



Book	Board Policies and Administrative Regulations
Section	5000 Students
Title	Interdistrict Attendance Appeals
Number	5117 BP
Status	Active
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The Santa Clara County Board of Education shall consider an appeal against any school district within the county for its failure or refusal to issue an interdistrict transfer permit to a student, or for its failure or refusal to enter into an interdistrict transfer agreement with another school district for the student's attendance. (Education Code 46601)

If the request for interdistrict transfer involves a school district located within the county and a school district located in a different county, the County Board shall have jurisdiction if the denial of the permit, or the refusal or failure to enter into an agreement, is by the school district within the county. If both school districts deny the permit or refuse or fail to enter into an agreement, the County Board shall have jurisdiction only if the school district within the county is the student's district of residence. (Education Code 46601)

The appeal shall be filed in writing, by a person having legal custody of the student, within 30 calendar days of the district's failure or refusal to issue a permit, or to enter into an agreement allowing the interdistrict transfer. Failure to appeal within the required time is good cause for denial of an appeal. (Education Code 46601)

The appeal shall be accepted only upon verification by the Santa Clara County Superintendent of Schools or designee that appeals within the districts have been exhausted. (Education Code 46601)

Students who are under consideration for expulsion or who have been expelled may not appeal interdistrict attendance denials or decisions while expulsion proceedings are pending or during the term of the expulsion. (Education Code 46601)

Hearing

No later than 10 days prior to the hearing, the secretary to the County Board shall serve upon all parties involved, a notice by certified mail, return receipt requested. The notice shall include details of the date, time and place of the hearing, and of the opportunity to submit written statements and documentation, and to be heard on the matter.

The County Board shall conduct a hearing within 40 calendar days after the appeal is filed, to determine whether the student should be permitted to attend school in the district of his/her choice. If it is impractical for the County Board to comply with the time requirement for the hearing, the County Board may extend the time period for up to an additional five school days. (Education Code 46601)

The Board hearing proceeds as follows:

1. The County Board President opens the hearing, identifies all participants, and addresses procedural matters.
2. Each party will have an opportunity to address the Board and summarize their position for 5 minutes (or longer as determined by the Board President).
3. Each party will have an opportunity to respond to the presentation of the other party or parties.
4. Board members may ask clarifying questions either during or after the presentation and responses.
5. The hearing will then be closed and the County Board of Education will deliberate in private to review the decision. If any representative of the District or the student is admitted to this deliberation, the representatives from the opposing party shall also be admitted.
6. After deliberating, the County Board will meet in open session and announce its decision.

If an interpreter is used by a parent, the time allotted may be doubled at the discretion of the chair.

Criteria for Consideration in Appeals

1. The student's psychological or physical well-being.

Problems with a student's psychological or physical well-being must be supported by the written statement of a qualified professional.

2. A substantial danger to the student's health or safety.

A danger to the student's health or safety must be supported by the written statement of a qualified health expert, by police reports, by school records, or by other documentation.

3. A specialized and specific academic program or service, unavailable in the district of residence, but necessary to the student's career or academic objectives.

Such a program or service must be related to the student's career objectives or academic advancement and not based solely on the student's interests or desires, or on extracurricular activities or athletics.

4. Hardship resulting from lack of available or appropriate after school care options for the pupil in the district of residence.

The parent/guardian must demonstrate attempts to find appropriate care in the district of residence and must describe these attempts in the written materials provided when the appeal is filed.

5. A severe and demonstrated hardship to parents/guardians which could affect the student's success in school.

The parent/guardian must specify and describe the type of hardship in writing; "hardship" shall be understood to exclude inconvenience to the parents/guardians or matters of preference.

6. The student's desire to remain in his/her school of current attendance for the balance of the semester or school year.

The student's desire may be based on his/her anticipated promotion from the school of current attendance at the end of the semester or school year, or on a need for educational continuity for the remainder of the semester or school year.

7. The student's plan to move in the near future and desire to begin the semester or school year in his or her new school district.

The student and his/her parent/guardian must offer written proof of their plan to move into the district of proposed attendance; such written proof may be a rental agreement, a contract to purchase new property, or similar document.

8. The financial impact of educating the student (district of desired attendance) or of losing the student (district of residence).

In either case, the impacted district(s) must demonstrate in writing that the student's transfer would place an undue hardship on the district's resident students in terms of reduced services or other unacceptable outcomes.

9. The student's demonstrated failure to meet reasonable standards relating to behavior, attendance, or diligence to studies.

The demonstration of such failure must be based on a written explanation of the district's previous experience with the student under an interdistrict transfer agreement or on other documented evidence.

10. Lack of space for the student in the receiving district.

The district of proposed transfer must demonstrate in writing that the student's transfer would result in an undue hardship on the district's resident students in terms of overcrowding and/or would be a violation of district policy or a collective bargaining agreement regarding class size goals.

11. The negative impact of the student's transfer on a court ordered or voluntary desegregation plan of either district.

The district must provide details about the court order or desegregation plan and provide written evidence of the anticipated negative impact of the student's transfer.

12. Other exceptional or extraordinary circumstances which would weigh heavily in favor of the appellate student or the affected school district.

The parent/guardian or school district must specify and describe the type of exceptional or extraordinary circumstance and its effect on the appellate student or the resident students of the district.

Final Order of the County Board

The County Board/hearing officer/administrative panel shall render its decision within three school days of the hearing unless the student requests a postponement. (Education Code 46601)

The County Board shall either grant or deny an appeal on its merits. However, 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.

If the County Board determines that the student should be permitted to attend school in the district of choice, the County Board shall fix the length of time for the student's attendance in that district, and the student shall be admitted to a school in that district without delay. The County Board is not authorized to order the specific school placement for the student. School placement, even after a successful appeal, is determined by the district of attendance. (Education Code 46601, 46602)

All parties shall be notified in writing of the decision of the County Board. (Education Code 46602)

Legal Reference:

EDUCATION CODE

46600-46611 Interdistrict attendance agreements
 48204 Residency requirements for school attendance
 48300-48316 Student attendance alternatives, school district of choice program
 48350-48361 Open Enrollment Act
 48900 Grounds for suspension and expulsion; definition of bullying
 48915 Expulsion; particular circumstances
 48915.1 Expelled individuals: enrollment in another district
 48918 Rules governing expulsion procedures
 48950 Speech and other communication
 48980 Notice of beginning of term

49073-49079 Privacy of student records

52317 Regional occupational/program, enrollment of students, interdistrict attendance

GOVERNMENT CODE

11455.20 Contempt

54950-54962 Ralph M. Brown Act (re closed sessions)

ATTORNEY GENERAL OPINIONS

87 Ops.Cal.Atty.Gen. 132 (2004)

84 Ops.Cal.Atty.Gen. 198 (2001)

COURT DECISIONS

Walnut Valley Unified School District v. the Superior Court of Los Angeles County, (2011) 192

Cal.App.4th 234

Crawford v. Huntington Beach Union High School District, (2002) 98 Cal.App.4th 1275

Management Resources:

CSBA PUBLICATIONS

Transfer Law Comparison, Fact Sheet, March 2011

WEB SITES

CSBA: <http://www.csba.org>

California Department of Education: <http://www.cde.ca.gov>

Last Modified by Suzanne Carrig on August 10, 2018