



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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## LEGAL UPDATE

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**To: Superintendents, Member School Districts (K-12)**

**From: Carl D. Corbin, General Counsel** CDC

**Subject: AB 2109 – Changes to General Education Home-Hospital  
Instruction  
Memo No. 39-2018 - REVISED**

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The Governor signed Assembly Bill (“AB”) 2109<sup>1</sup> on August 20, 2018, which makes various changes in law regarding general education students with a temporary disability receiving individual instruction in the home or hospital. The changes in law are effective on January 1, 2019, and this Legal Update will detail the changes in law. Also, for your convenience, included with this Legal Update is a document showing the additions and deletions in statutory law as a result of AB 2109.

Please note that for special education students, the determination of whether or not a student should receive home-hospital instruction should be made in accordance with the student’s Individualized Education Program (“IEP”) team in accordance with 5 CCR § 3051.4 and the student should not be referred back to the student’s district of residence even if the student is attending the current district through an interdistrict transfer or if the student is enrolled in a charter school. In addition, this law is not intended to limit the rights for special education students with a temporary disability.

### Current Law

The law currently in effect provides that a general education student with a temporary disability, which makes attendance in the regular day classes or alternative education program in which the student is enrolled impossible or inadvisable, shall receive individual instruction provided by the school district in which the pupil is deemed to reside. This resulted in students enrolled in charter schools or attending a district through an interdistrict transfer to be disenrolled and referred back to the student’s district of residence to address home-hospital instruction requests.

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<sup>1</sup> Available at: [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB2109](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2109).



The current law also requires districts who have a student placed in a hospital or other residential health facility located within the district's boundaries to treat the student as a resident (and provide individual instruction) even if the student's parents reside outside of the district. Again, this results in students being disenrolled from the charter school or district the student was attending through an interdistrict transfer.

### New Law

AB 2109 allows, but does not require, a school district or charter school to continue to allow the student to be enrolled in the school even though the student has been placed for the entire school week in a hospital or other residential health facility and is receiving individual instruction from the district in which the hospital or other residential health facility is located.<sup>2</sup> The purpose of the change in law is to facilitate the student's timely reentry from the hospital or other residential health facility back in the school the student was attending prior to the health issue.

AB 2109 also allows, but does not require, the student to attend a partial school week at the school the student attended prior to the health issue and to also receive individual instruction at the hospital or other residential health facility. For example, a student receiving medical treatment in a hospital on Monday and Tuesday may receive individual instruction from the district in which the hospital is located and on Wednesday through Friday the student could receive instruction from the school the student attended prior to the health issue. Also, a student who attends a school operated by a school district or a charter school, who is subsequently enrolled in individual instruction in a hospital or other residential health facility for a partial week, shall be entitled to attend school in his or her school district of residence, or receive individual instruction provided by the school district of residence in the student's home, on days in which he or she is not receiving individual instruction in a hospital or other residential health facility, if he or she is well enough to do so.<sup>3</sup>

For purposes of computing Average Daily Attendance ("ADA"), the district in which the hospital or other residential health facility is located may only claim ADA for the days of the week the student is receiving individual instruction and the school the student attended prior to the health issue (or, as applicable, the student's district of residence) may only claim ADA for the days the student attends the school.<sup>4</sup> The total combined ADA cannot exceed five school days or the equivalent – each hour of individual instruction may be counted as one day of attendance.<sup>5</sup>

AB 2109 provides a right for the student to return to the school, including a charter school, the student attended before receiving individual instruction in the hospital or other residential health facility if the student is well enough to attend school and returns prior to the end of the school

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<sup>2</sup> Education Code § 48207(b).

<sup>3</sup> Education Code § 48207.3(b).

<sup>4</sup> Education Code § 48207(c).

<sup>5</sup> Education Code § 48207(d).



year in which the individual instruction was initiated.<sup>6</sup> Accordingly, all schools must re-enroll a student who receives individual instruction (home-hospital instruction) in another school district, but is well enough to return back to the original school during the same school year.

