



Memo 8

December 2017

WHERE PUPILS ARE ENTITLED TO ATTEND SCHOOL; RESIDENCE AND CUSTODY ISSUES

I. ATTENDANCE IN DISTRICT OF RESIDENCE

A. Students Are Generally Required to Attend the Neighborhood School Identified by Their District's Governing Board as Serving the Attendance Area in Which Their Parents/ Guardians Reside

Unless otherwise complying with or exempt from compulsory education law, parents/guardians are required to enroll their school-aged children in an educational program as determined by the governing board of the public school district in which they are residents. Usually, that is the student's neighborhood school. Nowhere in the Education Code, however, is it expressly provided that students have a "right" to enroll in their neighborhood school. Instead, the Education Code provides that parents have an obligation to enroll their child in a school or program per the governing board of their local school district.

School districts can require reasonable proof of residency, which may be in the form of documents such as utility bills, property tax billings or other records. A school district that reasonably suspects such information to be false or unreliable may take reasonable steps to determine the residency requirement is met. Legislation requires the adoption of a policy containing various criteria and restrictions on investigations of residency questions.

(See Educ. Code §§ 48200, 48204(a) and 48204.1; CSBA Model BP 5111 and AR 5111.1.)

B. Students Whose Parents/Guardians Are Employed Within the Geographical Boundaries of Another School District May Be Classified as Residents of the Other District and Enroll in a School Within the Other District

A school district may adopt a policy permitting the enrollment of non-district residents, without the agreement of their district of residence (except as hereinafter noted), if the student's parent or guardian is physically employed for a minimum of at least 10 hours per week within the geographical boundaries of the school district. A district adopting such a policy is not required to enroll every student, but cannot refuse enrollment on the basis of race, ethnicity, sex, parental income, scholastic achievement or other arbitrary consideration. The receiving district may prohibit the transfer if it is determined that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer.

The district of residence may prohibit the transfer if the net amount of pupil transfers out of the district exceeds statutory limits. Both the receiving district and district of residence may prohibit the transfer if it would negatively impact a court-ordered or voluntary desegregation plan of the district.

Once a student has enrolled pursuant to the employment-based residency rule, the student must be allowed to continue to attend a school within the district. However, there is no regulatory requirement that the student be allowed to continue to attend any particular school as in the case of a Section 46600 inter-district attendance agreement.

(See Educ. Code § 48204(b); CSBA Model AR 5111.12(a).)

C. Children of Live-in Nannies and Housekeepers

Students whose parents are employed within a school district's boundaries and live with the student at the place of employment for a minimum of three days during the school week become residents for enrollment purposes even if the parent's permanent residence is outside the school district's boundaries.

(See Educ. Code § 48204(B)(7).)

D. Military

Students whose parents are on active duty in the military become residents for enrollment purposes when their parents are transferred or are pending transfer to a military installation within the boundaries of the school district.

(See Educ. Code § 48204.3)

E. Licensed Children’s Institution

A pupil placed in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a commitment or placement under Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code, located within the boundaries of that school district may attend a school of the district.

The agency placing the pupil in the home or institution must provide evidence to the school that the placement or commitment is pursuant to law.

(See Educ. Code § 48204(a)(1)); CSBA Model AR 5111.1.)

F. Foster Youth

Students who are or become “Foster” children must be permitted to continue their education at their “school or origin” through the end of the academic year and maybe longer if that placement is in their best interests. This rule applies as long as they remain “Foster” children.

“Foster” children must be allowed to matriculate with their peers in accordance with the established feeder patterns of the school district when transitioning to middle school or high school. On the other hand, if the district’s Educational Liaison and the Foster family agree that enrollment in a “new” school is in the best interest of the “Foster” child, the new school must immediately enroll the child.

(See Educ. Code §§ 48204(a)(2) and 48853.5; CSBA Model BP/AR 6173.1.)

G. Emancipated Youth

An emancipated pupil whose residence is located within the boundaries of a school district is considered a resident of within that district and may attend the district’s schools. An emancipated pupil is a minor whose parent or legal guardian has been relieved of responsibility, control, and authority through an emancipation procedure in court.

(See Educ. Code § 48204(a)(4); Fam. Code §§ 7000, et seq.; CSBA Model AR 5111.1.)

H. Caregiving Adult

A pupil who lives in the home of a caregiving adult within the boundaries of a school district is a resident of that district. If the caregiver provides an affidavit under penalty of perjury, pursuant to the California Family Code (commencing with Section 6550), that is a sufficient basis

for determining the pupil lives in the home of the caregiver, unless the school district determines from actual facts that the pupil is not living in the caregiver's home.

(See Educ. Code § 48204(a)(5)); Fam. Code §§ 6550, et seq.; CSBA Model AR 5111.1.)

I. State Hospitals

A pupil residing in a state hospital located within the boundaries of a school district is deemed a resident of that district.

(See Educ. Code § 48204(a)(6)); CSBA Model AR 5111.1.)

J. “Homeless” Students

A student whose parents come within the McKinney-Vento criteria for homelessness may, if they so choose, continue enrollment in the school they were attending prior to becoming homeless even if now living elsewhere in or outside of the district's boundaries. Note that they may also choose the neighborhood school in their new district instead.

