (for year requested) _____ Home Phone _____ Work Phone _____

_____, of whom I am the parent or legal guardian, is a student in the
(Student's name)

_____ School District. I request transfer of this pupil under the provisions of Education Code Section 48354.

PART B: Action by District of Requested Enrollment: Date received by district: _____

- ☐ Enrollment in this district has been considered by the governing board of this district and has been **approved**.
- ☐ The request for transfer is **denied** pursuant to a determination by the governing board as recorded in the minutes of the board meeting on _____ (meeting date). The reasons for this determination are attached.

By: _____ District: _____
Authorized Representative

Title: _____ Date: _____

For purposes of "open enrollment" under the Romero Bill Education Code section 48356(a) allows each school district of enrollment to adopt "specific, written standards for acceptance and rejection" of open enrollment applications.

PART C: Notification to District of Residence

Education Code section 48357 provides that the district of enrollment has 60 days to accept or reject the application. Written notice of the acceptance or rejection must be given by the district of enrollment to both the parent/guardian and the district of residency.

Distribution:
MCOE Business Form No. 9/04
Updated: August 2011

White (original) - District of Employment
Pink - Marin County Office of Education

Yellow - District of Residence
Goldenrod - Parent/Guardian

EDUCATION CODE
48354 and 48356

48354 (a) The parent of a pupil enrolled in a low-achieving school may submit an application for the pupil to attend a school in a school district of enrollment pursuant to this article.

(b) (1) Consistent with the requirements of Section 1116(b)(1)(E) of the federal Elementary and Secondary Education Act of 2001 (20 U.S.C. Sec. 6301 et seq.), on or before the first day of the school year, or, if later, on the date the notice of program improvement, corrective action, or restructuring status is required to be provided under federal law the district of residence shall provide the parents and guardians of all pupils enrolled in a school determined in subdivision (a) of Section 48352 with notice of the option to transfer to another public school served by the school district of residence or another school district.

(2) An application requesting a transfer pursuant to this article shall be submitted by the parent of a pupil to the school district of enrollment prior to January 1 of the school year preceding the school year for which the pupil is requesting to transfer. The school district of enrollment may waive the deadline specified in this paragraph.

(3) The application deadline specified in paragraph (2) does not apply to an application requesting a transfer if the parent, with whom the pupil resides, is enlisted in the military and was relocated by the military within 90 days prior to submitting the application.

(4) The application may request enrollment of the pupil in a specific school or program within the school district of enrollment.

(5) A pupil may enroll in a school in the school district of enrollment in the school year immediately following the approval of his or her application.

(6) In order to provide priority enrollment opportunities for pupils residing in the school district, a school district of enrollment shall establish a period of time for resident pupil enrollment prior to accepting transfer applications pursuant to this article.

48356 (a) A school district of enrollment may adopt specific, written standards for acceptance and rejection of applications pursuant to this article. The standards may include consideration of the capacity of a program, class, grade level, school building, or adverse financial impact. Subject to subdivision (b), and except as necessary in accordance with Section 48355, the standards shall not include consideration of a pupil's previous academic achievement, physical condition, proficiency in the English language, family income, or any of the individual characteristics set forth in Section 200.

(b) In considering an application pursuant to this article, a nonresident school district may apply its usual requirements for admission to a magnet school or a program designed to serve gifted and talented pupils.

(c) Subject to the rules and standards that apply to pupils who reside in the school district of enrollment, a resident pupil who is enrolled in one of the district's schools pursuant to this article shall not be required to submit an application in order to remain enrolled.

(d) A school district of enrollment shall ensure that pupils enrolled pursuant to standards adopted pursuant to this section are enrolled in a school with a higher Academic Performance Index than the school in which the pupil was previously enrolled and are selected through a random, unbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based on his or her individual academic or athletic performance, or any of the other characteristics set forth in subdivision (a), except that pupils applying for a transfer pursuant to this article shall be assigned priority for approval as follows:

(1) First priority for the siblings of children who already attend the desired school.

(2) Second priority for pupils transferring from a program improvement school ranked in decile 1 on the Academic Performance Index determined pursuant to subdivision (a) of Section 48352.

(3) If the number of pupils who request a particular school exceeds the number of spaces available at that school, a lottery shall be conducted in the group priority order identified in paragraphs (1) and (2) to select pupils at random until all of the available spaces are filled.

(e) The initial application of a pupil for transfer to a school within a school district of enrollment shall not be approved if the transfer would require the displacement from the desired school of any other pupil who resides within the attendance area of that school or is currently enrolled in that school.

(f) A pupil approved for a transfer to a school district of enrollment pursuant to this article shall be deemed to have fulfilled the requirements of Section 48204.

**SOLICITUD DE INSCRIPCION ABIERTA PARA LA TRANSFERENCIA DE UN ALUMNO/
PROYECTO DE LEY ROMERO /**

[De conformidad con las Secciones 48354, 48356 del Código de Educación (ver el reverso)]

PARTE A: El padre o tutor llena esta sección y la *DEVUELVE AL DISTRITO DE INSCRIPCION SOLICITADO*:

Año escolar solicitado _____
_____ Distrito de residencia _____

_____ Padre o tutor _____

_____ Dirección de la casa _____ Ciudad _____ Código postal _____

Grado (para el año solicitado) _____
_____ Teléfono de la casa _____ Teléfono del trabajo _____

_____, de quien yo soy el padre o tutor legal,
(Nombre del estudiante)

es un estudiante en el Distrito Escolar _____.

Yo solicito la transferencia de este alumno conforme a las disposiciones de la Sección 48354 del Código de Educación.

PARTE B: Acción del distrito de inscripción solicitado: Fecha recibida por el distrito: _____

- [] La inscripción en este distrito ha sido considerada por el consejo de educación de este distrito y ha sido **aprobada**.
[] La solicitud de transferencia es **negada** en virtud de una determinación del consejo de educación según consta en el acta de reunión del consejo del _____ (fecha de la reunión). Se adjuntan las razones para esta determinación.

Por: _____ Distrito: _____
Representante autorizado

Título: _____ Fecha: _____

A los efectos de la “inscripción abierta” bajo el Proyecto de Ley Romero Sección 48356(a) del Código de Educación, se permite que cada distrito escolar de inscripción adopte “normas escritas específicas de aceptación y rechazo” de las solicitudes de inscripción abierta.

PARTE C: Notificación al distrito de residencia

La Sección 48357 del Código de Educación establece que el distrito de inscripción tiene 60 días para aceptar o rechazar la solicitud. La notificación escrita de la aceptación o rechazo debe ser dada por el distrito de inscripción tanto a los padres o tutores y como al distrito de residencia.

Distribución:	Blanco (original) - Distrito de empleo	Amarillo claro - Distrito de residencia
MCOE Business Form No. 9/04	Rosado – Oficina de Educación del Condado de Marin	Amarillo oscuro – Padre o tutor
Updated: August 2011		

CODIGO DE EDUCACION
48354 y 48356

48354 (a) El padre de un alumno matriculado en una escuela de bajo rendimiento puede presentar una solicitud para que el alumno asista a una escuela en el distrito escolar de inscripción de conformidad con este artículo.

(b) (1) De acuerdo con los requisitos de la Sección 116(b)(1)(E) de la Ley Federal de Educación Primaria y Secundaria del 2001 (20 USC sec. 6301 et seq.), en o antes del primer día del año escolar, o si fuera posterior, en la fecha de notificación del programa de mejoría, acción correctiva o reestructuración, se requiere bajo la ley federal que el distrito de residencia proporcione a los padres o tutores de todos los alumnos matriculados en una escuela determinada en el inciso (a) de la Sección 48352, una notificación de la opción de transferencia a otra escuela pública administrada por el distrito de residencia o de otro distrito escolar.

(2) Una solicitud pidiendo una transferencia en virtud del presente artículo deberá ser presentada por el padre de un alumno a la escuela del distrito de inscripción antes del 1º de enero del año escolar anterior al cual el alumno solicita la transferencia. El distrito escolar de inscripción podrá renunciar al plazo establecido en este párrafo.

(3) El plazo de solicitud especificado en el párrafo (2) no aplica a una solicitud que pida una transferencia si el padre con quien reside el alumno, está enlistado en el ejército y fue trasladado por el ejército dentro de los 90 días antes de la presentación de la solicitud.

(4) La solicitud puede pedir la inscripción del alumno en una escuela o programa específico dentro del distrito escolar de inscripción.

(5) Un alumno puede matricularse en una escuela en el distrito escolar de inscripción en el año escolar inmediatamente después de la aprobación de la solicitud.

(6) Con el fin de proporcionar oportunidades de prioridad de inscripción para los alumnos que residen en el distrito escolar, el distrito escolar de matriculación deberá establecer un plazo para la inscripción de alumnos residentes antes de aceptar las solicitudes de transferencia en virtud del presente artículo.

48356 (a) Un distrito escolar de inscripción podrá adoptar normas específicas escritas de aceptación y rechazo de las solicitudes en virtud del presente artículo. Las normas pueden incluir consideración de la capacidad de un programa, clase, grado, escuela o impacto financiero adverso. Sujeto a la subdivisión (b), y salvo que sea necesario de conformidad con la Sección 48355, las normas no incluirán el examen de logros académicos previo del alumno, condición física, dominio del idioma inglés, ingreso familiar o cualquiera de las características individuales establecidas en la Sección 200.

(b) Al considerar una solicitud de conformidad a este artículo, un distrito escolar no residente podrá aplicar sus requisitos habituales para la admisión a una escuela especializada o a un programa diseñado para servir a los alumnos dotados y talentosos.

(c) Con sujeción a las reglas y normas que se aplican a los alumnos que residen en el distrito escolar de matriculación, un alumno residente que está inscripto en una de las escuelas de conformidad con este artículo, no está obligado a presentar una solicitud para permanecer inscripto.

(d) Un distrito escolar de matriculación se asegurará que los alumnos inscriptos de conformidad con las normas adoptadas en virtud de esta sección son inscriptos en una escuela con un Índice de Rendimiento Académico más alto que el de la escuela en la que fueron matriculados con anterioridad y son seleccionados a través de un proceso al azar e imparcial, que prohíbe una evaluación de si un alumno debe ser inscripto en base a su desempeño individual académico o deportivo, o por cualquiera de las otras características establecidas en la subdivisión (a), excepto que a los alumnos que soliciten una transferencia en virtud del presente artículo se les asignará prioridad de aprobación de la siguiente manera:

(1) La primera prioridad para los hermanos de niños que ya asisten a la escuela deseada.

(2) La segunda prioridad para los alumnos que transfieran de una escuela de mejoría de programa clasificada en el rango 1 en el Índice de Desempeño Académico determinado conforme a la subdivisión (a) de la Sección 48352.

(3) Si el número de alumnos que solicitan una escuela en particular es superior al número de plazas disponibles en esa escuela, se llevará a cabo una lotería en el orden de prioridad del grupo identificado en los párrafos (1) y (2) para seleccionar a los alumnos al azar hasta que se llenen todos los espacios disponibles.

(e) La solicitud inicial de un alumno para su traslado a una escuela en un distrito escolar de inscripción no será aprobada si el traslado exige el desplazamiento en la escuela deseada de cualquier otro alumno que reside en el área de asistencia de la escuela o está inscripto en esa escuela.

(f) Un alumno aprobado para una transferencia a un distrito escolar de inscripción en virtud del presente artículo se considerará que ha cumplido con los requisitos de la Sección 48204.



MARIN COUNTY BOARD OF EDUCATION

APPEAL REGARDING DENIAL OF INTERDISTRICT ATTENDANCE REQUEST

The District of Residence and the District of Desired Attendance must act on the transfer request prior to appeal to the Marin County Board of Education.

Parent/Guardian making appeal: _____

Address: _____

Phone: (Home) _____ (Work) _____

Student Name: _____ Age: _____ Grade Level (for year requested): _____

District of Residence: _____ Number of Years: _____

District board approved _____ denied _____ the request for interdistrict attendance.

Date of board action: _____

Have all appeals within the district been exhausted? Yes _____ No _____

District of desired attendance: _____

District board approved _____ denied _____ the request for interdistrict attendance.

Date of board action: _____

Have all appeals within the district been exhausted? Yes _____ No _____

State the Reason for Request: (Attach additional sheets if necessary. Also attach any supporting documentation.)

Request for Closed Session:

The hearing will be in a public meeting of the Board unless one or both of the following circumstances exists.

(Check one/both)

_____ The appeal includes allegations against staff members and/or other students.

_____ The case is such that it will require using information of a personal/confidential nature concerning the student for whom transfer is requested.

Date: _____ Signature: _____

Parent will attend meeting: Yes _____ No _____

Please submit completed form to: Marin County Office of Education - (415) 499-5820.
P.O. Box 4925/1111 Las Gallinas Avenue
San Rafael, CA 94913

**This form must be submitted within 30 calendar days of the failure or refusal to issue a permit allowing the attendance, to the County board of education.
Failure to appeal within the required time is good cause for denial of an appeal.**

California Education Code 46601(a)(b)(c): Appeal to County Board

If, within 30 calendar days after the person having legal custody of a pupil has so requested, the governing board of either school district fails to approve interdistrict attendance in the current term, or, in the absence of an agreement between the districts, fails or refuses to enter into an agreement, the district denying the permit, or, in the absence of an agreement, the district of residence, shall advise the person requesting the permit of the right to appeal to the county board of education.

If, within 14 calendar days after the commencement of instruction in a new term in each of the school districts, respectively, when the person having legal custody of a pupil has so requested separately of each district not later than 30 calendar days prior to the commencement of instruction in that term in that district, the governing board of either district fails to approve interdistrict attendance in that term, or, in the absence of an agreement between the districts to permit that attendance, fails or refuses to enter an agreement, the district denying the permit, or, in the absence of an agreement, the district of residence, shall advise the person requesting the permit of the right to appeal to the county board of education.