### Other Considerations

The parents of the student placed in a hospital or other residential health facility have the primary responsibility to notify the respective school or charter school of the student's placement.<sup>7</sup>

Individual instruction in a student's home shall commence no later than five working days after a school district has determined the student shall receive this instruction within the student's home.<sup>8</sup>

AB 2109 authorizes a school district, county office of education, and a charter school to issue an honorary high school diploma to a student who is terminally ill.<sup>9</sup> The honorary diploma must be clearly distinguishable from a regular diploma.

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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<sup>6</sup> Education Code § 48207.3(a).

<sup>7</sup> Education Code § 48208(a).

<sup>8</sup> Education Code § 48207.5.

<sup>9</sup> Education Code § 51225.5(a)(2).


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**AB-2109 Pupils: pupils with a temporary disability: individual instruction: pupils who are terminally ill: honorary diplomas.** (2017-2018)

**SECTION 1.** Section 48206.3 of the Education Code is amended to read:

**48206.3.** (a) ~~Except for those pupils receiving individual instruction provided pursuant to Section 48206.5, a~~ A pupil with a temporary disability ~~which that~~ makes attendance in the regular day classes or alternative education program in which the pupil is enrolled impossible or inadvisable shall receive *either* individual instruction *at home* provided by the *school* district in which the pupil is deemed to ~~reside. reside, or individual instruction in a hospital or other residential health facility, excluding state hospitals, provided by the school district in which the hospital or other residential health facility is located.~~

(b) For purposes of this section and Sections ~~48206.5,~~ 48207, *48207.3, 48207.5,* and 48208, the following terms have the following meanings:

(1) "Individual instruction" means instruction provided to an individual pupil in the pupil's home, in a hospital or other residential health facility, excluding state hospitals, or under other circumstances prescribed by regulations adopted for that purpose by the ~~State Board of Education.~~ *state board.*

(2) "Temporary disability" means a physical, mental, or emotional disability incurred while a pupil is enrolled in regular day classes or an alternative education program, and after which the pupil can reasonably be expected to return to regular day classes or the alternative education ~~program without special intervention.~~ *program.* A temporary disability shall not include a disability for which a pupil is identified as an individual with exceptional needs pursuant to Section 56026.

(c) (1) For purposes of computing average daily attendance pursuant to Section ~~42238.5,~~ *42238.05,* each clock hour of teaching time devoted to individual instruction shall count as one day of attendance.

(2) No pupil shall be credited with more than five days of attendance per calendar week, or more than the total number of calendar days that regular classes are maintained by the *school* district in any fiscal year.

(d) Notice of the availability of ~~individualized~~ *individual* instruction shall be given pursuant to Section ~~48980.~~ *48980, and shall include information regarding a pupil's eligibility for, and the duration of, individual instruction.*

*(e) Nothing in this section shall be construed to limit any rights accruing to a pupil with a temporary disability who is also identified as an individual with exceptional needs, as defined in Section 56026.*

**SEC. 2.** Section 48206.5 of the Education Code is repealed.

~~48206.5. Any school district which, prior to January 1, 1986, maintained a program to provide individual instruction to pupils enrolled in regular day classes or an alternative education program offered by the district who have a temporary disability may continue the program as it existed prior to January 1, 1986.~~

**SEC. 3.** Section 48207 of the Education Code is amended to read:

**48207.** (a) Notwithstanding Section 48200, a pupil with a temporary ~~disability~~ *disability*, who is in a hospital or other residential health facility, excluding a state hospital, ~~which is-~~ located outside of the school district in which the pupil's parent or guardian ~~resides~~ *resides*, shall be deemed to have complied with the residency requirements for school attendance in the school district in which the hospital is located.