Also note that McKinney-Vento gives homeless students transportation rights. The new district and old district, together, must make transportation arrangements for the student.

(See 42 USC §§ 11413-11435; CSBA Model BP/AR 6173.)

K. Students Receiving Special Education Services Pursuant to an Individualized Education Program (IEP) or a 504 Plan

IEP teams and the IDEA, not district administrators and/or other federal/state legislation, determine the placement of IDEA eligible students. The requirements of IDEA necessitate placement where the student can receive Free and Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE). LRE tends to create a preference favoring sites in relative close proximity to the student's home provided that the student can receive FAPE at that site.

The same is generally true of students receiving special education services pursuant to Section 504 of the Rehabilitation Act of 1973.

(See 29 USC § 794; CFR §§ 104.33 and 104.34; CSBA Model BP/AR 6164.6; 20 USC § 1400, et seq.; 34 CFR §§ 300.114-300.118; CSBA Model BP/AR 6159.)

L. Intra-district Open Enrollment Policy

School districts are required to have an open enrollment policy that allows students residing within the school district the option of attending a district-run school other than their neighborhood school. The intra-district open enrollment rules provide that no student currently residing within a school's attendance area may be displaced by another student coming from outside the school's attendance area, nor must the district allow transfers that would upset racial or ethnic balances or violate a court-ordered or voluntary desegregation plan.

The policy must include a random, unbiased process ensuring, for a school with more applicants than available space, that the selection of pupils who may enroll in the school is not based on a pupil's academic or athletic performance. However, school districts may employ entrance criteria for specialized schools or programs if the criteria are uniformly applied to all applicants. The policy may provide that priority be given to pupils with siblings already attending the school. Even when a school is at capacity, the existence of harmful or dangerous special circumstances may warrant placement of a pupil in the school.

(See Educ. Code § 35160.5(b); CSBA Model AR 5116.1.)

II. INTER-DISTRICT ATTENDANCE

A. Inter-district Attendance Agreements and Permits

A student who resides in one district may transfer to and enroll at a school in another district pursuant to a permit issued under an inter-district attendance agreement between the two school districts. Both districts must consent to the transfer. Unless the inter-district attendance agreement expressly provides otherwise, the student does not have to reapply annually, or at all, and must be allowed to continue to attend the school in which he or she first enrolls. Neither the sending nor receiving districts are required to consent to the transfer, but all denials must be consistent with policy and be non-discriminatory.

There is an appeal process if an application is denied. The appeal is to the county board of education with jurisdiction over the district denying the transfer or, if both districts deny the transfer, to the county board of education with jurisdiction over the district of residence. Failure to file the appeal within thirty (30) days can be good cause for denial of the appeal. The county board of education generally must rule within thirty (30) days of the appeal hearing, and may send the matter back to the denying district for further review (if new grounds or evidence is presented), or must order or deny the transfer.

District policies typically provide that a transfer requested will be granted if it is based on a need related to after school child care, for behavior adjustment purposes or to access a particular program or activity which the school district of residence does not offer.

Special rules apply to victims of bullying. A pupil who has been determined by personnel of either the district of residence or the district of proposed enrollment to have been the victim of an act of bullying, committed by a pupil of the district of residence, shall be given priority for inter-district attendance under an existing agreement or be given additional consideration for the creation of an agreement.

(See Educ. Code § 46600(a), (b) and § 46601; CSBA Model BP/AR 5117.)

B. School District of Choice Program

The School District of Choice Program allows the receiving district to enroll non-district students without the agreement of their district of residence. Under this program, priority must be given to siblings of children already in attendance and the receiving district may also give priority to children of military personnel.

Once enrolled pursuant to the School District of Choice Program, the transfer is renewed automatically unless the governing board withdraws from the program. However, the student does not have a regulatory right to stay at the same school as in the case of a Section 46600 inter-district attendance agreement. Additionally, the district of residence may impose a statutorily-set cap on the total number of students transferring out of the district, and the district of choice is required to give certain notices to districts of residence.

(See Educ. Code § 48300-48316; CSBA Model BP/AR 5117.)

III. OTHER ATTENDANCE ALTERNATIVES

A. NCLB/PI Public School Choice Transfers Pursuant to an Inter-district Attendance Agreement

A student may be enrolled in a school outside the district under an inter-district attendance agreement in conjunction with Program Improvement under No Child Left Behind. Any school receiving Title I funding for Program Improvement under No Child Left Behind must identify non-PI schools in the district or, if none, in a nearby district, as Choice Transfer Options. Once a student enrolls in a school outside the district pursuant to NCLB/PI School Choice, the transferring student may remain at that school unless the inter-district attendance agreement between the two school districts expressly provides otherwise. Note that the sending district may

not deny the transfer request. However, the receiving district may deny the transfer request. Also note that the county board of education may overrule a denial.

(See USC § 6316(b)(11); 34 CFR § 200.44(h); CSBA Model AR 0520.2; Educ. Code § 46600.)