Notifying districts shall also, in all instances, advise persons making unsuccessful requests for interdistrict attendance of all of the following:

- (a) The person having legal custody may appeal, within 30 calendar days of the failure or refusal to issue a permit, or to enter into an agreement allowing the attendance, to the county board of education having jurisdiction over the district of residence of the parent or legal guardian or person having legal custody. Failure to appeal within the required time is good cause for denial of an appeal. An appeal shall be accepted only upon verification by the county board's designee that appeals within the districts have been exhausted. 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.
- (b) The county board of education shall, within 30 calendar days after the appeal is filed, determine whether the pupil should be permitted to attend in the district in which he desires to attend and the applicable period of time. In the event that compliance by the county board within the time requirement for determining whether the pupil should be permitted to attend in the district in which he or she desires to attend is impractical, the county board or the county superintendent of schools, for good cause, may extend the time period for up to an additional 5 school days. The county shall provide adequate notice to all parties of the date and time 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 of education. The county board rules may provide for the granting of continuances upon a showing of good cause.
- (c) The county supervisor of attendance, or other designee of the county superintendent of schools, 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.

CONSEJO DE EDUCACIÓN DEL CONDADO DE MARIN

APELACIÓN CON RELACIÓN A LA NEGACIÓN DE LA SOLICITUD DE ASISTENCIA INTERDISTRITAL

El Distrito de Residencia y el Distrito de Asistencia Deseada deben actuar sobre la solicitud de transferencia antes de apelar al Consejo de Educación del Condado de Marin.

Padre, madre o tutor que hace la apelación: _____

Dirección: _____

Teléfono: (Casa) _____ (Trabajo) _____

Nombre del estudiante: _____ Edad: _____ Nivel de grado (para el año solicitado): _____

Distrito de residencia: _____ Número de años: _____

El consejo del distrito aprobó _____ negó _____ la solicitud de transferencia interdistrito.

Fecha de acción del consejo: _____

¿Se han agotado todos los recursos dentro del distrito? Si _____ No _____

Distrito de asistencia deseada: _____

El consejo del distrito aprobó _____ negó _____ la solicitud de transferencia interdistrito.

Fecha de acción del consejo: _____

¿Se han agotado todos los recursos dentro del distrito? Si _____ No _____

Indique el motivo de la solicitud: (Adjunte hojas adicionales si necesario. También adjunte la documentación de apoyo).

Solicitud de sesión cerrada al público: La audiencia será en una reunión pública del Consejo a menos que exista una o ambas de las siguientes circunstancias. (Marque una o ambas)

_____ La apelación incluye acusaciones contra los miembros del personal y/u otros estudiantes.

_____ El caso es tal que se requiere el uso de información de carácter personal o confidencial sobre el estudiante para quien se solicita la transferencia.

Fecha: _____ Firma: _____

Los padres asistirán a la reunión: Si _____ No _____

Por favor envíe el formulario completado a: Marin County Office of Education – (415) 499-5801
P.O. Box 4925/1111 Las Gallinas Avenue
San Rafael, CA 94913

Este formulario debe ser presentado ante el Consejo de Educación del Condado dentro de los 30 días calendarios siguientes a la omisión o negativa a expedir un permiso permitiendo la asistencia. La falta de apelación dentro del tiempo requerido es motivo suficiente para la negación de un recurso de apelación

Sección 46601 (a)(b)(c) del Código de Educación de California: Apelación al Consejo del Condado

Si, dentro de los 30 días calendarios después que la persona que tenga la custodia legal de un alumno lo ha solicitado, el consejo gobernante de cualquiera de los distritos escolares no aprueba la asistencia interdistrito para el término actual, o, en ausencia de un acuerdo entre distritos, se niega o rechaza entrar en un acuerdo, el distrito que niega el permiso, o, en ausencia de un acuerdo, el distrito de residencia, asesorará a la persona que solicita el permiso sobre el derecho a apelar ante el consejo de educación del condado.

Si, dentro de los 14 días calendarios siguientes al inicio de la instrucción en un nuevo término en cada uno de los distritos escolares, respectivamente, cuando la persona que tenga la custodia legal de un alumno así lo ha solicitado separadamente a cada distrito a más tardar 30 días calendarios antes del comienzo de la instrucción en ese término en ese distrito, el consejo gobernante de cualquiera de los distritos no aprueba la asistencia interdistrito en ese término, o, en ausencia de un acuerdo entre los distritos para permitir esa asistencia, se niega a entrar en un acuerdo, el distrito que niega el permiso, o, en la ausencia de un acuerdo, el distrito de residencia, asesorará a la persona que solicita el permiso sobre el derecho a apelar ante consejo de educación del condado.

Los distritos notificantes deberán también, en todos los casos, asesorar a las personas que realizan sin éxito solicitudes de asistencia interdistrito, de todo lo siguiente:

- (a) La persona que tenga la custodia legal puede apelar, dentro de los 30 días calendarios siguientes a la falta de o negativa a expedir un permiso, o a entrar en un acuerdo que permita la asistencia, ante el consejo de educación del condado que tenga jurisdicción sobre el distrito de residencia del padre, madre o tutor legal o persona que tenga la custodia legal. La falta de apelación dentro del plazo requerido es causa suficiente para la denegación de un recurso de apelación. Una apelación será aceptada solo tras la verificación de la persona designada por el consejo del condado que las apelaciones dentro los distritos se han agotado. Si las nuevas pruebas o razones para la solicitud son presentadas, el consejo del condado puede remitir el asunto para su posterior consideración por el distrito o distritos. En los demás casos, la apelación será concedida o denegada en sus méritos.
- (b) El consejo de educación del condado, en un plazo de 30 días calendarios después que la apelación se ha presentado, deberá determinar si el alumno debe ser autorizado a asistir al distrito en el que desea asistir y el período de tiempo aplicable. En el caso de que el cumplimiento por parte del consejo del condado dentro tiempo requerido para determinar si el alumno debe ser autorizado a asistir en el distrito que el o ella desea asistir sea poco práctico, el consejo del condado o el superintendente de escuelas del condado, con causa justificada, podrá prorrogar el plazo por un máximo de 5 días escolares adicionales. El condado deberá proporcionar notificación adecuada a todas las partes de la fecha y la hora de cualquier audiencia programada y de la posibilidad de presentar declaraciones por escrito y documentación y de ser oído en el asunto de conformidad con las normas y reglamentos adoptados por el consejo de educación del condado. Las reglas del consejo del condado pueden disponer la concesión de aplazamientos si se demuestra un motivo suficiente.
- (c) El supervisor de asistencia del condado, u otra persona designada por el superintendente de las escuelas del condado, investigará para determinar si los recursos locales en la materia han sido agotados y para proporcionar cualquier información adicional que se estime útil para que el consejo del condado tome una decisión.

SECTION SEVEN

LEGAL OPINIONS

DELAINE EASTIN
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

LO: 1-95

LEGAL ADVISORY

DATE: March 3, 1995

CALIFORNIA STATE DEPARTMENT OF EDUCATION

721 Capitol Mall, Sacramento, CA 95814

CONTACT: Michael E. Hersher
Deputy General Counsel
PHONE: (916) 657-2453

To: County and District Superintendents of Schools;
Directors of Welfare and Attendance

From: Office of the General Counsel
Legal and Audits Branch

Subject: VERIFICATION OF RESIDENCY

This advisory is intended to assist districts and county offices regarding the information you may rely on to determine that a child is a resident for purposes of public school attendance. Although no California statute specifically defines "residence," this office has opined on the subject of residency documentation in several prior advisories. In the context of the homeless, this office advised districts to accept any kind of document, including a parental declaration, indicating an intent to remain in the district for an indefinite period.¹ This office has also advised districts that they may be "flexible" in accepting proof of parent employment within the district where the employment is difficult to verify with payroll records.² In addition, the Department of Education has promulgated regulations regarding eligibility for child care and development services that allow a wide range of documents to be accepted by providers as proof of residency.³

These opinions and regulations reflect a balance of several competing interests. First, the overriding concern is that every child that resides in California be educated somewhere. Second, a child's place of residence is sometimes difficult to determine, given the complexity and mobility of California families. Despite that difficulty, school districts need stability and predictability in attendance patterns in order to plan for and provide adequate services. Finally, while reasonable compliance with attendance accounting law is necessary, school districts are not law enforcement agencies.

Given these competing issues, what is reasonable proof of residency? In our view, that question must be answered in the context of particular facts. The general rule is that districts may

¹ Legal Advisory LO: 5-88 (Nov. 15, 1988), Calif. Department of Education, Legal and Audits Branch.

² Advisory Opinion No. 89-1 (June 19, 1989), Calif. Department of Education, Field Services Branch.

³ 5 California Code of Regulations, Section 18107(b).

accept a wide range of documents and parent representations regarding residency in the first instance. There is no particular list of documents that may be accepted; any reasonable evidence of residence is sufficient. A district may presume the legitimacy of the documents provided by the parents of a child at the time of enrollment. The district should retain a copy of any writing produced to verify residence.⁴ If no written document is available, a written verification of residence by the parents or a school official should be retained. In the first instance, it is within the discretion of district officials to develop reasonable procedures for the annual verification of each student's residence within the district. This standard is the same as that applied by the State Controller in reviewing district residency records for compliance.

However, when information comes to the attention of employees of the district indicating that the parents have provided false or unreliable evidence of residency, the district must either disenroll the child or make a reasonable effort to determine that the child actually resides within the district.⁵ The amount of effort necessary to make that determination may vary substantially from case to case and district to district. A district, however, should not ignore indications of obvious residency fraud by parents or guardians. It is a fact of life that districts located on international borders face a more difficult problem with residency than other districts. This problem has been recognized by the Legislature in Education Code sections 48051 and 48052, which allow non-resident students to cross the border daily to attend California schools if they pay tuition.

These are the general parameters within which districts and county offices must operate. For more specific assistance regarding particular residency questions, please contact Michael E. Hersher, Deputy General Counsel of this office at (916) 657-2453.

The guidance in this Legal Advisory is not binding on local education agencies or other entities. Except for the statutes, regulations, and court decisions that are referenced herein, this Legal Advisory is exemplary, and compliance with it is not mandatory. (See Education Code section 33308.5.)

⁴It should be noted that an opinion on this issue was requested by attorney Keith Bray from Richard Chivaro, Chief Counsel to the State Controller. Mr. Chivaro responded that such opinions should be obtained from the Department of Education, rather than the State Controller's office. To the extent that this Legal Advisory contains such an opinion, all future audits of attendance records should be guided by the principles stated herein.

⁵For example, if 25 unrelated children all claim the same post office box as their residence address, the evidence would appear to be unreliable.



CALIFORNIA STATE DEPARTMENT OF EDUCATION

721 Capitol Mall; P.O. Box 944272

Sacramento, CA 94244-2720

Bill Honig

Superintendent

of Public Instruction

Advisory Opinion No.89-1 -- June 19, 1989

Requested by: **LA MONT SKIBY, Superintendent**
Buttonwillow Union School District

Opinion by: **JOSEPH R. SYMKOWICK, General Counsel**
Michael E. Hersher, Staff Counsel

QUESTION

Superintendent La Mont Skiby of Buttonwillow Union School District (BUSD) has requested an opinion from the State Department of Education (SDE) on the following question:¹

May a school district prohibit parents from transferring their child to another school district where the sending district concludes that the parents are not employed in the receiving district or that the transfer is not based on childcare needs?

CONCLUSION

A sending school district does not have authority to unilaterally prohibit parents who reside within the sending

¹ Education Code section 33319.5 authorizes SDE to render, publish, and disseminate advisory opinions as follows:

The State Department of Education may encourage among school districts, county boards of education, and county superintendents of schools the implementation of the authority granted to those agencies by Section 35160, including the rendering to those agencies, upon request, advisory opinions on whether a program, activity, or course of action is authorized by Section 35160. The department may publish and disseminate those opinions.

Education Code section 35160 provides:

On and after January 1, 1976, the governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.

district from enrolling their child in another school district. The receiving district may enroll the child if that district determines that the residency requirements have been met.

ANALYSIS

Attendance at school is compelled by Education Code section 48200 which states, in relevant part:

Each person between the ages of 6 and 18 years not exempted under the provisions of this chapter... is subject to compulsory full-time education. Each person...shall attend the public full-time day school or continuation school or classes and for the full time designated as the length of the schoolday by the governing board of the school district in which the residency of either the parent or legal guardian is located and each parent, guardian, or other person having control or charge of the pupil shall send the pupil to the public full-time day school or continuation school or classes and for the full time designated as the length of the schoolday by the governing board of the school district in which the residence of either the parent or legal guardian is located. (Emphasis added.)

"Residence" is not defined in Section 48200.² The term does not have a standard or fixed legal meaning; rather, the term is construed to give effect to the purpose of particular legislation. (Burt v. Scarborough (1961) 56 Cal.2d 817, 821.) For the purposes of the compulsory education statute, "residence" has been limited in order to bring predictability to the enrollment level of each district and to ensure enforcement of the attendance laws. (Laton Joint Union High School Dist. v. Armstead (1933) 130 Cal.App. 628, 631.) However, in order to ensure that children attend school somewhere, even when they lack permanent street addresses, SDE has adopted the following definition of "residence:"³

² In fact, recent amendments to the statute deleted a reference to Welfare and Institutions Code section 17.1(a) which defined the residence of a child as:

The residence of the parent with whom a child maintains his or her place of abode or the residence of any individual who has been appointed legal guardian...

