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Note: When this memorandum was originally published, we were known as Protection & Advocacy, Inc. (PAI). In October 2008, we changed our name from PAI to Disability Rights California.

MEMORANDUM

RE: Appeal Process for Interdistrict Transfers (Cal. Educ. Code Section 46601)
DATE: July 28, 1987; REVISED: January 19, 1999

The following is a summary of the procedure for appealing interdistrict transfer decisions. This procedure is provided by Cal. Educ. Code Section 46601. Note that the procedure for appealing interdistrict transfer decisions within the same county is somewhat different than interdistrict transfer decisions involving different counties.

I. Appeal Process for Interdistrict Transfers

A. Right to Appeal

1. If a parent makes a request for an interdistrict transfer and 30 calendar days pass before the transfer is approved, the parent must be advised of his/her right to appeal and of the appeal process. Cal. Educ. Code Section 46601.

B. Notice - Who is Responsible?

1. The district denying the transfer is responsible for notifying the parent about his/her right to appeal to the County Board of Education and the appeal process. Cal. Educ. Code Section 46601.

2. If both districts refuse or fail to enter into an agreement to permit the transfer, the district of residence is the responsible agency to notify the parent. Cal. Educ. Code Section 46601.

C. Appeal Procedure

1. How to Request an Appeal

a. The parent must appeal within 30 calendar days after either district denies the transfer or refuses to enter into an agreement permitting the transfer. Cal. Educ. Code Section 46601(a).

b. Failure to appeal within 30 calendar days is good cause to deny an appeal. Cal. Educ. Code Section 46601(a).

2. Jurisdiction

a. If the school districts are located in the same county, the agency hearing the appeal is the county board of education which has jurisdiction over the district where the parent resides. Cal. Educ. Code Section 46601(a).

b. If the school districts are located in different counties, the county board of education having jurisdiction over the district denying the transfer, or refusing or failing to enter into an agreement to allow for the issuance of a permit, must conduct the appeal. If both districts deny the transfer or fail to enter into an agreement, the county board of education having jurisdiction over the district of residence shall conduct the appeal and shall seek concurrence with the other county board. The other county board must provide the district under its jurisdiction an opportunity to be heard before making a decision. If the two counties do not concur, the appeal will be denied. Cal. Educ. Code Section 46601(d).

3. Role of County Board of Education

a. The county board of education will only accept an appeal if it is verified that the appeal process within the district has been exhausted. Cal. Educ. Code Section 46601(a). There are no provisions in the Cal. Educ. Code regarding the appeal process within the districts. Presumably, all informal mechanisms must be pursued within the district before a county will accept an appeal. Advocates should call the particular district involved in the matter to be informed of its appeal process.

b. If new evidence or ground for the request is introduced, the county board of education may remand the matter to the districts. Otherwise, the appeal shall be granted or denied on its merits. Cal. Educ. Code Section 46601(a).

c. The county board of education must provide adequate notice to all

parties regarding the date and time of any hearing scheduled and the opportunity to submit written documents and statements. Cal. Educ. Code Section 46601(b)(1).

d. The county board of education can adopt rules and grant continuances upon a showing of good cause. Cal. Educ. Code Section 46601(b)(1).

e. The county board of education must make the determination whether to permit the transfer within 30 calendar days after the appeal is filed. The county board of education or the county superintendent of schools may, for good cause, extend the 30-day period up to an additional five school days if compliance with the time period is impractical. Cal. Educ. Code Section 46601(b)(1).

f. Any hearing conducted by the county board of education will be decided within 3 schooldays, unless a postponement is requested by the person who filed the appeal. Cal. Educ. Code Section 46601(b)(1).

g. In a class 1 or class 2 county, the county board rules may provide for a hearing to be conducted by a hearing officer pursuant to Chapter 14 (Cal. Gov't Code Sections 27720-27728, titled "Hearing Officer"). A hearing may also be conducted by an impartial administrative panel of 3 or more certificated persons appointed by the county board of education pursuant to Cal. Gov't Code Section 27722, which discusses authorized and other hearing; decisions and record to clerk; recommended decision; and adoption or rejection by local body. Cal. Educ. Code Section 46601(b)(2).

1. "Class 1 county" means a county with 19 94/95 countywide ADA of more than 500,000. Cal Educ. Code Section 48919.5(e)(2).

2. "Class 2 county" means a county with countywide ADA of at least 180,000, but less than 500,000. Cal. Educ. Code Section 48919.5(e)(3).

h. The term “hearing officer” includes an impartial administrative pane. No member of the impartial administrative panel shall be a member of the county board of education, nor by employed by the school district or residence of the district of desired attendance. The county board of education shall render a decision within 10 days, pursuant to Cal. Gov’t Code Section 27722(b) 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. Cal. Educ. Code Section 46601(b)(2).

i. The county supervisor of attendance, or other designee of the county superintendent of schools, must determine whether local remedies have been exhausted and must provide any information useful to the county board in reaching a decision. Cal. Educ. Code Section 46601(c).