B. NCLB/PI School Choice Transfers via the Intra-district Open Enrollment Policy

A district student attending his/her neighborhood school may enroll in another district school pursuant to the intra-district open enrollment policy in conjunction with Program Improvement under No Child Left Behind. Any PI school receiving Title I funding for Program Improvement under No Child Left Behind must identify a non-PI school within the district that has a higher API score and offer their students the option of transferring to that school.

More than one choice option must be offered, if possible, and parent preferences must be considered when determining the choice options. Note that in most circumstances, the district may not deny such an intra-district transfer request.

(See 20 USC §§ 6316(b)(1)(E) and 6316(b)(5)(a); 34 CFR § 200.44(a); CSBA Model AR 0520.2; Educ. Code § 35160.5(b); CSBA Model AR 5116.1.)

C. Open Enrollment Act Transfers Pursuant to an Inter-district Attendance Agreement

A student may enroll in a school outside the district under an inter-district attendance agreement in conjunction with the Open Enrollment Act. A student in a school on California's list of 1,000 lowest achieving schools may transfer to another school with a higher API in the school district or, if none, in a nearby district. Once enrolled at a school pursuant to an inter-district transfer, the transferring student may remain at that school unless the inter-district attendance agreement between the two school districts expressly provides otherwise. The sending district may not deny the transfer request. The receiving district, however, may deny the transfer request. The county board of education may overrule a denial.

(See Educ. Code §§ 48350-48361; 5 CCR §§ 7400-4705; CSBA Model BP/AR 5118.)

D. Unsafe School Choice Transfers via an Intra-district Open Enrollment Policy

Students who become a victim of a violent criminal offense on school grounds or whose neighborhood school has been classified as “persistently dangerous” must be given an intra-district transfer option to a “safe” school within the district.

(See 20 USC § 7912; 5 CCR §§ 11992 and 11993; CSBA Model BP/AR 5116.1.)

IV. ALTERNATIVES TO TRADITIONAL PUBLIC SCHOOLS

A. Charter Schools

Governed by the Education Code, but free of most of the Code's restrictions, teachers, parents, community groups and school districts are starting an increasing number of charter schools in California. The two main forms of charter schools are classroom-based or non-classroom-based instruction. The attendance rules are different for each form, with classroom-based charter schools having few attendance rules based on residency. Especially in urban communities with multiple school districts, a student can elect to attend any classroom-based program the student is willing to travel to, no matter how far away. Transportation, typically, is the obligation of the family choosing to join the charter school, unless the charter indicates otherwise.

While attendance in a charter school is not dependent on the residence of the student, many charter schools have legally established admissions priorities that may impact a student's ability to enroll in a charter school. Such priorities may include residency within the territory of the charter granting agency, relationships to existing students or school staff or school promoters. Where more students desire to enroll than the school can handle, a lottery system is required to provide equal opportunity to all, but the adopted priorities still play a role in that process.

Non-classroom-based instruction, commonly referred to as "independent study" and taking place primarily at home or outside the traditional classroom-based school setting, is permitted anywhere in the county where the school is authorized, or in any adjacent county. This permits some charter schools to serve as many as nine different counties, as is possible with a school chartered by an agency in Kern County. The non-classroom-based instruction means any form of instruction that does not meet the definition of classroom-based instruction.

(See Educ. Code §§ 47600-47663; 5 CCR § 11963.)

B. Private Schools

Children who are being instructed in a private full-time day school by persons capable of teaching shall be exempted. Such school shall (except for a "Heritage School" under Section 33195), be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of the state. The attendance of the pupils shall be kept by private school authorities in a register, and the record of attendance shall indicate clearly every absence of the pupil from school for a half day or more during each day that school is maintained during the year.

Exemptions under this section shall be valid only after verification by the attendance supervisor of the district, or other person designated by the board of education, that the private

school has complied with the provisions of Section 33190 requiring the annual filing by the owner or other head of a private school of an affidavit or statement of prescribed information with the Superintendent of Public Instruction. The verification required by this section shall not be construed as an evaluation, recognition, approval, or endorsement of any private school or course.

(See Educ. Code §§ 33190 and 33195.)

C. Mentally Gifted Students

Children who are mentally gifted may be taught in a private full-time day school by persons capable of teaching. All or parts of the various courses required to be taught in traditional public schools must be taught in a foreign language, but not less than 50 percent of the total daily instructional time must be taught in the English language.

(See Educ. Code § 48223.)

D. Private Tutors

As an alternative to a private school, children may be instructed by a private tutor, who must hold a valid state credential for the applicable grade level. The instruction cannot be part of a private school program, and must be for at least three hours a day for at least 175 days each calendar year, including instruction in the “several branches of study required to be taught in the public schools” and in the English language. The instruction must be offered between the hours of 8 a.m. and 4 p.m.

(See Educ. Code § 48224.)

E. Homeschooling

The concept of homeschooling is traditionally found in one of two forms, either performed by a parent who files the same private school affidavit each year, or by parents who simply teach their child at home. Both are found in California, although there is little law on the subject of parental home schools without filing as a private school. If the parent is a credentialed teacher, legitimacy is found under the “Private Tutor” authority of Section 48224.