³ See, SDE Legal Advisory LO: 5-88, "Application of the Residency Requirements for Homeless Children and Youth" (Nov. 15, 1988).

Personal presence at some place with no present intention of definite and early removal and with purpose to remain for undetermined period...but not necessarily with design to stay permanently.... (Black's Law Dict.(5th ed. 1979) p. 1176, col. 2.)

Alternative methods of meeting the residency requirements of Section 48200 have been created by Education Code section 48204.⁴ In particular, Section 48204(f) states:

Notwithstanding Section 48200, a pupil shall be deemed to have complied with the residency requirements for school attendance in a school district, provided he or she is any of the following:

(f) An elementary school pupil, one or both of whose parents, or whose legal guardian, is employed within the boundaries of that school district.

(1) Nothing in this subdivision requires the school district within which the pupil's parents or guardians are employed to admit the pupil to its schools. Districts may not, however, refuse to admit pupils under this subdivision on the basis, except as expressly provided in this subsection, of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.

(2) The school district in which the residency of either the pupil's parents or guardians is established, or the school district to which the pupil is to be transferred under this subdivision, may prohibit the transfer of the pupil under this subdivision if the governing board of the district determines that the

⁴ Although it is not within the scope of the question raised by BUSD here, a question has repeatedly been raised as to whether a child may claim residency for school attendance purposes when living with a relative in a different district than the child's parents or legal guardians. Section 48204(d) allows a parent or guardian to establish the residence of a child "in a home located within the boundaries of that school district, provided such home is properly licensed as required by law." Under 22 C.C.R. section 80007(a)(11), the home of a relative is specifically exempted from the licensing requirements applied to "community care facilities." In SDE's opinion, if a parent establishes the residence of his or her child in the home of a relative (within the meaning of 22 C.C.R. sec. 80001(a)(43)), that child may attend school in the district in which the relative resides under Section 48204(d).

transfer would negatively impact the district's court ordered or voluntary desegregation plan.

(3) The school district to which the pupil is to be transferred under this subdivision may prohibit the transfer of the pupil if the district determines that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer.

(4) Any district governing board prohibiting a transfer pursuant to paragraph (1), (2), or (3) shall identify, and communicate in writing to the pupil's parent or guardian, the specific reasons for that determination and shall ensure that the determination, and the specific reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made.

(5) The average daily attendance for pupils admitted pursuant to this subdivision shall be calculated pursuant to Section 46616.

(6) Unless approved by the sending district, this subdivision does not authorize a transfer of pupils out of any given district in any fiscal year in excess of the following amounts:

(A) For any district with an average daily attendance for that fiscal year of less than 501, 5 percent of the average daily attendance of that district.

(B) For any district with an average daily attendance for that fiscal year of 501 or more, but less than 2501, 3 percent of the average daily attendance of the district or 25 pupils, whichever is greater.

(C) For any district with an average daily attendance of 2501 or more, 1 percent of the average daily attendance or 75 pupils, whichever is greater.

The question presented here is what are the relative powers and responsibilities of the sending and receiving school districts where a transfer has been requested under Section 48204(f). To begin with, Section 48204(f) is inherently ambiguous since it purports to create an alternative method of satisfying residency requirements, yet refers to interdistrict transfers. If the section is a residency statute, then the pupil would have a right to attend in any district for which the statutory requirements are met, without the need for an interdistrict transfer agreement under Education Code section 46600. Yet Section 48204(f) gives the receiving district

authority to refuse the transfer, suggesting that the receiving district must agree to accept the transfer.

A receiving district may refuse to admit any pupil who applies for a Section 48204(f) transfer because of the excessive cost of educating the pupil or for any reason that is not discriminatory or "arbitrary." Either district may prohibit the transfer if it would interfere with a desegregation plan. Finally, the sending district may prohibit the transfer of more than a specified percentage of its total enrollment for that fiscal year. The statute, then, gives each district the power to unilaterally block the transfer under certain circumstances.⁵

What is not clear from the face of the statute is which district has authority to determine whether the transfer request was valid in the first place? Section 48204(f) allows a parent to claim residence in a school district in which he or she is "employed." The purpose of this provision is not expressly stated. The purpose appears to be to allow parents who work a long distance from their homes more immediate access to their children during the school day. The original bill which carried the amendments to Section 48204(f) also added Education Code section 46601.5, which requires districts, in considering a request for an interdistrict transfer, to consider "the child care needs of the pupil." (Stats.1986, ch. 172, sec. 1.)⁶ We assume that the overall intent was to give working parents more child care choices and more flexibility in coordinating commuting, school attendance, and school-age child care.

A transfer may therefore be based upon parental employment or the pupil's child care needs. Such a request may be denied for the various reasons enumerated in Section 48204(f), for any legitimate reason by the receiving district under Section 48204(f)(1), or for any legitimate reason by either district under Section 46601.5. The statutes do not indicate which district must initially decide whether the request is based on

⁵ Presumably, the Legislature expected each district to respect the exercise of the other's judgment within its area of unilateral control. As a practical matter, each district is an independent entity and only a court could compel a district to comply with another district's decision.

⁶ Section 46601.5 provides:

The governing board of any two school districts that have been requested by a pupil's parent or legal guardian, to enter into an agreement for interdistrict attendance pursuant to Section 46600, shall, in considering that request, give consideration to the child care needs of the pupil.

actual employment or child care needs or the degree of proof that a district may require of the parents.

In SDE's opinion, Sections 48204(f) and 46601.5 create different authority and must be distinguished. Section 46601.5 clearly gives districts authority to enter into transfer agreements based on a pupil's child care needs. Either district may block such a transfer by refusing to enter an agreement. Section 48204(f), on the contrary, is an exception to a residency statute which gives a pupil the right to attend school in one or more districts, without the need for an interdistrict transfer agreement. If the Legislature had intended Sections 48204(f) and 46601.5 to operate in the same manner, they would have included them in the same statutory scheme. Having chosen to create two separate statutory schemes, we must assume the Legislature intended different results. (People v. Norwood (1972) 26 Cal.App.3d 148, 156.)

The question presented here is whether a sending school district may enact a policy regarding Section 48204(f) transfer requests and may reach a conclusion as to the merits of a parental request. Given the difference noted above between Sections 48204(f) and 46601.5, SDE concludes that the legislative intent was not to allow the sending district to exercise any authority over the merits of a transfer request under Section 48204(f). The receiving district is expressly authorized by the section to refuse to admit a pupil so long as the refusal is not arbitrary or discriminatory. The exercise of refusal power clearly requires the receiving district to make substantive determinations regarding a parental claim of employment in the district. SDE believes that the Legislature did not intend for both the sending and receiving districts to possess such authority over the same determination at the same time. If both districts had equal authority over a transfer request, it would create the anomalous and wasteful situation of two districts fighting over the right to enroll a pupil. The statute should be interpreted so as to avoid such an absurd result, if possible. (Steilberg v. Lackner (1977) 69 Cal.App.3d 780, 785.)

Education Code section 35160 authorizes a school district to conduct any program or activity that is not "in conflict with or inconsistent with, or preempted by, any law..." Based on the analysis above, SDE concludes that it would be inconsistent with the intended operation of Section 49204(f) for both the sending and receiving districts to reach conflicting determinations as to the merit of a transfer request based on employment. In our view, only the receiving district may determine the merits of such a transfer request.

We turn now to the specific transfer policy enacted by Buttonwillow Union School District. BUSD Policy No. 6201.1.D, currently states, in relevant part:

This Board of Trustees will consider parent or guardian requests for interdistrict transfers on an individual basis, however, such requests will be denied unless there is clear and compelling reason to permit the transfer. Examples of compelling reasons to permit the transfers include the following:

Child care needs of students in grades Kindergarten through sixth where the person(s) with whom the child resides work(s) regularly and cannot obtain child care in this district.

As a threshold matter, SDE believes that this policy may only be applied to employment-based transfer requests when BUSD is the receiving district. However, even assuming that BUSD is the receiving district, this particular policy statement raises a series of four additional questions regarding transfer requests. 1) May a district require that a parent demonstrate both employment and the availability of child care in the receiving district? 2) May the receiving district limit parental employment to "regular" work in that district? 3) What degree of proof of "regular" employment may a district require a parent to submit in support of a transfer request? 4) May a district require that such proof substantiate a "clear and compelling" reason for the transfer?

As to the first issue, the answer is no. Sections 48204(f) and 46601.5, though created by the same legislation, appear to create independent bases for requesting a transfer. That is, a parent may seek an interdistrict transfer based on either employment under Section 48204(f) or child care needs under Section 46601.5. Although parents often seek child care near their work for convenience, the statutory provisions are neither cross-referenced nor contingent upon each other. Therefore, Buttonwillow's policy, which requires a parent to demonstrate both employment and child care within the receiving district, is too restrictive; it conflicts with the intent of the Legislature to allow either basis for transfer.

The answer to the second question depends upon the meaning of "regular." SDE believes that a receiving district may determine whether an assertion of employment in another district is genuine. However, "employment," like "residence" discussed above, does not have a fixed legal meaning. The term must be interpreted in light of the intent of the particular statute in which it is used. (Knight v. Bd. etc. Employees' Retirement (1948) 32 Cal.2d 400, 402.) Section 48204(f) appears to be aimed at such employment that causes a parent to be present in the receiving district for such substantial periods of time that various family needs can be better met by having the children and the parents in closer proximity during the day. This purpose is

very general and does not necessarily depend on such concepts as full-time, part-time, or intermittent employment, as defined by other statutes. The Buttonwillow policy, which requires employment to be "regular," would be permissible if its intent was to identify actual employment which requires substantial periodic presence in the receiving district during the school year. It would not be within the district's authority to limit transfers to parents with regular assigned shifts, whether in full or part-time jobs. However, it would be reasonable for a district to find that infrequent or occasional work performed in the receiving district was not sufficient to justify a transfer.

As to the third question involving the degree of proof, we believe that a district may accept a parental assertion of employment in another district at face value. There is no legal requirement that districts engage in thorough independent investigations of such parental requests. However, it is certainly within the district's authority to require substantiation of a parental assertion, such as a statement from the employer indicating the hours and conditions of employment or reasonable evidence of self-employment, if the district believes such additional support is warranted. This is particularly true where the district has independent reason to believe that the parental claim of employment is suspect.⁷

As to the fourth question, we believe that a parent may be required to submit a reason for transfer that is "clear and compelling." The general rule for determining the appropriate school district is the residency requirement of Section 46600. This rule furthers the strong policy interest in stability of district enrollment and in predictability of average daily attendance and financial resources from year to year. (Laton Joint Union School Dist. v. Armstead, *supra*, 130 Cal.App. at p. 631.) Sections 48204 and 46601.5 provide exceptions to that rule; they further the special interests of a limited number of families and, therefore, should be narrowly construed to allow transfers only in cases where a clear need has been established. (City of National City v. Fritz (1949) 33 Cal.2d 635, 636.) In SDE's opinion, a "clear and compelling" standard balances competing interests and still requires the district to act reasonably in reviewing parental requests.

⁷ In a prior advisory by SDE regarding homeless children and youth, we advised school districts to be flexible in accepting proof of residency. (See fn. 3 above.) Such flexibility is particularly necessary where the parents, due to their circumstances, are unable to produce proof of a "regular" or permanent street address or even post office box. Similar consideration should be given to parents whose employment is impossible to verify in the usual manner.

Based on all the foregoing, it is SDE's conclusion that a sending district is without authority to determine the merits of a parental request for transfer of a pupil based on the parent's place of employment. A receiving district may determine the merits of such a request by reviewing evidence of actual and substantial employment in the receiving district.

mh/

DATE: November 15, 1988

LEGAL ADVISORY

CALIFORNIA STATE DEPARTMENT OF EDUCATION
721 CAPITOL MALL, SACRAMENTO, CA 95814

CONTACT: Joyoe Eckren
Staff Counsel

PHONE: (916) 445-4694

To: County and District Superintendents of Schools;
Directors of Welfare and Attendance

From: Joseph R. Symkowick, General Counsel
Legal and Audits Branch

Subject: APPLICATION OF THE RESIDENCY REQUIREMENTS FOR HOMELESS
CHILDREN AND YOUTH

This advisory is designed to assist districts with the interpretation of California's residency laws as they apply to admission to the public schools. Its purpose is to suggest ways of determining residency so as not to exclude homeless children from the public schools. It should not be generalized to populations other than the homeless.

In 1987 Congress enacted Title VII, subtitle B of the McKinney Homeless Assistance Act (Act) to address the educational needs of homeless children.¹ Congress stated that:

The purpose of this subtitle is to make plain the intent and policy of Congress that every child of a homeless family and each homeless youth be provided the same opportunities to receive free, appropriate educational services as children who are residents of the state. No child or youth should be denied access to any educational services simply because he or she is homeless. Of particular concern are potential disputes between school districts over the placement of these children, which could result in the homeless being denied an education in any school district.²

¹42 U.S.C. sections 11432 - 11433.

²House Conf. Report No. 100-174 100th Cong., 1st Sess.; reprinted in [1987] U.S. Code Cong. & Admin. News, 362, 472.

To carry out the purposes of this Act, Congress has made grants to State Educational Agencies to begin the planning processes. It is anticipated that in future years, funds will also be available for allocation to local educational agencies.

As a recipient of these federal funds, California's plan must ensure that homeless youth are able to participate in education, in their school district of origin or in the school district in which the pupil is living, whichever is in the best interests of the child. The State plan must also contain a mechanism to resolve disputes which arise between districts over the responsibility to educate homeless children. The Act requires that "any State that has a residency requirement as a component of its compulsory school attendance laws...will review and undertake steps to revise such laws to assure that homeless youth are afforded a free and appropriate public education."³

California's compulsory education law⁴ has long been interpreted as incorporating a residency requirement,⁵ requiring the pupil to attend school in the district wherein the pupil's parent or legal guardian resides.