Citation
CA EDUC s 46600 FOUND DOCUMENT
West's Ann.Cal.Educ.Code s 46600

Database
CA-ST-ANN

Mode
Page

WEST'S ANNOTATED CALIFORNIA CODES
EDUCATION CODE
TITLE 2. ELEMENTARY AND SECONDARY EDUCATION
DIVISION 4. INSTRUCTION AND SERVICES
PART 26. ATTENDANCE FOR COMPUTING APPORTIONMENTS
CHAPTER 5. INTERDISTRICT ATTENDANCE COMPUTATION

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Current through the 1995 portion of the 1995-1996 legislative sessions.

s 46600. Agreements for interdistrict attendants; 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.

CREDIT(S)

1993 Main Volume

(Added by Stats.1986, c. 742, s 2. Amended by Stats.1991, c. 756 (A.B.675), s 23, eff. Oct. 9, 1991.)

< General Materials (GM) - References, Annotations, or Tables >

HISTORICAL AND STATUTORY NOTES

1993 Main Volume

Former s 46600, enacted by Stats.1976, c. 1010, s 2, relating to agreements
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Citation	Rank(R)	Database	Mode
CA EDUC s 48209.3	R 19 OF 87	CA-ST-ANN	Page
West's Ann.Cal.Educ.Code s 48209.3			

WEST'S ANNOTATED CALIFORNIA CODES
EDUCATION CODE
TITLE 2. ELEMENTARY AND SECONDARY EDUCATION
DIVISION 4. INSTRUCTION AND SERVICES
PART 27. PUPILS
CHAPTER 2. COMPULSORY EDUCATION LAW
ARTICLE 1.5. PUPIL **ATTENDANCE** ALTERNATIVES

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Current through the 1995 portion of the 1995-1996 legislative sessions.

s 48209.2. Special needs pupils; prohibition or rejection of transfer

(a) The school district of choice shall 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 or provide a new service 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.

CREDIT(S)

1996 Pocket Part

(Added by Stats.1993, c. 160 (A.B.19), s 1. Amended by Stats.1994, c. 1262 (A.B.2768), s 6, eff. Sept. 30, 1994.)

<< ARTICLE 1.5. PUPIL ATTENDANCE ALTERNATIVES >>

<< GENERAL NOTES >>

1996 Pocket Part

< Article 1.5 was added by Stats.1993, c.160 (A.B.19), s 1. >

<< REPEAL >>

< Article 1.5 becomes inoperative July 1, 2000 and is repealed Jan. 1, 2001, under the provisions of s 48209.16. >

< General Materials (GM) - References, Annotations, or Tables >

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HISTORICAL NOTES -- HISTORICAL STATUTORY NOTES

for admission of pupils desiring interdistrict attendance, was repealed by Stats.1986, c. 742, s 1.

Derivation: Former ss 46600, 46602, added by Stats.1976, c. 1010, s 2.

Educ.C. 1959, s 10801 (Stats.1959, c.2, p. 864, s 10801, amended by Stats.1961, c. 1047, p. 2729, s 1; Stats.1963, c. 285, p. 1050, 2 1; Stats.1964. 1st Ex.Sess., c. 61, p. 199, s 1; Stats.1965, c. 1876, p. 4325, s 2; Stats.1973, c. 208, p. 535, s 13.2).

Educ.C. 1959, s 10802, added by Stats.1961, c. 1047, s 2.

Educ.C. 1943, s 1503 (Stats.1943, c. 71, p. 329, amended by Stats.1947, c. 217, p. 783, s 1; Stats.1951, c. 625, p. 1801, s 1; Stats.1955, c. 855, p. 1468, s 1).

School C. s 2.21, added Stats.1937, c. 612, p. 1701, s 3, amended Stats.1939, C. 831, p. 2411, s 1.

FORMS

1993 Main Volume

See West's California Code Forms, Education.

CROSS REFERENCES

Admission of pupils to regional occupational center or program under interdistrict attendance agreements, see Education Code s 52314.

Governing boards, see ss 78, 35010, 35012.

Powers and duties, see Education Code ss 35160 et seq., 39601 et seq., 81600 et seq.