*(b) Notwithstanding any other law, a school district or charter school may continue to enroll a pupil with a temporary disability who is receiving individual instruction in a hospital or other residential health facility in order*

*to facilitate the timely reentry of the pupil in his or her prior school after the hospitalization has ended, or in order to provide a partial week of instruction to a pupil who is receiving individual instruction in a hospital or other residential health facility, for fewer than five days of instruction per week, or the equivalent, as described in subdivision (c) of Section 48206.3.*

*(c) (1) A pupil with a temporary disability who remains enrolled in a school district of residence or a charter school pursuant to subdivision (b) while also receiving individual instruction in a hospital or other residential health facility may only be counted by the school district of residence or charter school for purposes of computing average daily attendance pursuant to Section 42238.05 for days on which the pupil is in attendance in that school district or charter school.*

*(2) A pupil with a temporary disability who remains enrolled in a school district of residence or a charter school pursuant to subdivision (b) while also receiving individual instruction in a hospital or other residential health facility may only be counted by the school district in which the hospital or other residential health facility is located for purposes of computing average daily attendance pursuant to Section 42238.05 for days on which the pupil is receiving individual instruction in a hospital or other residential health facility.*

*(d) The total attendance counted for purposes of computing average daily attendance pursuant to Section 42238.05 for a pupil with a temporary disability, including days of attendance in a hospital or other residential health facility, shall not exceed five days per week, or the equivalent, as described in subdivision (c) of Section 48206.3.*

**SEC. 4.** Section 48207.3 is added to the Education Code, to read:

**48207.3.** *(a) A pupil receiving individual instruction who is well enough to return to a school shall be allowed to return to the school, including a charter school, that he or she attended immediately before receiving individual instruction, if the pupil returns during the school year in which the individual instruction was initiated.*

*(b) A pupil who attends a school operated by a school district or a charter school, who is subsequently enrolled in individual instruction in a hospital or other residential health facility for a partial week, shall be entitled to attend school in his or her school district of residence, or receive individual instruction provided by the school district of residence in the pupil's home, on days in which he or she is not receiving individual instruction in a hospital or other residential health facility, if he or she is well enough to do so.*

**SEC. 5.** Section 48207.5 is added to the Education Code, to read:

**48207.5.** *Individual instruction in a pupil's home pursuant to Section 48206.3 shall commence no later than five working days after a school district has determined that the pupil shall receive this instruction.*

**SEC. 6.** Section 48208 of the Education Code is amended to read:

**48208.** *(a) It shall be the primary responsibility of the parent or guardian of a pupil with a temporary disability to notify the school district in which the pupil is deemed to reside pursuant to Section 48207 of the pupil's presence in a qualifying hospital.*

*(b) Upon receipt of notification pursuant to subdivision (a), a school district shall do all of the following:*

*(1) Within five working days of receipt of the notification, determine whether the pupil will be able to receive ~~individualized individual~~ individual instruction, and, if the determination is positive, when the ~~individualized individual~~ individual instruction may commence. ~~Individualized Individual~~ instruction shall commence no later than five working days after ~~the a~~ positive determination has been rendered.*

*(2) Provide the pupil with ~~individualized individual~~ individual instruction pursuant to Section 48206.3. The school district may enter into an agreement with the school district in which the pupil previously attended regular day classes or an alternative education ~~program, program~~ to have the school district the pupil previously attended provide the pupil with ~~individualized individual~~ individual instruction pursuant to Section 48206.3.*

*(3) Within five working days of the commencement of ~~individualized individual~~ individual instruction, provide the school district in which the pupil previously attended regular day classes or an alternative education program with written notice that the pupil shall not be counted by that ~~school~~ district for purposes of computing average daily attendance pursuant to Section ~~42238.5, 42238.05~~, effective the date on which ~~individualized instruction commenced. individual instruction commenced, except as provided in Section 48207.~~*

**SEC. 7.** Section 48240 of the Education Code is amended to read:

**48240.** (a) The governing board of each school district and each county superintendent of schools shall appoint a supervisor of attendance and any assistant supervisors of attendance as may be necessary to supervise the attendance of pupils in the school district or county. The governing board of the school district or county superintendent of schools shall prescribe the duties of the supervisor of attendance and assistant supervisors of attendance to include, among other duties that may be required, those specific duties related to compulsory full-time education, truancy, work permits, compulsory continuation education, and opportunity schools, classes, and programs, now required of the attendance supervisors by this chapter and Article 4 (commencing with Section 48450) of Chapter 3 and Article 2 (commencing with Section 48640) of Chapter ~~4 of this part.~~ 4.