Explicit exceptions to the residency requirement are contained in various education code sections.⁶ Interpretive exceptions have historically been made for children who live with relatives or other responsible adults, other than their parents or legal guardians.⁷

There is, however, no explicit residency exception for homeless children. As the residency law is typically applied, if the parents cannot provide proof of a street address within the district, the child is denied admission. Furthermore, because the term "residency" is ill-defined and because of fiscal and desegregation concerns, school officials are often reluctant to accept temporary addresses, post office box addresses and similar indices of residency. Yet, requiring proof of an actual street

³42 U.S.C. section 11431.

⁴Education Code section 48200.

⁵See, for example, Laton Joint Union High School v. Armstead (1933) 130 Cal. App. 628; 11 OPS. CAL. ATTY. GEN. 59; 26 OPS. CAL. ATTY. GEN. 269; 67 OPS. CAL. ATTY. GEN. 452.

⁶See, for example, section 46605 (newly formed districts); section 48204 (interdistrict attendance); sections 56156.5 and 56167 (redefining residency requirements for special populations).

⁷11 OPS. CAL. ATTY. GEN. 59

address may be an overly restrictive interpretation of the residency requirement⁸ and may deny otherwise eligible pupils their right to receive a public education.

This advisory attempts to clarify the purpose and meaning of the "residency" requirement, and how it can be applied to effect the legislative purpose without unnecessarily denying homeless pupils access to public education.

1. What does residency mean for purposes of admission to the public schools?

"Residency" should not be construed so as to require a permanent and fixed home to which one intends to return in perpetuity, but rather as:

Personal presence at some place with no present intention of definite and early removal and with the purpose to remain for an undetermined period, but not necessarily with a design to stay permanently. [See discussion below]

Education Code section 48200, from which the residency requirement is derived, is California's compulsory education law. It establishes that parents, legal guardians, or other persons having control or charge of a pupil must send that pupil to school. It compels the pupil to attend. The primary purpose of the statute, therefore, is to ensure that every person of school age attends school.⁹ Thus, it should be liberally construed to effect this purpose.

By reviewing the exceptions to the residency requirement (e.g., section 48204, Interdistrict Attendance) another purpose - to ensure orderly and predictable attendance patterns within the various districts - is evident.¹⁰ A similar purpose is to limit

⁸California Education Code section 2 requires that the code "be liberally construed, with a view to effect its objects and to promote justice."

⁹11 OPS. CAL. ATTY. GEN. 59, 60.

¹⁰Laton Joint Union High School Dist. v. Armstead, supra, 130 Cal.App. 628. The legislative and interpretive history of the compulsory education law indicates that the legislature intended that districts have some way of restricting admission to the public schools. Prior to 1955, the Attorney General interpreted the residency requirement as allowing districts to exclude children from school attendance if the child was living with other than the parent or legal guardian for the sole purpose

the benefit of a free public education to those who reside within California. But even these exceptions are designed to ensure that children attend school. They are not designed to exclude children or to make admission prohibitively cumbersome.¹¹

Thus, it is the State Department of Education's position that the residency requirement must be broadly and liberally construed to ensure that all school-aged children who reside in California are permitted to attend the public schools.

The word "residence" is a term with no definite legal meaning. It is subject to varying constructions, depending upon the purposes of the particular statute.¹²

Sometimes "residence" is used in the legal sense of "domicile". Blacks Law Dictionary, Fifth Edition, distinguishes these two terms as follows:

Residence. Personal presence at some place with no present intention of definite and early removal and with purpose to remain for undetermined period... but not necessarily with design to stay permanently....

Residence means living in a particular locality, but domicile means living in that locality with the intent to make it a fixed and permanent home. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention

of attending school there. (11 OPS. CAL. ATTY. GEN. 59) In 1955, the legislation was amended, replacing the word "resides" with the word "lives". The Attorney General interpreted this amendment to mean that the pupil was eligible to attend the district wherein he lived without an interdistrict agreement and without regard to his motive or intent for living in the district. (26 OPS. CAL. ATTY. GEN. 269) In 1977, the statute was again amended to restore the term "resides". It is of interest that this latter amendment coincides in time with much of the desegregation litigation, and was probably intended to restore the prohibition against living with friends or relatives simply for the purpose of attending the public schools there.

¹¹Further evidence that the primary purpose of the compulsory education law is to ensure school attendance is that sections 48291-48295 provide for penalties for non-attendance.

¹²Nadler v. California Veterans Board (1984) 152 Cal.App.3d 707, 715 n.5; Burt v. Scarborough (1961) 56 C.2d 817, 821.

to make it one's domicile [citations omitted]. "Residence" is not synonymous with "domicile", though the two terms are closely related; a person may have only one legal domicile at one time, but he may have more than one residence [citations omitted].

It is the State Department of Education's position that "residence" should not be confused with "domicile" for purposes of school admission and that a permanent and fixed dwelling place is not necessary to establish residency for school purposes.

2. Must a pupil provide evidence of a permanent home/street address in order to enroll in a public school?

No. Although this is a permissible method for districts to determine residency, it should not be applied routinely so as to exclude children from school attendance. Section 17.1 of the Welfare and Institutions Code states, in part, that the child's residence is "the residence of the parent with whom a child maintains his or her place of abode" (emphasis added). Blacks Law Dictionary, Fifth Edition, defines "abode" as "One's home; habitation; place of dwelling; or residence...Living place impermanent in character". A temporary shelter would certainly meet the test of either a residence or an abode. Other less traditional habitats, such as vehicles or tents, could also meet the definitions of residence or abode. The important factors are that the child is personally present somewhere within the district with a purpose to remain, but not necessarily to remain permanently. The intent of the law is to keep children in school, not to exclude them under the definition of residency.

3. What indices of residence, other than a street address, may a district accept?

Some districts accept letters from a social service agency verifying that the person does in fact live within the district boundaries. Hotel or motel receipts are also accepted by some districts. Although Post Office Box numbers are not favored, they could be combined with an affidavit by the parent declaring that the family is homeless and lives within the district. Where the family may be living on the street, it is permissible to accept an affidavit from the parent that they are living within the district with the purpose of remaining there.¹³

¹³Some proof of residency is necessary to prevent abuse of desegregation, interdistrict and assignment policies. However, districts should look for alternatives to avoid excluding those who are in the unfortunate situation of being homeless.

Where the pupil has no family (e.g., runaways), but wishes to attend school, it is recommended that the school district work cooperatively with either the social service agency or a legal advocacy group.

4. Must the original district serve a pupil whose family has temporarily been housed in another district but states the intention of returning to the original district?

Although the above analysis of residence would seem to relieve the original district of the obligation to serve the pupil, the federal law requires a determination of the child's best interests. The federal law states that:

(3) The local educational agency of each homeless child or youth shall either --

- (A) continue the child's or youth's education in the school district of origin for the remainder of the school year; or
- (B) enroll the child or youth in the school district where the child is actually living, whichever is in the child's best interest or the youth's best interest.¹⁴

[Emphasis added]

If it is clear that the relocation is temporary, and if distance factors are not prohibitive, the original district ought to make arrangements to continue serving the pupil through interdistrict agreement procedures¹⁵ if other factors indicate that it is in the best interests of the pupil.¹⁶

There are numerous other issues surrounding the education of homeless children and youth that are not addressed by this legal advisory. This advisory is intended solely to reassure districts that it is not unlawful to serve children who have no home. The State Department of Education will be working with an advisory

¹⁴42 U.S.C. section 11432(e)(3).

¹⁵Education Code section 46600.

¹⁶ The federal district court in Orozco by Arroyo v. Sobol (1987) 674 F.Supp. 125, ruling on a preliminary injunction while the merits were being argued, ordered the school district wherein the temporary residence was located to serve the pupil. Distance, duration, and the nebulous intent of the parent influenced this result.

committee to address such issues as timely receipt of health records and procedures for dealing with immunization issues, assignment, labeling, identification and reporting, and run-away youth. Further program advisories may be developed and sent to school districts as determined necessary or helpful.

If you have any questions regarding the legal residency issues raised herein, please contact Joyce Eckrem, Staff Counsel at 916-445-4694. Any policies which your district implements should, of course, be reviewed by your own counsel.

SAMPLE AFFIDAVIT

I, _____ declare as follows:
(Name)

1. I am the parent/legal guardian of _____
who is of school age and is seeking admission to _____
School District.

2. Since _____ our family has not had a permanent home,
(Date)
however, we have been residing within the _____
School District boundaries and intend to remain herein.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct and of my own personal knowledge and that if called upon to testify, I would be competent to testify thereto.

Date: _____ Signature: _____

I regularly contact and receive my mail at:

Name: _____

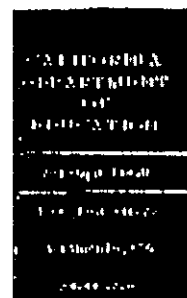
Address: _____

Phone Number: _____

I can be reached for emergencies at:



DELAINE EASTIN
State Superintendent of Public Instruction



[Students](#) > [Homeless](#) > [NCLB Provisions](#)

Date: May 31, 2002

To: County Superintendents
District Superintendents
Directors of State and Federal Categorical Programs

From: Joanne Mendoza
Deputy Superintendent
Curriculum and Instructional Leadership Branch

Subject: New Provisions of the Education of Homeless Children and Youth

This letter is to inform you of some of the changes contained in the No Child Left Behind (NCLB) Act of 2001, signed into law by President Bush on January 8, 2002 as it relates to the education of homeless children and youth. The McKinney-Vento Homeless Assistance Act, reauthorized in January 2002, ensures educational rights and protections for children and youth experiencing homelessness. This summary letter provides a brief overview of key provisions of the reauthorized Act. To acquire a copy of the legislation, it is available at the California Department of Education's Web Site at < <http://www.cde.ca.gov/lasa>>. You may also contact Leanne Wheeler, Education Programs Consultant, at 916-657-2871.

Definitions

According to the McKinney-Vento Homeless Assistance Act, the definition of homeless children and youth means an individual who lacks a fixed, regular, and adequate nighttime residence. These definitions also include children and youth who are living with a friend, relative or someone else because they lost their home or can't afford housing; children and youth who are staying in a motel or hotel due to lack of adequate alternative accommodations; children and youth who are living in an emergency or transitional shelter or a domestic violence shelter, and many other situations.

Academic Achievement

It is the policy of Congress that students in homeless situations should have access to the education and other services they need to ensure that they have an opportunity to meet the same challenging State student academic achievement standards to which all students are held.

Liaisons

Every LEA must designate an appropriate staff person as a local educational agency liaison for students in homeless situations. State coordinators and LEAs must inform school personnel, service providers, and advocates who work with families in homeless situations of the duties of the liaison.

Liaisons must ensure that:

- Children and youth in homeless situations are identified by school personnel and through coordination activities with other entities and agencies;
- Children and youth enroll in, and have full and equal opportunity to succeed in, the schools of the LEA;
- Families, children, and youth receive educational services for which they are eligible, including Head Start, Even Start, and pre-school programs administered by the LEA, and referrals to health, mental health, dental, and other appropriate services;
- Parents or guardians are informed of educational and related opportunities available to their children, and are provided with meaningful opportunities to participate in the education of their children;
- Public notice of the educational rights of students in homeless situations is disseminated where children and youth receive services under the Act (such as schools, family shelters, and soup kitchens);
- Enrollment disputes are mediated in accordance with the Enrollment Disputes section;
- Parents and guardians, and unaccompanied youth, are fully informed of all transportation services, including to the school of origin, and are assisted in accessing transportation services; and,
- Collaboration and coordination with state coordinators and community and school personnel responsible for the provision of education and related services to children and youth in homeless situations.

School Selection

Local Educational Agencies (LEAs) must, to the extent feasible, keep students in homeless situations in their school of origin (defined as the school attended when permanently housed, or the school in which they were last enrolled), unless it is against the parent or guardian's wishes.

Students can stay in their school of origin the entire time they are homeless, and until the end of any academic year in which they move into permanent housing.

Students may also choose to enroll in any public school that students living in the same attendance area are eligible to attend.

If a student is sent to a school other than the school of origin or the school requested by a parent/guardian, the LEA must provide a written explanation of its decision and the right to appeal, whether or not the parent/guardian disputes the placement.

Homeless liaisons must help unaccompanied youth (youth who are not in the physical custody of a parent or guardian) choose and enroll in a school, after considering the youth's wishes, and provide youth with notice of their right to appeal an enrollment choice that goes against their wishes.

Enrollment

LEAs must immediately enroll students in homeless situations, even if they do not have required documents, such as school records, medical records, proof of residency, or other documents. The term "enroll" is defined as attending classes and participating fully in school activities.

Enrolling schools must obtain school records from the previous school, and students must be enrolled in school while records are obtained. If a student does not have immunizations or immunization or medical records, the liaison must immediately assist in obtaining them, and the student must be enrolled in school in the interim.

States and LEAs must develop, review and revise their policies to remove barriers to the enrollment and retention of children and youth in homeless situations.

Dispute Resolution

Whenever a dispute arises, the student must be immediately admitted to the school of choice while the dispute is being resolved.

A written explanation of the school's decision must be provided if a parent, guardian or unaccompanied youth disputes a school placement or enrollment decision.

The school must refer the student, parent or guardian to the local liaison to carry out the dispute resolution process as expeditiously as possible.

Liaisons must ensure that this provision is followed for unaccompanied youth.

