

Book	Board Policies and Administrative Regulations
Section	5000 Students
Title	Interdistrict Attendance Appeals
Code	5117 BP
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BP 5117 Interdistrict Attendance Appeals

The Santa Clara County Board of Education (County Board) shall consider an appeal against any school district within the county for its denial of or refusal to issue an interdistrict transfer permit to a student, or for its denial or refusal to enter into an interdistrict transfer agreement with another school district for the student's attendance. (Education Code 46601)

A denial includes a school district's failure to provide written notification of the school district's decision within the timelines required by the Education Code or the district's refusal to approve an interdistrict transfer agreement to any school within the district. A denial does not include any of the following: a request that is deemed abandoned (as described in Education Code 46600.2). an existing interdistrict transfer permit that has been revoked or rescinded in accordance with the school district governing board's policy, or a denial by the school district of proposed enrollment when no permit has been issued by the school district of residence. (Education Code 46600.1)

If the request for an interdistrict transfer involves a school district located within Santa Clara 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)

A parent or legal guardian may appeal a school district's decision regarding a request for interdistrict transfer within 30 calendar days of the district's final denial, or the district's denial or refusal to enter into an agreement allowing the interdistrict transfer. Failure by the parent/guardian to appeal within 30 calendar days of the date of the district's final denial is good cause for rejection of an appeal. (Education Code 46601)

The appeal shall be accepted only upon verification by the Santa Clara County Superintendent of Schools (County Superintendent) or designee that appeals within the districts have been exhausted pursuant to the procedures and timelines of the denying school district. (Education Code 46600.2, 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 County Superintendent's designee shall serve upon all parties involved, notice of the appeal request.

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 30 calendar days after the appeal is filed, to determine whether the student should be permitted to attend school in the district of their 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 good cause, for up to an additional five school days. (Education Code 46601)

The designee of the County Superintendent 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 of education in reaching a decision. (Education Code 46601)

The Board hearing shall proceed 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). If an interpreter is used by a parent, the time allotted may be doubled at the discretion of 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.

Factors for Consideration in Appeals

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

Information regarding 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 their school of current attendance for the balance of the semester or school year.

The student's desire may be based on their 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 their new school district.

The student and their 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 students in the district of attendance 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 shall render its decision within three school days of the hearing unless the parent/guardian requests a postponement. (Education Code 46601) The County Board's decision is final and there is no method to appeal the Board's decision.

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. (Education Code 46601)

If the County Board determines that the student should be permitted to attend school in the school district proposed, the County Board shall determine the applicable period of 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)

Parents/guardians and school districts 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>