(b) It is the intent of the Legislature that in performing his or her duties, the supervisor of attendance promote a culture of attendance and establish a system to accurately track pupil attendance in order to achieve all of the following:

- (1) Raise the awareness of school personnel, parents, guardians, caregivers, community partners, and local businesses of the effects of chronic absenteeism and truancy and other challenges associated with poor attendance.
- (2) Identify and respond to grade level or pupil subgroup patterns of chronic absenteeism or truancy.
- (3) Identify and address factors contributing to chronic absenteeism and habitual truancy, including suspension and expulsion.
- (4) Ensure that pupils with attendance problems are identified as early as possible to provide applicable support services and interventions.
- (5) Evaluate the effectiveness of strategies implemented to reduce chronic absenteeism rates and truancy rates.

*(c) When a pupil with a temporary disability, as defined in Section 48206.3, is receiving individual instruction in the home or a hospital or other residential health facility, the supervisor of attendance shall ensure that absences from the pupil's regular school program are excused until the pupil is able to return to the regular school program.*

~~(d)~~ (d) The supervisor of attendance may provide support services and interventions, which may include, but are not limited to, any or all of the following:

- (1) A conference between school personnel, the pupil's parent or guardian, and the pupil.
- (2) Promoting cocurricular and extracurricular activities that increase pupil connectedness to school, such as tutoring, mentoring, the arts, service learning, or athletics.
- (3) Recognizing pupils who achieve excellent attendance or demonstrate significant improvement in attendance.
- (4) Referral to a school nurse, school counselor, school psychologist, school social worker, and other pupil support personnel for case management and counseling.
- (5) Collaboration with child welfare services, law enforcement, courts, public health care agencies, or government agencies, or medical, mental health, and oral health care providers to receive necessary services.
- (6) Collaborating with school study teams, guidance teams, school attendance review teams, or other intervention-related teams to assess the attendance or behavior problem in partnership with the pupil and his or her parents, guardians, or caregivers.
- (7) In schools with significantly higher rates of chronic absenteeism, identify barriers to attendance that may require schoolwide strategies rather than case management.
- (8) Referral for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an individualized education program for an individual with exceptional needs, as that term is defined in Section 56026, or plan adopted for 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 federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794).
- (9) Referral to a school attendance review board established by the county or by a school district pursuant to Section 48321 or to the probation department pursuant to Section 48263.

(10) Referral to a truancy mediation program operated by the county's district attorney or probation officer pursuant to Section 48260.6.

**SEC. 8.** Section 51225.5 of the Education Code is amended to read:

**51225.5. (a) (1)** The governing board of ~~any a~~ school district maintaining a high school may confer honorary high school diplomas upon foreign exchange students from other countries who have not completed the course of study ordinarily required for graduation, and who are returning to their home countries following the completion of one academic school year in a school district in the state. ~~Honorary high school diplomas awarded pursuant to this section shall be clearly distinguishable from the regular diplomas of graduation awarded by the district.~~

*(2) The governing board of a school district, a county office of education, and the governing body of a charter school maintaining a high school may confer an honorary high school diploma upon a pupil who is terminally ill.*

*(b) An honorary high school diploma awarded pursuant to this section shall be clearly distinguishable from the regular diploma of graduation awarded by the school district, county office of education, or charter school.*

**SEC. 9.** *If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*