Transportation

At a parent or guardian's request, homeless students must be provided with transportation to and from their school of origin. For unaccompanied youth, transportation to and from the school of origin must be provided at the liaison's request. If the student's temporary residence and the school of origin are in the same LEA, that LEA must provide transportation. If the student is living outside the school of origin's LEA, the LEA where the student is living and the school of origin's LEA must determine how to divide the responsibility and cost of providing transportation, or they must share the responsibility and cost equally.

In addition to providing transportation to the school of origin, LEAs must provide students in homeless situations with transportation services comparable to those provided to other students.

Segregation

It is the policy of the Congress that homelessness alone is not sufficient reason to separate students from the mainstream school environment.

States that receive McKinney-Vento Act assistance are prohibited from segregating homeless students in separate schools, separate programs within schools, or separate settings within schools, except:

- States that have separate schools operated in FY2000 in a "covered county" are excluded from the prohibition, and are eligible to receive McKinney funds, providing

that the covered schools, and the LEAs that the homeless children enrolled in the covered schools are eligible to attend, meet the requirements specified for them in the Act (Covered counties are Orange County, CA; San Diego County, CA; San Joaquin County, CA; and Maricopa County, AZ).

- If McKinney-Vento services are provided on school grounds, schools must not provide services in settings within a school that segregate homeless children and youth from other children and youth, except as is necessary for short periods of time for health and safety emergencies, or to provide temporary, special, and supplementary services.
- SEAs and LEAs must adopt policies and practices to ensure that homeless children and youth are not segregated or stigmatized on the basis of their status as homeless.
- Services provided with McKinney-Vento Act funds must not replace the regular academic program and must be designed to expand upon or improve services provided as part of the school's regular academic program.

Statewide Activities

The Office of State Coordinator must provide technical assistance, in coordination with local liaisons, to all LEAs in order to ensure compliance with the following LEA requirements: school choice/placement; best interest determination; enrollment; enrollment disputes; records; comparable services; coordination; local liaison duties; review and revision of policies; and the prohibition on segregation.

Thank you for your attention to the education of homeless children and youth. If you have any questions about the contents of this letter, please contact Leanne Wheeler, Education Programs Consultant, at (916) 657-2871.

This page is maintained by the CIL Branch Web Team.

Updated June 28, 2002

Copyright © California Department of Education.

You are at: <http://www.cde.ca.gov/cilbranch/homeless/nclbltr.html>

[Contact CDE](#) | [Help](#) | [CDE Home](#)



84 Ops. Cal. Atty. Gen. 198
84 Ops. Cal. Atty. Gen. 198, 2001 WL 1477933 (Cal.A.G.)
(Cite as: 2001 WL 1477933 (Cal.A.G.))

Office of the Attorney General
State of California

*1 Opinion No. 01-316
November 19, 2001

THE HONORABLE HELEN MACLEOD THOMSON
MEMBER OF THE STATE ASSEMBLY

THE HONORABLE HELEN MACLEOD THOMSON, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following questions

1. May a school district deny all applications for pupil admissions that are based upon a parent's employment within the district where the reason for the denial is that the district's school facilities are overcrowded at the relevant grade level?
2. May a school district that has admitted an elementary school pupil based upon a parent's employment within the district deny the pupil continued attendance at a school within the district because of overcrowded school facilities at the relevant grade level?
3. May a school district deny all applications for interdistrict attendance agreements that are based upon the child care needs of the pupil where the reason for the denial is that the district's school facilities are overcrowded at the relevant grade level?
4. May a school district that has entered into an interdistrict attendance agreement based upon the child care needs of the pupil deny the pupil continued attendance at a school within the district because of overcrowded school facilities at the relevant grade level?

CONCLUSIONS

1. A school district may deny all applications for pupil admissions that are based upon a parent's employment within the district where the reason for the denial is that the district's school facilities are overcrowded at the relevant grade level.
2. A school district that has admitted an elementary school pupil on the basis of a parent's employment within the district may not deny the pupil continued

Copr. © West 2004 No Claim to Orig. U.S. Govt. Works

84 Ops. Cal. Atty. Gen. 198
84 Ops. Cal. Atty. Gen. 198, 2001 WL 1477933 (Cal.A.G.)
(Cite as: 2001 WL 1477933 (Cal.A.G.))

Page 2

attendance at a school within the district because of overcrowded school facilities at the relevant grade level.

3. A school district may deny all applications for interdistrict attendance agreements that are based upon the child care needs of the pupil where the reason for the denial is that the district's school facilities are overcrowded at the relevant grade level.

4. A school district that has entered into an interdistrict transfer agreement based upon the child care needs of the pupil may not deny the pupil continued attendance at a school within the district because of overcrowded school facilities at the relevant grade level.

ANALYSIS

The questions presented for analysis concern the authority of a school district, when it has overcrowded school facilities, to deny attendance at its schools by pupils who reside outside the boundaries of the district. The two situations considered involve pupils whose parents are employed within the district and pupils who have child care needs within the district.

Normally, a child is required to attend school in the district in which the residence of either a parent or guardian is located. (Educ. Code, § 48200.) [FN1] However, section 48204 provides

"Notwithstanding Section 48200, a pupil shall be deemed to have complied with the residency requirements for school attendance in a school district, provided he or she is any of the following

*2 "(b) A pupil for whom interdistrict attendance has been approved pursuant to [sections 46600-46611].

"(f) An elementary school pupil, one or both of whose parents, or whose legal guardian, is employed within the boundaries of that school district.

"(1) Nothing in this subdivision requires the school district within which the pupil's parents or guardians are employed to admit the pupil to its schools. Districts may not, however, refuse to admit pupils under this subdivision on the basis, except as expressly provided in this subdivision, of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.

"(4) Any district governing board prohibiting a transfer pursuant to paragraph (1), (2), or (3) shall identify, and communicate in writing to the pupil's parent or guardian, the specific reasons for that determination and shall ensure that the determination, and the specific reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made.

"(7) Once a pupil is deemed to have complied with the residency requirements for school attendance pursuant to this subdivision and is enrolled in a school district whose boundaries include the location where one parent or both parents of a pupil is employed, or where the pupil's legal guardian is employed, the pupil shall not have to reapply in the next school year to attend a school within that school district and the district governing board shall allow the pupil to attend school through the 12th grade in that district if the parent or guardian so chooses, subject to paragraphs (1) to (6), inclusive.

Copr. © West 2004 No Claim to Orig. U.S. Govt. Works

While subdivision (f) of section 48204 allows for the admission of a pupil based upon a parent's employment, subdivision (b) of the statute allows for admission based upon the child care needs of the pupil by its reference to sections 46600-46611. [FN2] Subdivision (a) of section 46600 provides

"The governing boards of two or more school districts may enter into an agreement, for a term not to exceed five school years, for the interdistrict attendance of pupils who are residents of the districts. The agreement may provide for the admission to a district other than the district of residence of a pupil who requests a permit to attend a school district that is a party to the agreement and that maintains schools and classes in kindergarten or any of grades 1 to 12, inclusive, to which the pupil requests admission.

"The agreement shall stipulate the terms and conditions under which interdistrict attendance shall be permitted or denied.

"... The stipulation of the terms and conditions under which the permit may be revoked is the responsibility of the district of attendance."

Section 46601.5 additionally states

"(a) The governing boards of any two school districts that have been requested by a pupil's parent or legal guardian to enter into an agreement for the interdistrict attendance pursuant to Section 46600 shall, in considering that request, give consideration to the child care needs of the pupil.

*3 "(b) The governing board of any school district that has entered into an agreement for the interdistrict attendance of a pupil based on that pupil's child care needs shall allow that pupil to remain continuously enrolled in the school district of choice if the parent or guardian so chooses, subject to paragraphs (1) to (6), inclusive, of subdivision (f) of Section 48204.

"(c) The governing board of any high school district whose feeder elementary school has entered into an agreement with another school district for the interdistrict attendance of a pupil based on that pupil's child care needs shall allow that pupil to continue to attend school through the 12th grade in the same district if the parent or guardian so chooses, subject to paragraphs (1) to (6), inclusive, of subdivision (f) of Section 48204.

1. Admission Requests Based Upon Parental Employment

The first question to be resolved is whether a school district may deny all applications for pupil admissions that are based upon a parent's employment within the district if the reason for the denial is the existence of overcrowding in the district's schools at the relevant grade level. We conclude that it may.

As quoted above, subdivision (f)(1) of section 48204 governs our discussion. It allows a school district to deny pupil admissions requested on the basis of parental employment except as particularly specified or on the basis "of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration." Does classroom overcrowding constitute an "arbitrary consideration" for purposes of the statute? If not, a district may deny the requests for admission on such basis.

We believe that the existence of overcrowded school facilities cannot be viewed

as an "arbitrary" consideration for a school district. "Arbitrary" generally means "arising from unrestrained exercise of the will, caprice, or personal preference." (Webster's 3d New Internat. Dict. (1971) p. 110.) [FN3] Unlike the specific examples of an arbitrary consideration given in subdivision (f)(1) of section 48204, overcrowded school facilities are directly related to the ultimate mission of the school district to provide quality educational opportunities for all students who attend its schools. In contrast, each of the specific factors listed in subdivision (f)(1) pertains to attributes or characteristics of the individual pupil who seeks admission or those of his or her family. Classroom overcrowding is not a consideration that is personal to the applicant or the applicant's family. [FN4]

We conclude in answer to the first question that a school district may deny all applications for pupil admissions that are based upon a parent's employment within the district where the reason for the denial is that the district's school facilities are overcrowded at the relevant grade level.

2. Continued Attendance of a Pupil Admitted Based Upon Parental Employment

*4 The second question concerns a student who has been admitted to an elementary school on the basis of a parent's employment within the district. May the pupil's continued attendance be denied by the school district due to its school facilities being overcrowded at the relevant grade level? We conclude that continued attendance may not be denied due to a lack of classrooms.

As quoted above, subdivision (f)(7) of section 48204 controls our analysis. Conditions (1) through (6) of subdivision (f) refer to the initial transfer and admission of the pupil due to parental employment. Once admitted in compliance with those conditions, subdivision (f)(7) requires that the child be treated like any other child residing within the district, assuming the parent maintains employment within the district. "[T]he pupil shall not have to reapply in the next school year to attend a school within that school district and the district governing board shall allow the pupil to attend school through the 12th grade in that district if the parent or guardian so chooses...." (§ 48204, subd. (f)(7).)

When subdivision (f)(7) of section 48204 was amended in 1994 (Stats. 1994, ch. 1262, § 1) to add the language in question, the committee reports concerning the proposed legislation described the Legislature's intent as follows the legislation "would provide that a pupil whose parent or guardian is employed in a given school district may continue to attend school in that district through the twelfth grade" (Assem. Com. on Education, Rep. on Assem. Bill No. 2768 (1993-1994 Reg. Sess.) as amended April 4, 1994, p. 1), and "[t]his bill provides that a pupil whose parent or guardian is employed in a given school district may continue to attend school in that district through the twelfth grade" (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 2768 (1993-1994 Reg. Sess.) as amended August 27, 1994, p. 2).

Once admitted, therefore, a pupil of a parent who is employed within the school district's area may continue to attend the schools of the district through the

84 Ops. Cal. Atty. Gen. 198

Page 5

84 Ops. Cal. Atty. Gen. 198, 2001 WL 1477933 (Cal.A.G.)

(Cite as: 2001 WL 1477933 (Cal.A.G.))

twelfth grade "if the parent or guardian so chooses." (§ 48204, subd. (f)(7).) Of course, the admission of a pupil for reasons of parental employment is only available for "[a]n elementary school pupil." (§ 48204, subd. (f).) The subdivision has no application to school districts that do not maintain an elementary school. Moreover, not all school districts maintaining elementary schools also provide grade levels beyond the sixth grade. Subdivision (f)(7) of section 48204 allows "the pupil to attend school through the 12th grade" only when the particular school district has already admitted the pupil for parental employment reasons and maintains grades beyond the elementary school level. Finally, the pupil is "deemed" to be a resident of the school district due to the parental employment. If parental employment within the school district ceases, the "deemed" residence ceases as well.

*5 We conclude in answer to the second question that a school district that has admitted an elementary school pupil on the basis of a parent's employment within the district may not deny the pupil continued attendance at a school within the district because of overcrowded school facilities at the relevant grade level.

3. Interdistrict Attendance Agreements Based Upon Child Care Needs

The third question to be resolved concerns the language of section 48204, subdivision (b), which allows a pupil to be deemed a resident of a school district under an interdistrict attendance agreement based upon the child care needs of the pupil. May a school district deny all applications for such agreements that are based upon child care needs if the reason for the denial is a lack of classroom space? We conclude that it may.

The key statute controlling our analysis is section 46601.5, quoted above, which is incorporated by reference in section 48204, subdivision (b). When a pupil's parent requests approval of an interdistrict attendance agreement, the district "shall, in considering that request, give consideration to the child care needs of the pupil." (§ 46601.5, subd. (a).)

Nothing in section 46601.5 requires a school district to enter into an interdistrict attendance agreement if the district does not have the classroom space for the pupil. Just as requests for transfers based upon parental employment may be denied due to a lack of classroom facilities, so also may execution of an interdistrict attendance agreement be denied for such reason. A school district is not required to provide classrooms for pupils who do not reside in the district even though they may have child care needs within the district. A lack of school facilities is a justifiable reason for a denial of any and all interdistrict attendance agreement requests.

We conclude in answer to the third question that a school district may deny all applications for interdistrict attendance agreements that are based upon the child care needs of the pupil where the reason for the rejection is that the district's school facilities are overcrowded at the relevant grade level.