NOTES OF DECISIONS

Consent of resident school district 3
 Continuation education classes 12
 Contracts, generally 7
 Interdistrict attendance agreements 2
 Lease of class rooms 6
 Legislative intent 1
 Limitation of actions, tuition payments 10
 Meetings 13
 New districts 4
 Nonpublic school pupils 5
 Payment to district of attendance, tuition payments 9
 Remedies, tuition payments 11
 Right of action 15

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Tort liability 14
Tuition payments 8-11
 Tuition payments - In general 8
 Tuition payments - Limitation of actions 10
 Tuition payments - Payment to district of attendance 9
 Tuition payments - Remedies 11

1. Legislative intent

The 1955 amendment of Educ.C.1943, s 1503 and s 16601 to substitute the word "live" for "reside" clarifies legislative intent that pupil is eligible to and may, under some circumstances, be required to attend school of district, wherein he is living without interdistrict attendance agreement and without regard to motive or intent in living in such district. 26 Ops.Atty.Gen. 269

2. Interdistrict attendance agreements

Pupils residing in one high school district could not attend high school of another district, in absence of agreement authorizing such attendance between authorities of respective districts. Laton Joint Union High School Dist. v. Armstead (App. 4 Dist. 1933) 130 Cal.App. 628, 20 P.2d 737.

3. Consent of resident school district

Children in one school district who had consent of trustees of neighboring school district in same county and of county superintendent of schools to attend neighboring school district were entitled to attend neighboring school district without consent of trustees of their resident school district. McClerkin v. San Mateo School Dist. (1935) 4 Cal.2d 363, 49 P.2d 830.

4. New districts

In view of Educ.C.1943, ss 1503, 8722, 10522 where an elementary school district withdrew from a high school district which was coterminous with a junior college district maintaining grades 11-14 inclusive and the territory of the elementary school district was formed into a new high school district the junior college district could not require the attendance in the junior college of the 11th and 12th grade pupils residing in the new high school district. 13 Ops.Atty.Gen. 41 (1949).

5. Nonpublic school pupils

An interdistrict agreement for the implementation of Educ.C.1959, s 5665 which required every district maintaining a high school to admit pupils from nonpublic schools to vocational and shop classes and to classes relating to the natural and physical sciences, was possible under Educ.C.1959, s 10800 et seq. 55 Ops.Atty.Gen. 393, 11-1-72.

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6. Lease of class rooms

A school board may lease class rooms from contiguous school district and transport students and teachers there for the purpose of alleviating de facto segregation and class room shortage. 46 Ops.Atty.Gen. 45, 9-14-65.

7. Contracts, generally

Where male high school student living in one school district and attending high school in another district was issued a permit by district of his residents which had an interdistrict attendance agreement with district having high school attended by student, student was entitled to attend high school he was attending so far as the interdistrict attendance agreement was concerned. Meyers v. Arcata Union High School Dist. (App. 1 Dist. 1969) 75 Cal. Rptr. 68, 269 Cal.App.2d 549.

Courts will not interfere with exercise of discretion vested in governing board of school district to perform school services for another district unless such action is unreasonable, unfair or tainted with fraud, corruption or bad faith. Butler v. Compton Junior College Dist. Of Los Angeles County (App. 1947) 77 Cal.App.2d, 176 P.2d 417.

The terms of contract by which one school district performs school services for another school district are presumed to be reasonable and fair in absence of proof to contrary. Butler v. Compton Junior College Dist. Of Los Angeles County (App. 1947) 77 Cal.App.2d 719, 176 P.2d 417.

8. Tuition payments--In general

A contract between junior college districts providing for interchange of pupils and that district educating smaller number of nonresident pupils should pay to the other district \$35 for each pupil in excess of number of nonresident pupils educated by first district did not contemplate making of "gift" of public funds by first district in violation of constitutional prohibition against gift of public money to municipal corporation, since the districts were not municipal corporations, and the funds involved were to be used for general education purposes. Butler v. Compton Junior College Dist. Of Los Angeles County (App. 1947) 77 Cal.App.2d 719, 176 P.2d 417.

Where a chartered city of the sixth class annexes unincorporated territory including part of a pre-existing school district, tuition contracts for the education of the children residing in the remaining part of the school district could be entered into under statute. 9 Ops.Atty.Gen. 133 (1947).

9. ---- Payment to district of attendance, tuition payments

Under provisions of Educ.C.1959, s 10801 that if county board of education determines that pupils should be permitted to attend school in district other than district of residence and the districts involved have neglected or refused
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ANNOTATIONS (Notes of Decisions Index)

to enter into interdistrict attendance agreement, the pupils should be admitted to that school and governing board of district in which pupil lives shall pay to district of attendance amount which shall be actual cost to district of attendance of education of such pupil, the district of attendance could not forego collecting the costs of educating pupils, the district of attendance was not required to bill the district of residence, and if there was no payment by district of residence, it was duty of county superintendent of district of attendance to determine amount due the district and draw his requisition against funds of district of residence in favor of district of attendance. 36 Ops.Atty.Gen. 92 (1950).

10. ---- Limitation of actions, tuition payments

Under provision of Educ.C.1959, s 10801 requiring district of residence to pay district of attendance the actual cost to district of attendance of education of pupils, the obligation of the district of residence to pay the district of attendance was an obligation imposed by statute and hence three year statute of limitations was applicable to claims against district of residence. 36 Ops.Atty.Gen. 92 (1960).

