



September 13, 2007

TO: SCHOOLS LEGAL SERVICE MEMBERS AND CLIENTS

FROM: CAROL GROGAN *CG*

RE: INTERDISTRICT ATTENDANCE PROGRAMS
RESIDENCY BASED UPON PARENT'S EMPLOYMENT

Schools Legal Service
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Grant Herndon
General Counsel

Stacy L. Inman
Assistant General Counsel

Peter C. Carton
Senior Counsel

William A. Hornback
Patricia T. Castle

Christopher P. Burger
Alan B. Harris

Carol J. Grogan
Kathleen R. LaMay

Christopher W. Hine
Counsel

Carl B. A. Lange III
Director of Labor Relations

On July 6, 2007, the Governor signed SB 170 extending the program allowing a parent or legal guardian to request that a student be enrolled in a district where the parent or legal guardian is physically employed. The previous version of the statute was repealed on July 1, 2007 by its own terms. The version of the statute in SB 170 became effective on July 6, 2007.

On August 24, 2007, the Governor signed SB 80 reauthorizing the "School of Choice" program. However, the program was only reauthorized for districts that had elected to participate in the program by August 24, 2007.

A third statutory provision, encouraging consideration of child care needs when considering interdistrict transfer requests, was also repealed by its own terms on July 1, 2007, but was not reauthorized.

Statutory provisions pertaining to interdistrict transfer and residency statutes are summarized below.

1. **Interdistrict Attendance Agreements.** (Ed. Code secs. 46600 et seq.) With the permission of both the district of residence and the receiving district, a student may transfer between school districts. Districts are not required to approve interdistrict transfer requests. However, a parent or guardian may appeal the denial of a request to the county board of education.

A district may establish policies and regulations regarding interdistrict transfer requests, including criteria to be utilized in making decisions regarding the requests.

- **Change Regarding Child Care Needs.** (Former Ed. Code sec. 46601.5.) Formerly, when considering an interdistrict transfer request, the law provided a school district was "*encouraged* to . . . give consideration to the child care

needs” of students and “*encouraged* to allow any pupil to remain continuously enrolled” in the district if a transfer had been granted based upon child care needs. (Former Ed. Code sec. 46601.5(b), emphasis added.) Section 46601.5 was not reauthorized and by its terms was repealed on July 1, 2007. There is no pending legislation to reauthorize this provision. However, it could be revived in the future. Of course, districts can continue to use the general interdistrict transfer provisions in Education Code sections 46600, et seq., to consider interdistrict transfer requests based upon child care needs. Additionally, child care needs could be one of the criteria in a district regulation addressing interdistrict transfer requests.

A parent or guardian seeking to appeal the denial of an interdistrict transfer request to the county board of education is to do so within 30 days of the denial of the request. (Ed. Code sec. 46601(a).) A hearing is then scheduled before the county board of education. At the hearing, both the parent/guardian and representatives of the district(s) have the opportunity to address the county board. Historically, an area of inquiry by the county board has been whether the district can demonstrate that the parent/guardian was notified of the district board meeting at which the transfer request was considered, and whether the parent/guardian took advantage of the opportunity to address the district board.

2. **Parent/Guardian Employment within District.** (Ed. Code sec. 48204(b).) A school district may deem a pupil to have complied with residence 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.

The approval of the district of residence is not needed in order for the receiving district to accept the student based upon parent/guardian employment.

School districts are not required to admit students based on a parent/guardian’s employment within district boundaries. However, a district may not refuse to admit a student on the basis “of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.” (Ed. Code sec. 48204(b)(1).)

Employment-based transfers may be denied or discontinued where 1) the net transfer out of students would exceed specified statutory limits,¹ 2) the transfer

¹Education Code section 48204(b)(6) provides:

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:

would negatively impact court-ordered or voluntary desegregation plans, or 3) additional costs would exceed state aid received as a result of the transfer. (Ed. Code sec. 48204(b)(1)-(6).)

The board of a school district that denies a transfer request based upon one of the three reasons set forth in the previous paragraph, is encouraged to identify, and communicate in writing to the parents or guardians of the pupil, the specific reason 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. (Ed. Code sec. 48204(b)(4).)

A parent or guardian may not appeal the denial of an employment-based request to the county board of education.

The California Attorney General has opined that overcrowding is a permissible reason for denying a request based upon parent/guardian employment. However, the same opinion provides that after a student has been permitted to attend within the district, the right to attend cannot subsequently be revoked if the district's facilities become overcrowded at the student's grade level. (84 Ops. Cal. Atty. Gen. 198 (2001).) The Office of Civil Rights has found that lack of space was an acceptable reason for the denial of an interdistrict transfer request of a student requiring placement in a Special Day Class, when OCR found no evidence that policies were applied in a discriminatory fashion. (*Arcadia Unified School District* (January 10, 1997) 26 IDELR 883.) However, denying admission of a special education student because the cost of his or her educational services would exceed state aid received as a result of the transfer would not be permissible. (*Fallbrook Union Elem. School. Dist.* (January 22, 1990) 16 IDELR 754.)

Once a pupil is deemed to have complied with the residence requirements for school attendance based upon parent/guardian employment and the student is enrolled, the student is not required to reapply in subsequent years and may attend school in the district through 12th grade if the parent/guardian continues to be physically employed within the district boundaries, subject to the provisions

(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.

of Ed. Code sec. 48204(b)(1)-(6), discussed above. (Ed. Code sec. 48204(b)(7).)

3. **Caregiving Adult Affidavit.** (Ed. Code sec. 48204(a)(4).) A pupil who lives in the home of a caregiving adult located within the boundaries of a school district is entitled to attend school in that district. The execution of an affidavit under penalty of perjury by the caregiving adult is a sufficient basis for determining that the student lives in the caregiver's home, unless the district "determines from actual facts that the pupil is not living in the caregiver's home."

A Caregiver's Authorization Affidavit is provided at Family Code section 6552, and is available through this office.

The approval of the school district is not needed for a student to attend a district school based on a caregiving adult's affidavit.

4. **District of Choice.** (Ed. Code secs. 48300 et seq.) On August 24, 2007, the "District of Choice" program was reauthorized, but only for districts that had previously elected to be School Districts of Choice. (Ed. Code sec. 48314.5, as added by SB 80.) Further, SB 80 only reauthorized the School District of Choice Program through June 30, 2009.

A school district may elect to accept a specified number of students from other districts. The students must be selected through a random, unbiased process. (Ed. Code sec. 48301(a).) However, siblings of students already enrolled are entitled to priority. (Ed. Code sec. 48306.)

Either the district of choice or the district of residence may prohibit or limit the number of transfers if the governing board determines that the transfer would "negatively impact" the district's court-ordered or voluntary desegregation plan or the racial and ethnic balance of the district. (Ed. Code sec. 48301(b).)

A school district of residence may not adopt policies that in any way block or discourage pupils from transferring to another district. (Ed. Code sec. 48301(c).)

A district may deny a transfer "if the transfer of that pupil would require the district to create a new program to serve that pupil." (Ed. Code sec. 48303(a).)

A district must deny a transfer if it "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. (Ed. Code sec. 48304.)

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If you have any questions regarding interdistrict attendance or residency, please contact this office.

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