84 Ops. Cal. Atty. Gen. 198

Page 6

84 Ops. Cal. Atty. Gen. 198, 2001 WL 1477933 (Cal.A.G.)

(Cite as: 2001 WL 1477933 (Cal.A.G.))

4. Continued Attendance of a Pupil Admitted Based Upon Child Care Needs

The final question to be considered concerns a pupil who has been admitted by a school district under an interdistrict attendance agreement based upon the child care needs of the pupil. May the district, due to the existence of overcrowded school facilities, deny the pupil continued attendance at its schools? We conclude that it may not.

As with pupils who attend a school based upon parental employment, pupils who attend a school based upon their child care needs are deemed to be residents of the school district. (§ 48204.) While the child care needs remain, the pupil may continue to attend as a "deemed" resident of the district.

However, a slight distinction has been drawn by the Legislature between parental employment situations and child care needs situations with respect to continued attendance of those previously admitted. As discussed in answer to the second question, admission based upon parental employment obligates only the school district that initially admitted the pupil; that district must accept continued attendance through the twelfth grade, if available, for those whose parent remains employed within the district. Admission based upon child care needs, however, not only obligates the district that admitted the pupil (§ 46601.5, subd. (b)), but also "any high school district whose feeder elementary school has entered into an agreement...." (§ 46601.5, subd. (c)). As long as the pupil continues to require child care, such high school district "shall allow that pupil to continue to attend school through the 12th grade...." (Ibid.)

*6 While it is true that an interdistrict attendance "agreement shall stipulate the terms and conditions under which interdistrict attendance shall be permitted or denied" (§ 46600, subd. (a)), we do not believe that school districts may contract away their statutory responsibilities. Rather, the terms of each agreement must be consistent with those mandatory duties of a district that are specified by the Legislature. In this manner, the related statutes may be read together and harmonized. [FN5]

Our construction of section 48204 and the statutes it references provides some degree of consistency in the legislation regarding parental employment and child care needs outside the district of residence. The needs of the parents in both situations are essentially the same, and the needs of the pupils in establishing and maintaining continuity in their educational programs are substantially similar. We recognize that not all the language of these statutes, particularly the phrase "subject to paragraphs (1) to (6), inclusive, of subdivision (f) of Section 48204," may have significant meaning under our interpretation. However, we believe our interpretation provides "a practical construction" that does "not readily imply an unreasonable legislative purpose." (See California Correctional Peace Officers Assn. v. State Personnel Bd. (1995) 10 Cal.4th 1133, 1147.)

We conclude in answer to the fourth question that a school district that has entered into an interdistrict attendance agreement based upon the child care needs of the pupil may not deny continued attendance at a school within the district because of overcrowded school facilities at the relevant grade level.

Copr. © West 2004 No Claim to Orig. U.S. Govt. Works

84 Ops. Cal. Atty. Gen. 198
84 Ops. Cal. Atty. Gen. 198, 2001 WL 1477933 (Cal.A.G.)
(Cite as: 2001 WL 1477933 (Cal.A.G.))

Page 7

Bill Lockyer

Attorney General

Gregory L. Gonot

Deputy Attorney General

[FN1]. All references hereafter to the Education Code are by section number only.

[FN2]. The scope of this opinion is limited to a discussion of section 48204, subdivisions (b) and (f).

[FN3]. In construing a statute, we are to effectuate the Legislature's purposes by giving the words "the meaning they bear in ordinary use." (Wilcox v. Birtwhistle (1999) 21 Cal.4th 973, 977.)

[FN4]. "[W]hen a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with the specific enumeration." (Norfolk & Western R. Co. v. Train Dispatchers (1991) 499 U.S. 117, 129 [111 S.Ct. 1156, 1163, 113 L.Ed.2d 95, 107].) This is a restatement of the rule attributed to Lord Tenterden, i.e., ejusdem generis: " ' "[W]here general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated." ' " (Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142, 1160.)

[FN5]. A well recognized principle of statutory construction is that " '[words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible.' " (Woods v. Young (1991) 53 Cal.3d 315, 323.)

84 Ops. Cal. Atty. Gen. 198, 2001 WL 1477933 (Cal.A.G.)

END OF DOCUMENT

H

Briefs and Other Related Documents

Court of Appeal, Fourth District, Division 3,
California.

Donald Bruce CRAWFORD, Plaintiff and
Appellant,

v.

HUNTINGTON BEACH UNION HIGH SCHOOL
DISTRICT et al., Defendants and Respondents.

No. G028752.

May 31, 2002.

Review Denied Aug. 28, 2002.

Taxpayer brought action against school district contending the racial and ethnic balancing component of the district's open-transfer policy violated the State Constitution. The Superior Court, Orange County, No. 814334, Sheila Fell, Temporary Judge, granted district's motion for summary judgment. Taxpayer appealed. The Court of Appeal, Sills, P.J., held that: (1) the racial and ethnic balancing portion of district's policy as applied to the school violated State Constitution's prohibition against discrimination or preferential treatment on the basis of race in operation of public education, and (2) and balancing component of the Education Code governing open enrollments also violated the State Constitution.

Reversed with directions.

West Headnotes

[1] Schools ⇨13(14)

345k13(14) Most Cited Cases

Racial and ethnic balancing portion of school

district's open-transfer policy violated State Constitution's prohibition against discrimination or preferential treatment on the basis of race in operation of public education, and to the extent the balancing was required by the balancing component of the Education Code section governing open enrollments, that section violated the State Constitution as well; the policy mandated a one-for-one same race exchange in and out of a high school which had a "white" student population of approximately 16%, thus creating different transfer criteria for students solely on the basis of their race. West's Ann.Cal. Const. Art. 1, § 31; West's Ann.Cal.Educ.Code § 35160.5.

[2] Constitutional Law ⇨220(4)

92k220(4) Most Cited Cases

Federal equal protection clause prohibits a school district from acting to segregate schools. U.S.C.A. Const.Amend. 14.

[3] Constitutional Law ⇨220(4)

92k220(4) Most Cited Cases

Federal equal protection clause does not require the implementation of a proactive program of school integration. U.S.C.A. Const.Amend. 14.

[4] Constitutional Law ⇨220(4)

92k220(4) Most Cited Cases

Racial isolation or imbalance in public schools that is not the result of segregative intent does not require a racially discriminatory desegregation plan to comply with federal equal protection clause. U.S.C.A. Const.Amend. 14.

[5] Constitutional Law ⇨220(4)

92k220(4) Most Cited Cases

Racial balancing of public schools cannot be the objective of a federal court unless the balancing is shown to be necessary, under federal equal protection clause, to correct the effects of

government action of a racist character. U.S.C.A. Const.Amend. 14.

[6] Constitutional Law ¶12

92k12 Most Cited Cases

Where two constitutional provisions conflict, the one that was enacted later in time controls.

West Codenotes

Unconstitutional as Applied

West's Ann.Cal.Educ. Code § 35160.5.

****97** Appeal from a judgment of the Superior Court of California, County of Orange, Sheila B. Fell, Temporary Judge. [FN*] Reversed with directions.

FN* Pursuant to California Constitution, article VI, section 21.

***1276** Pacific Legal Foundation, Sharon L. Browne, Sacramento, and Stephen R. McCutcheon, Jr., for Plaintiff and Appellant.

Rutan & Tucker, David C. Larsen and Terence J. Gallagher, Costa Mesa, for Defendant and Respondent Huntington Beach Union High School District.

Linda A. Catatic, General Counsel, Marsha A. Bedwell, Assistant General Counsel, and Joanne Lowe, Deputy General Counsel, for Defendant and Respondent California Department of Education.

***1277** Munger, Tolles & Olson, Vilma S. Martinez, Allison B. Stein, and Henry H. Gonzalez, Los Angeles, Amicus Curiae for the Educational Legal Alliance of the California School Boards Association on behalf of Defendants and Respondents.

OPINION

SILLS, P.J.

Donald Bruce Crawford sued the Huntington Beach Union High School District and the California Department of Education (collectively the District unless the context indicates otherwise), contending the racial and ethnic balancing component of the District's open-transfer policy violates Proposition 209 (Cal. Const., art. I, § 31). He appeals the judgment entered after the trial court denied his motion for summary judgment and granted the District's. We agree with his contention on appeal—that the policy violates Proposition 209. Accordingly, we reverse the judgment.

I

The Transfer Policy

The District has an open transfer policy for all its high schools. The open-transfer policy has a "racial and ethnic balance" component as required by section 35160.5 of the state Education Code. This statute dictates that "school districts shall retain the authority to maintain appropriate racial and ethnic balances among their respective schools at the school districts' discretion or as specified in applicable court-ordered or voluntary desegregation plans." [FN1]

FN1. Education Code section 35160.5 provides in pertinent part: "[T]he governing board of each school district ... shall, as a condition for the receipt of school apportionments from the state school fund, adopt rules and regulations establishing a policy of open enrollment within the district for residents of the district.... The policy shall include all of the following elements: (A) It shall provide that the parents or guardian of each schoolage child who is a resident in the district may select the schools the child shall attend, irrespective of the particular locations of his or her residence within the district, except that school districts shall retain the authority to maintain appropriate racial and ethnic balances among their respective schools at the school districts' discretion or as specified in applicable court-ordered or voluntary desegregation plans."

There are six high schools in the District, but the only high school affected by the one-for-one same race exchange policy, that is, has been declared "ethnically isolated," is Westminster High School. The District has employed a private firm, Davis Demographics, to do demographic studies for it. This private firm uses, in the language of the firm's owner, Gregory Davis, *1278 in a declaration in the record, "District data from student records of names, addresses, schools of attendance, and ethnicity," which has been "stored in a computer program which can be utilized to generate statistical information based on race relative to each high school and its established geographic attendance area."

The actual tables supplied by Davis Demographics for Westminster High School **98 put every student into one of the following categories: (1) "American Indian or Alaska Native;" (2) the Asian sub-categories of (a) "Japanese," (b) "Korean," (c) "Chinese," (d) "Vietnamese," (e) "Laotian" and (f) "Other Asian"; (3) "Hawaiian/Pacific Islander"; (4) "Filipino"; (5) "Mexican American Chicano Span. Surn.;" (6) "Black Negroid Afro American"; and (7) "Total White Students." [FN2]

FN2. The "total Whites" category includes students who are classified as "Egyptian/Iranian/Lebanese."

To prevent an "inappropriate" racial and ethnic balance, the District restricts transfers to and from Westminster High School. If you are White and you live inside the high school's attendance area, you cannot transfer out unless another White student is willing to transfer in and take your place. If you are non-White and you live outside the high school's attendance area, you cannot transfer in unless another non-White student is willing to transfer out and you take that student's place.

Demographic studies calculated that, for the 1999-2000 academic year, the school's make-up was roughly four-tenths Vietnamese (41.1 percent, total Asian is 45.2 percent), three-tenths "Mexican American Chicano Spanish Surname" (30.5 percent), and one-sixth "White" (15.9 percent).

Crawford, a taxpayer in the District, brought this action in September 1999 to challenge the constitutionality of the one-for-one same race exchange policy under Proposition 209. Crawford and the District both brought motions for summary judgment. The District's motion largely relied on several pre-Proposition 209 cases decided under the state equal protection clause.

In mid-December 2000, the trial court granted the District's motion and denied Crawford's. In a brief minute-order, it ruled that the District's transfer policy was not prohibited under Proposition 209 and "promotes a non-segregated public education." The formal order granting the District's motion stated that the court had considered the Supreme Court's recent opinion in *1279*Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537, 101 Cal.Rptr.2d 653, 12 P.3d 1068 and that the case "had no application" to the "pending dispute."

II California Law

Crawford contends the trial court erred in granting the District's summary judgment motion. He contends the racial balancing component of the District's open enrollment program violates Proposition 209. We agree.

The voters adopted Proposition 209 in the November 1996 general election. The initiative measure added section 31 to article I of the California Constitution, which states in relevant part: "(a) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."

In *Hi-Voltage, supra*, 24 Cal.4th 537, 101 Cal.Rptr.2d 653, 12 P.3d 1068, the California Supreme Court applied a common and plain meaning approach to the words "discriminate against, or grant preferential treatment to" as used in Proposition 209. As of this writing, the only other published decision to substantively consider a challenge to a government program under

(Cite as: 98 Cal.App.4th 1275, 121 Cal.Rptr.2d 96)

Proposition 209 is ****99** *Connerly v. State Personnel Board* (2001) 92 Cal.App.4th 16, 112 Cal.Rptr.2d 5. *Connerly* involved challenges to several state government affirmative action programs, all of which were held to contravene Proposition 209.

In *Hi-Voltage*, all seven members of our state's high court held that San Jose's contractor outreach program on behalf of "women and minority business enterprises" was unconstitutional under article I, section 31 of the state constitution. (*Hi Voltage, supra*, 24 Cal.4th at p. 562, 101 Cal.Rptr.2d 653, 12 P.3d 1068 ["we remain persuaded the City's Program violates section 31"]; *id.* at p. 572, 101 Cal.Rptr.2d 653, 12 P.3d 1068 (conc. opn. of Mosk, J.) ["despite the legitimacy and even necessity of its end, the means that the city's program employs offend section 31"]; *id.* at p. 575, 101 Cal.Rptr.2d 653, 12 P.3d 1068 (conc. opn. of Kennard, J.) [applying "common meaning of 'preferential,' I agree ... that the challenged program of the City of San Jose grants preferential treatment on the basis of race and sex in the operation of public contracting"]; *id.* at p. 596, 101 Cal.Rptr.2d 653, 12 P.3d 1068 (conc. & dis. opn. of George, C.J.) ["we must conclude that an outreach program directed to an audience on the basis of its members' race or gender constitutes a program that grants preferential treatment for purposes of article I, section 31"].)