11. ---- Remedies, tuition payments

In view of Educ.C.1943, s 1503 where a pupil residing in an elementary school district attends an elementary school of an adjoining unified school district pursuant to an agreement between the outside school district and the county board of education, the county superintendent of schools was not empowered to draw a warrant in favor of the unified school district on the funds of the elementary school district in the amount provided for in the agreement when the latter district refused to draw its warrant, the remedy being by mandamus action against the elementary school district. 10 Ops.Atty.Gen. 267 (1947).

12. Continuation education classes

Educ.C.1959, s 12551 provided that, pursuant to interdistrict attendance laws, a student could be allowed to attend a continuation education class maintained by a neighboring school district. 53 Ops.Atty.Gen. 93, 3-10-70.

13. Meetings

The Ralph M. Brown Act (Gov.C. s 54950 et seq.) was applicable to county boards of education when determining a matter of school district attendance of boards of education when determining a matter of school district attendance of a student pursuant to Educ.C.1959, s 10803 and such matter was required to be made in a public meeting. 57 Ops.Atty.Gen. 189, 4-23-74.

14. Tort liability

Negligence of nine year old child or of driver of automobile which struck child as he was crossing street en route home from school or unavoidable

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ANNOTATIONS (Notes of Decisions Index)

Accident was sole "proximate cause" of death of child and could not reasonably be foreseen by school district officials, and any breach of duty by officers or employees of school districts in advising or permitting child upon removal from one district to the other to enroll in school with would necessitate crossing heavily traveled street on which he was killed or in not providing transportation from school to home was too remote to impose liability on either school district for death of child. Girard v. Monrovia City School Dist. (App. 1 Dist. 1953) 121 Cal.App.2d 737, 264 P.2d 115.

15. Right of action

High school district of pupil's residence had such legal right to attendance of pupils residing therein that it might maintain action to prevent another high school district unlawfully receiving these pupils. Laton Joint Union High School Dist. v. Armstead (App. 4 Dist. 1933) 130 Cal.App. 628, 20 P.2d 757.

West's Ann. Cal. Educ. Code s 46600

CA EDUC s 46600

END OF DOCUMENT

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Government Code Section 27722. Authorized and other headings; decision and record to clerk; recommended decision; adoption or rejection by local body

(a) If the hearing officer is authorized to decide a matter upon which a hearing has been held pursuant to Section 27721, the office shall render a written decision, including any findings or conclusions required for that decision, and submit the decision and the record to the clerk of the local body on whose behalf the hearing was held.

(b) If the hearing office is not authorized to decide a matter upon which a hearing has been held pursuant to Section 27221, the office shall prepare a recommended decision, including any findings or conclusions required for that decision, and shall submit that recommendation and the record to the clerk of the local body on whose behalf the hearing was held. The local body may adopt the recommended findings, conclusions, and decision, or may reject the recommendation and enter its own findings, conclusions, and decision after a review of the record.

(Added by Stats.1965, c. 480, p. 1790, § 1. Amended by Stats.1985, c. 617, § 6.)

Education Code Section 28819.5. Expulsion appeals; hearing officer or impartial administrative panel

(a) A county board of education in a class 1 or class 2 county may have a hearing officer pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Title 3 of the Government Code, or an impartial administrative panel of three or more certificated persons appointed by the county board of education, hear appeals filed pursuant to Section 48919. The members of the impartial administrative panel shall not be members of the governing board of the school district nor employees of the school district, from which the pupil filing the appeal was expelled. Neither the hearing officer, nor any member of the administrative panel, hearing a pupil's appeal shall have been the hearing officer or a member of the administrative panel that conducted the pupil's expulsion hearing.

(b) A hearing conducted pursuant to this section shall not issue a final order of the county board. The hearing officer or impartial administrative panel shall prepare a recommended decision, including any findings or conclusions required for that decision, and shall submit that recommendation and the record to the county board of education within three schooldays of hearing the appeal.

(c) Sections 48919, 48920, 48921, 48922, 48923, and 48925 are applicable to a hearing conducted pursuant to this section.

(d) Within 10 schooldays of receiving the recommended decision and record from the hearing officer or the impartial administrative panel, the county board of education shall review the recommended decision and record and render a final order of the board.

(e) For purposes of this article, the following definitions shall apply:

(1) "Countywide ADA" means the aggregate number of annual units of regular average daily attendance for the fiscal year in all school districts within the county.

(2) "Class 1 county" means a county with 1994/95 countywide ADA of more than 500,000.

(3) "Class 2 county" means a county with 1994/95 countywide ADA of at least 180,000 but less than 500,000.

(Added by Stats.1997, c.417 (A.B. 259), § 3.)