The program considered by the high court in *Hi-Voltage* gave prospective bidders on city contracts a choice. They could, *but were not required*, to use ***1280** a certain percentage of subcontractors who were women or members of ethnic minorities. Alternatively, they merely had to document their efforts to reach out to "women and minority business enterprises" to give them the opportunity to obtain a subcontract on the program. That meant simply giving notice to at least four businesses owned by women or members of a minority ethnic group. The teeth in the second choice was that if a prospective bidder rejected a low bid from a subcontractor owned by a woman or a member of a minority ethnic group, he had to give written reasons for the rejection. (*Hi-Voltage, supra*, 24 Cal.4th at p. 542, 101 Cal.Rptr.2d 653, 12 P.3d 1068.) The program had been prompted by a study that had shown "a historical pattern of

discrimination by prime contractors against minority-owned and women-owned subcontractors ... with regard to public contracts awarded by the city." (*Id.* at p. 588, 101 Cal.Rptr.2d 653, 12 P.3d 1068 (conc. & dis. opn. of George, C.J.).)

In *Hi-Voltage*, the city argued that its outreach program did not involve any "overt discrimination." (*Hi-Voltage, supra*, 24 Cal.4th at p. 560, fn. 13, 101 Cal.Rptr.2d 653, 12 P.3d 1068.) The procedures were merely a device to "screen" for discrimination. (*Id.* at p. 544, 101 Cal.Rptr.2d 653, 12 P.3d 1068.) The city claimed that, operationally, the program merely expanded the pool of candidates to obtain subcontract jobs, but did "not afford preferential treatment on the basis of race or gender in the actual selection process itself." (See *id.* at p. 593, 101 Cal.Rptr.2d 653, 12 P.3d 1068 (conc. & dis. opn. of George, C.J.).)

Even so, the court determined that the program contravened Proposition 209. The key constitutional language of the provision is in the words "discriminate against or grant preferential treatment to." The court looked to the ordinary plain meaning of the key words. "Discriminate" means "distinctions in treatment." A "preference" means the " 'giving of priority or advantage to one person ... over others.' " (*Hi Voltage, supra*, 24 Cal.4th at pp. 559- 560, 101 Cal.Rptr.2d 653, 12 P.3d 1068; see also *id.* at p. 575, 101 Cal.Rptr.2d 653, 12 P.3d 1068 (conc. opn. of Kennard, J.).)

****100** Using the plain ordinary meaning of the words "discriminate" and "preference," it was clear that, while the city's outreach program might not have involved, as the city claimed, any "overt" discrimination, it was still discriminatory and preferential. The program required prospective bidders to give " 'personal attention' " to potential subcontractors owned by women and members of minority ethnic groups that was not required to be given to other businesses. (*Hi-Voltage, supra*, 24 Cal.4th at p. 544, 101 Cal.Rptr.2d 653, 12 P.3d 1068; see also *id.* at p. 590, 101 Cal.Rptr.2d 653, 12 P.3d 1068 (conc. & dis. opn. of George, C.J.) [agreeing that documentation component granted preferential treatment within the meaning of Proposition 209].) Requiring prospective bidders to give "special assistance and information" based on

race or sex was enough to contravene Proposition 209. (*Id.* at p. 544, 101 Cal.Rptr.2d 653, 12 P.3d 1068.)

*1281 Moreover, as the Chief Justice pointed out, the program was also discriminatory in the incentives that it created. A prime contractor was given a "strong incentive" to grant preferential treatment to at least some prospective subcontractors owned by women or members of minority ethnic groups because it would allow the prime contractor to avoid the burdensome documentation requirements and to look good for future contracts. (See *id.* at p. 592, 101 Cal.Rptr.2d 653, 12 P.3d 1068 (conc. & dis. opn. of George, C. J.).)

While the court made it clear that preferential treatment based on race or gender was impermissible in light of Proposition 209, it acknowledged its holding was "necessarily limited to the form at issue here, which requires contractors to notify, solicit, and negotiate with [minority or female owned] subcontractors as well as justify rejection of their bids." (*Id.* at p. 565, 101 Cal.Rptr.2d 653, 12 P.3d 1068.) The court expressed "no opinion regarding the permissible parameters" of outreach efforts that would not offend Proposition 209. (*Ibid.*)

In *Connerly, supra*, 92 Cal.App.4th 16, 112 Cal.Rptr.2d 5 the appellate court reviewed five state government affirmative action programs. The court concluded Proposition 209 prevented the state from awarding public contracts, civil service positions, and employment promotions to "favored groups" on the basis of race or gender. (*Connerly, supra*, 92 Cal.App.4th at pp. 47-63, 112 Cal.Rptr.2d 5.) Although the court severed and upheld certain elements of the challenged programs, most notably data collection and reporting requirements, it reiterated the core idea that "racial classification is presumptively invalid, and the burden is on the government to demonstrate extraordinary justification. [Citation.]" (*Id.* at p. 36, 112 Cal.Rptr.2d 5.)

The first of the programs under review in *Connerly* was a subcontracting program under the auspices of the state lottery requiring bidders for business with

the state lottery commission to include specific plans "to utilize subcontracts with socially and economically disadvantaged small business concerns." Race, ethnic and gender classifications were incorporated into the meaning of the phrase, "socially and economically disadvantaged." (See *Connerly, supra*, 92 Cal.App.4th at pp. 47-48, 112 Cal.Rptr.2d 5.) In theory White males could be included as persons who were "socially and economically disadvantaged" as well, but there were "no definitional criteria, no application procedures, and no procedures for review." (*Id.* at p. 48, 112 Cal.Rptr.2d 5.)

The court held the program unconstitutional, because of the operational *presumption* of disadvantage. "Even if such procedures [allowing White males to apply] **101 were included in statute, the fact that some individuals must *1282 prove disadvantage while others are *conclusively presumed* to be disadvantaged based solely on race, ethnicity, and gender, established impermissible race, ethnicity, and gender classifications." (*Connerly, supra*, 92 Cal.App.4th at p. 48, 112 Cal.Rptr.2d 5, emphasis added.)

The next program reviewed by the *Connerly* court involved state contracts for professional bond services (essentially the folks who help the state sell its bonds to investors). The program operated much the same way as San Jose's government contract program did. If there was a bond service available without competitive bidding, the respective government department was required, at a minimum, to give notice to all women and minority enterprises who had listed their names with the awarding department. In short, they got "special notice of the sale." (See *Connerly, supra*, 92 Cal.App.4th at p. 51, 112 Cal.Rptr.2d 5.) And because they got *special* notice, the *Connerly* court held that the program contravened Proposition 209 because it involved the "selective dissemination of information" (*Ibid.*)

The third program held unconstitutional in *Connerly* involved the state civil service generally. A general statute made each governmental agency "responsible for establishing an effective affirmative action program." (*Connerly, supra*, 92 Cal.App.4th at p. 53, 112 Cal.Rptr.2d 5.) Each

121 Cal.Rptr.2d 96

Page 6

98 Cal.App.4th 1275, 121 Cal.Rptr.2d 96, 165 Ed. Law Rep. 712, 2 Cal. Daily Op. Serv. 4822, 2002 Daily Journal D.A.R. 6123

(Cite as: 98 Cal.App.4th 1275, 121 Cal.Rptr.2d 96)

agency was supposed to establish "goals and timetables to overcome identified underutilization of minorities and women." (*Id.* at p. 55, 112 Cal.Rptr.2d 5.)

The court held that the duty imposed on "every managerial employee, from first line supervisors on up, to attempt to achieve the agency or departmental goals" of eliminating the "underutilization" was both violative of both Proposition 209 and equal protection. (*Connerly, supra*, 92 Cal.App.4th at p. 55, 112 Cal.Rptr.2d 5.) It differed from a quota or set-aside "only in degree." (*Ibid.*) It was still a "line drawn on the basis of race and gender." (*Ibid.*)

Next, *Connerly* considered an affirmative action program for the state community college system. Each community college district was required to have a plan which ensured "that district personnel participate in, and are committed to, the affirmative action employment program." (*Connerly, supra*, 92 Cal.App.4th at p. 58, 112 Cal.Rptr.2d 5, citing Ed.Code § 87102, subd. (a).) The plan included "hiring goals and timetables for its implementation" with the "goal" that by the year 2005 the community college system "work force will reflect proportionately the adult population of the state." (*Id.* at p. 59, 112 Cal.Rptr.2d 5.)

The court held that having "overall and continuing hiring goal[s]" of making a given workforce "proportionately reflect the adult population of the state" was a violation of Proposition 209. *1283(*Connerly, supra*, 92 Cal.App.4th at p. 59, 112 Cal.Rptr.2d 5.) The "goal of assuring participation by some specified percentage of a particular group merely because of its race or gender is 'discrimination for its own sake' " and contravened both Proposition 209 and the state's equal protection clause. (*Id.* at pp. 59-61, 112 Cal.Rptr.2d 5.) The program was not a mere "inclusive outreach" effort because it utilized the suspect classifications of race, gender and ethnicity. Some groups were "favored" over others, because application processes were structured so that sufficient numbers of that group would end up being hired. (See *id.* at p. 61, 112 Cal.Rptr.2d 5.)

While the *Connerly* court allowed mere data collection and reporting aspects of all the other

programs to be severed from those programs and held constitutional, **102 the reporting requirements in the community college program were "entirely bound up and intermixed with the success of the preferential hiring scheme" so that they could not be severed. Hence the community college reporting requirements were held to be unconstitutional. (*Connerly, supra*, 92 Cal.App.4th at p. 61, 112 Cal.Rptr.2d 5.)

Finally, the *Connerly* court considered one last reporting requirement, this one in connection with "participation goals" for state contracts. (*Connerly, supra*, 92 Cal.App.4th at p. 62, 112 Cal.Rptr.2d 5.) Unlike the reporting requirement for the community colleges, this data collection program could be severed from otherwise discriminatory participation goals. The reason was that it went to the Legislature's "power of inquiry." (See *Connerly, supra*, 92 Cal.App.4th at pp. 62-63, 112 Cal.Rptr.2d 5.) The fact that data is "collected and reported" to the Legislature could only be of use to that body for future consideration, it is not a "supervisory device" necessarily intertwined with a discriminatory program. (*Id.* at p. 63, 112 Cal.Rptr.2d 5.)

III Our Case

[1] The District insists *Hi-Voltage* and *Connerly* are inapplicable to the facts before us. It argues its policy is not analogous to the outreach programs addressed in those cases and characterizes the transfer policy as a permissible *voluntary desegregation program* that neither discriminates nor grants preferential treatment based on race. The District asserts that because "each school has the same general educational program and provides the same educational opportunities," there is no evidence that some students are "disadvantaged" by or "benefit" from the race-conscious transfer policy. (Page 31 of the District's brief.) The District further maintains the policy is simply a race-conscious program that seeks to provide students with equal educational opportunities. We do not agree.

*1284 Under the policy, White student open enrollment transfers out of the school and

121 Cal.Rptr.2d 96

Page 7

98 Cal.App.4th 1275, 121 Cal.Rptr.2d 96, 165 Ed. Law Rep. 712, 2 Cal. Daily Op. Serv. 4822, 2002 Daily Journal D.A.R. 6123

(Cite as: 98 Cal.App.4th 1275, 121 Cal.Rptr.2d 96)

non-White student transfers into the school are limited to a one-for-one basis. The imposition of these restrictions is inconsistent with the freedom of choice that voluntary programs provide. And more importantly, the policy creates different transfer criteria for students solely on the basis of their race. A White student may not transfer from Westminster High School to a different school until a White student chooses to transfer in and fills the void. A non-White student must wait to transfer into Westminster High School until a non-White student transfers out thereby creating essentially a "non-White opening."

Referencing its history, the District asserts Proposition 209 was never intended to eliminate school integration programs. Yet, by its terms, article I, section 31 of the state Constitution, applies to public education. Subdivision (a) of section 31 plainly says that "The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of ... public education...."

The ballot materials concerning Proposition 209 were quite clear that even race-conscious "desegregation" programs could be affected by Proposition 209. The Legislative Analyst prepared an in-depth analysis. That analysis, as Chief Justice George put it, is precisely "the item in the ballot pamphlet materials that voters are most likely to have consulted ... as a reliable indicator of the proposition's meaning and effect." **103(*Hi Voltage*, *supra*, 24 Cal.4th at p. 582, 101 Cal.Rptr.2d 653, 12 P.3d 1068 (con. & dis. opn. of George, J.)). And that analysis had told the voters that "the measure could eliminate, or cause fundamental changes to, voluntary desegregation programs run by school districts." (*Id.* at p. 584, 101 Cal.Rptr.2d 653, 12 P.3d 1068 (conc. & dis. opn. of George, C.J.)). The Legislative Analyst specifically noted that Proposition 209 could affect special funding for "designated 'racially isolated minority schools' that are located in areas of high proportions of racial or ethnic minorities." (*Hi-Voltage*, at p. 584, 101 Cal.Rptr.2d 653, 12 P.3d 1068 (conc. & dis. opn. of George, C.J.), quoting the Ballot Pamphlet at p. 31.)

The District emphasizes the special nature of K 12 public education and we do not underestimate the significance of quality K 12 public education. But while we appreciate the unique value and importance of education (see, e.g., *Brown v. Board of Education* (1954) 347 U.S. 483, 493, 74 S.Ct. 686, 98 L.Ed. 873 ["education is perhaps the most important function of state and local governments"]), it is clear the intention of the voters was that Proposition 209 apply to education. The district's *1285 transfer policy violates Proposition 209, and to the extent it is required by Education Code section 35160.5, the statute does as well.

IV

Equal Protection Considerations

[2][3] The District proposes that the transfer policy is required under the equal protection clause of the Constitution of the United States. While there can be no question the United States constitution prohibits a school district from acting to segregate schools, there is no federal constitutional mandate necessitating the implementation of a proactive program of integration. The United States Supreme Court has made it clear that such a plan is *not required* by the federal equal protection clause.

[4] "Racial isolation" or "imbalance" that is not the result of segregative intent does not require a racially discriminatory "desegregation" plan. (*Dayton Board of Education v. Brinkman* (1977) 433 U.S. 406, 413, 97 S.Ct. 2766, 53 L.Ed.2d 851 ["The finding that the pupil population in the various Dayton schools is not homogenous, standing by itself, is not a violation of the Fourteenth Amendment in the absence of a showing that this condition resulted from intentionally segregative actions on the part of the Board."]); *Milliken v. Bradley* (1977) 433 U.S. 267, 280, fn. 14, 97 S.Ct. 2749, 53 L.Ed.2d 745 [no federal constitutional right to a "particular degree of racial balance or mixing"]; *Swann v. Charlotte-Mecklenburg Board of Education* (1971) 402 U.S. 1, 26, 91 S.Ct. 1267, 28 L.Ed.2d 554 [racial imbalances may result from innocent causes such as the population distribution of a given district]; accord, *Missouri v. Jenkins*, *supra*, 515 U.S. 70, 115 S.Ct. 2038, 132 L.Ed.2d 63 [federal court had no authority to order the state to fund

predominantly non-White school district so as to attract White students from surrounding districts, so that the non-White district would be better balanced].)

[5] The distinction between what is required by the federal equal protection clause, and what may be permitted by it, is critical in this context. The Ninth Circuit recognized in the absence of de jure segregation there is no constitutionally required obligation to order desegregation. "Racial balancing cannot be the objective of a federal court unless the balancing is shown to be necessary to correct the effects of government action of a racist character." ****104**(*Ho by Ho v. San Francisco Unified School District* (9th Cir.1998) 147 F.3d 854, 865, citing *Freeman v. Pitts* (1992) 503 U.S. 467, 474, 112 S.Ct. 1430, 118 L.Ed.2d 108.)

[6] With respect to the equal protection provisions of the California constitution, the District relies, in part, on statements from ***1286***Crawford v. Board of Education*, *supra*, 17 Cal.3d 280, 130 Cal.Rptr. 724, 551 P.2d 28; *Serrano v. Priest* (1971) 5 Cal.3d 584, 96 Cal.Rptr. 601, 487 P.2d 1241, *San Francisco Unified School Dist. v. Johnson* (1971) 3 Cal.3d 937, 92 Cal.Rptr. 309, 479 P.2d 669; and *Jackson v. Pasadena City School Dist.* (1963) 59 Cal.2d 876, 31 Cal.Rptr. 606, 382 P.2d 878 and other pre-Proposition 209 California cases. But Proposition 209 has undeniably changed the state law. It is a firmly established rule of constitutional jurisprudence that where two constitutional provisions conflict, the one that was enacted later in time controls. (*People v. Adamson* (1946) 27 Cal.2d 478, 486-487, 165 P.2d 3 [1934 constitutional amendment qualified previous inability to comment on defendant's failure to take stand]; *Slavich v. Walsh* (1947) 82 Cal.App.2d 228, 236-237, 186 P.2d 35 [resolving conflict in power of chartered cities under one constitutional provision by looking to other constitutional provisions enacted later in time].)

V

Conclusion

One can reasonably infer that in enacting Education Code section 35160.5, the California Legislature believed that unrestricted open transfer policies

might result in what the literature calls de facto segregation, or at least racial or ethnic imbalance. Yet, despite the presumed legitimacy of the Legislature's motives, we are forced to conclude that the balancing component of Education Code section 35160.5 is in contravention of the state constitution as amended by Proposition 209.

It is not our intention to suggest that there cannot be any "integration plans" under Proposition 209. We stress that an "integration plan" developed by a school board need not offend Proposition 209 if it does not discriminate or grant preferences on the basis of race or ethnicity.

Although our analysis is limited to the facts before us and we answer only the questions presented to us in this appeal, we note other courts have confronted similar issues in different factual contexts and rendered opinions. The benefits of the development of magnet schools has been cited by some courts. "Magnet schools have the advantage of encouraging voluntary movement of students within a school district in a pattern that aids desegregation on a voluntary basis...." (*Missouri v. Jenkins* (1995) 515 U.S. 70, 92, 115 S.Ct. 2038, 132 L.Ed.2d 63.) Another version of an "integration plan" described is a program which would assign only a very small geographic area for a student's home school, and fill remaining places in that school's class by an unweighted random lottery. (See *Tuttle v. Arlington County School Board* (4th Cir.1999) 195 F.3d 698, 706.)

***1287** We do not dispute the evils of segregated schools and we recognize the potential benefits of attending a racially and ethnically diverse school, but the people have spoken. California Constitution, article I, section 31 is clear in its prohibition against discrimination or preferential treatment based on race, sex, color, ethnicity or national origin. Thus, the racial balancing component of the District's open transfer policy is invalid under our state Constitution.

****105** The judgment is reversed. The trial court is directed to enter a new order denying the District's motion for summary judgment and granting Crawford's motion for summary judgment and to enter a new judgment accordingly.

121 Cal.Rptr.2d 96

Page 9

98 Cal.App.4th 1275, 121 Cal.Rptr.2d 96, 165 Ed. Law Rep. 712, 2 Cal. Daily Op. Serv. 4822, 2002 Daily Journal D.A.R. 6123

(Cite as: 98 Cal.App.4th 1275, 121 Cal.Rptr.2d 96)

Crawford shall recover his costs on appeal.

WE CONCUR: RYLAARSDAM, and O'LEARY,
JJ.

98 Cal.App.4th 1275, 121 Cal.Rptr.2d 96, 165 Ed.
Law Rep. 712, 2 Cal. Daily Op. Serv. 4822, 2002
Daily Journal D.A.R. 6123

Briefs and Other Related Documents (Back to top)

- 2001 WL 34133205 (Appellate Brief) Appellant's
Reply Brief (Jul. 25, 2001)Original Image of this
Document (PDF)

- 2001 WL 34155677 (Appellate Brief) Brief of
Respondent/Defendant Huntington Beach Union
High School District (Jun. 20, 2001)Original Image
of this Document (PDF)

- 2001 WL 34155680 (Appellate Brief) Appellant's
Opening Brief (Apr. 25, 2001)Original Image of
this Document (PDF)

END OF DOCUMENT

SECTION EIGHT

QUESTIONS AND ANSWERS

**QUESTIONS AND ANSWERS
ABOUT INTERDISTRICT AND INTRADISTRICT TRANSFERS
for
PARENTS**

1. Q: What is the difference between an **Intradistrict Transfer** and an **Interdistrict Transfer**?

A: An **Intradistrict Transfer** is a transfer from your home (neighborhood) school in the school district where you live to another school in the school district where you live.

An **Interdistrict Transfer** is a transfer from the school district where you live to another school district.

2. Q: Do I need to apply for an **Intradistrict** or **Interdistrict Transfer** if my child needs a special day class placement in a school other than my neighborhood school or in another school district?

A: If your child needs a special day class placement in a school other than your neighborhood school or in another school district, the Individualized Education Plan (IEP) Team will determine where your child's special education needs can be met and make the appropriate arrangements.

3. Q: What do I do if I want an **Intradistrict** or **Interdistrict Transfer** for my child?

A: Call the school district office in the school district where you live and request an application and the procedures for requesting a transfer.

4. Q: What documentation will I need to support the application?

A: The application and procedures for requesting a transfer will tell you what documentation you need to provide to support the application.

5. Q: Can I apply to more than one school district at the same time?

A: Yes

6. Q: Where do I start the process for an **Interdistrict Transfer** for my child?

A: To start the process for an **Interdistrict Transfer**, you need to apply to your district of residence first. Call the school district office in the school district where you live and request an application and the procedures for requesting a transfer to another school district. Follow the procedures and submit your application to your district of residence.

7. Q: How will I know the criteria that will be used to approve or deny my application for an **Interdistrict Transfer**?

A: The procedures and/or application sent to you will include any established criteria that will be used to approve or deny your application.

8. Q: Will I be notified if my application has been approved or denied?

A: Yes, you will be notified by your district of residence if your application has been approved or denied.

9. Q: If my application for an **Interdistrict Transfer** has been approved by my district of residence, what is my next step?

A: The district of residence will notify the district you want your child to attend. You will hear directly from that district as to when the matter will be considered by that district.

10.Q: Will the school district where I want my child to go to school automatically approve the **Interdistrict Transfer** request?

A: No, the school district where you want your child to go to school will consider your application based on its policy and procedure.

11.Q: If an interdistrict permit is granted, will I be able to choose the school I want my child to attend?

A: Each school district has procedures it uses to determine which school a child will attend. You may request a specific school, but the school district will use its procedures to make the determination.

- 12.Q:** Will I be notified by the school district where I want my child to go to school if my application has been approved or denied?
- A:** Yes, you will be notified by the school district where you want your child to go to school if your application has been approved or denied.
- 13.Q:** What does conditionally approved mean?
- A:** This is a term used by school districts to indicate that approval is subject to certain limitations not known at the time of approval, such as class size limits. The term is also used when districts condition approval on behavior contracts or other individual circumstances involving the student.
- 14.Q:** If my application for an **Interdistrict Transfer** is denied by either school district, is there an appeal process?
- A:** Yes, you can appeal to the Marin County Board of Education. Call the Marin County Office of Education (499-5801) and request an application and procedures for filing an appeal.
- 15.Q:** Do I have to submit my application for an **Interdistrict Transfer** to both my district of residence and the school district where I want my child to attend school before I appeal to the Marin County Board of Education?
- A:** Yes, both school districts must act on your application for an **Interdistrict Transfer** before you can appeal to the Marin County Board of Education.
- 16.Q:** If my application for an **Interdistrict Transfer** was denied by my district of residence, can I appeal directly to the Marin County Board of Education?
- A:** No, you must submit your application to the school district where you want your child to go to school and be approved or denied before you appeal to the Marin County Board of Education.

17.Q: Can I appear before the Marin County Board of Education and present testimony and evidence to support my appeal?

A: Yes, you will be notified of the date and time the appeal will be heard and you may attend and present evidence and testimony to support your appeal. The Board will consider all evidence provided to it and render its decision in public session. The person appealing will be given an opportunity to speak regarding the appeal, as well as the representative of the school district denying the request and the representative of the other school district involved. Opportunities will also be provided for summary. If new evidence or grounds for the request are introduced, the Marin County Board of Education may remand the matter for further consideration by the school district or school districts.

18.Q: Will a representative from both school districts be invited to attend the appeal hearing? May the representatives present evidence and testimony to support the school districts' actions?

A: Yes, representatives from both the school district where you live and the school district where you want your child to go to school will be invited to attend and may present testimony and evidence at the appeal hearing.

19.Q: May I retain private legal counsel to represent me at the appeal hearing?

A: Yes, at your own expense, you may retain private legal counsel to represent you at the appeal hearing?

20.Q: May the school districts involved be represented by legal counsel?

A: Yes, the school districts may be represented by legal counsel.

21.Q: Will I be notified in writing by the Marin County Board of Education if my appeal has been approved or denied?

A: Yes, you will be notified in writing by the Marin County Board of Education if your appeal has been approved or denied.

22. Q: If there is no space available in the first grade in any of your district's schools for my interdistrict transfer student, what would your school district do if a first grader moved into your school district?

A: The law does not require the school district to accept an interdistrict transfer. For the student who moves into the school district, the school district would be obliged to provide a program.

**QUESTIONS AND ANSWERS
ABOUT INTERDISTRICT TRANSFERS
for
DISTRICT REPRESENTATIVES**

1. **Q:** Once an employment-related **Interdistrict Transfer** is approved, is it approved through grade 12, even if the approving school district is only K-8?
- A:** Once granted, an employment related **Interdistrict Transfer** is approved through grade 12 so long as employment continues in the district, subject only to the conditions set forth in EC 48204 (b) (1)-(6).
2. **Q:** Can a parent enroll in the district of residence if there is a pending request for another school district?
- A:** Yes.
3. **Q:** Can the school district where employment exists require annual verification of continued employment in the school district?
- A:** Yes, the Education Code was amended to clarify this point.
4. **Q:** When considering childcare related transfers, can the request be denied after a year or two as the child grows older?
- A:** No. So long as childcare needs continue to exist, the student may continue in attendance through grade six, subject only to the considerations set forth in Education Code 48204 (b) (1)-(6). After grade six, districts are encouraged to allow continued attendance but not required to do so. (Government Code 46601.5 (b) and (c)).
5. **Q:** Does a school district need to send the Marin County Office of Education notification about outgoing transfers?
- A:** No, the pink copy of the incoming **Interdistrict Transfer** form contains all the information the Marin County Office of Education needs to prepare a report of incoming and outgoing transfers.

6. Q: Are parents informed that the Marin County Board of Education considers the effect the granting of an appeal would have upon the school districts concerned? Are parents informed of the factors the Board considers in granting an appeal?

A: Yes, parents receive a copy of the Marin County Board of Education policy and procedures prior to the hearing of the appeal. The president of the Marin County Board of Education reminds parents and school district representatives of the policy and procedures at the beginning of the appeal hearing.

7. Q: How does a school district determine residency?

A: Refer to Section II Guidelines for Verification of Residency and Refer to Government Code § 243, § 244 and Education Code § 4890 in the Legislation Section V.