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## Residency and Interdistrict Transfer Options

Siskiyou County Office of Education

Yreka, California

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**Legal Citation**

Education Code § 48200

“Each person between the ages of 6 and 18 years not exempted under the provisions of this chapter or Chapter 3 (commencing with Section 48400) is subject to compulsory full-time education. Each person subject to compulsory full-time education and each person subject to compulsory continuation education not exempted . . . shall attend the public full-time day school or continuation school or classes and for the full time designated as the length of the schoolday by the governing board of the school district in which the residency of either the parent or legal guardian is located and each parent, guardian, or other person having control or charge of the pupil shall send the pupil to the public full-time day school or continuation school or classes and for the full time designated as the length of the schoolday by the governing board of the school district in which the residence of either the parent or legal guardian is located. . . .”

# Residency

Generally, the residency of a student’s parent or legal guardian controls which school district a student must attend. (Ed. Code, § 48200.) Outside of a student’s parent or legal guardian’s residency, there are certain other bases to establish residency, such as the location of a licensed children’s institution, foster home, or family home in which a student has been placed. (Ed. Code, § 48204, subd. (a).) Additionally, an emancipated minor residing in a school district’s boundaries establishes residency in that district; a student residing with a caregiver (with affidavit) within the district’s boundaries establishes residency for that district; and a student placed in a state hospital within the district’s boundaries establishes residency for that district. Outside of these methods for establishing residency and, correspondingly, the school district that a student must attend, there exists several interdistrict transfer options that allow students to attend a school district that they are not technically residents of. These statutory bases for interdistrict transfers and attendance are the only legally established bases to attend a school district other than a student’s district of residence.

**Legal Citation**

Education Code § 46600(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 . . . .”

**Legal Citation**

Education Code § 48204(b)

“A school district may deem a pupil to have complied with the residency 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.”

# Interdistrict Transfer Options

- **Interdistrict Transfer Permits**

Education Code section 46600, subdivision (a), provides that the governing boards of two or more school districts may enter into an agreement, for a term of no more than five school years, for the interdistrict attendance of students who are residents of the districts. Section 46600 further requires that the agreement stipulate the terms and conditions on which the interdistrict attendance will be permitted or denied. (Ed. Code, § 46600, subd. (a).) The statute does not specify the grounds on which school districts may enter into interdistrict attendance agreements. Consequently, the terms and conditions for an interdistrict transfer are primarily up to the discretion of a school district’s governing board, and there is no single factor that requires the acceptance or rejection of a transfer. (See *id.*) Many districts list the conditions on which they will accept an interdistrict attendance request in their board policies or administrative regulations.

As with acceptance of interdistrict transfers, schools enjoy wide discretion in setting the terms for rejection and revocation of an interdistrict transfer. (See *id.*) However, rejection and revocation of interdistrict transfers cannot be based on any discriminatory or other unlawful basis. If either the sending or receiving district denies a parent’s request to transfer, the parent may appeal to the County Board of Education. If multiple counties are involved, the sending district’s county board hears the appeal. (Ed. Code, § 46601.)

- **Allen Bill Transfers**

A second interdistrict transfer option is provided for under the “Allen Bill” and Education Code section 48204, subdivision (b). Reference to Allen Bill transfers as an interdistrict transfer option is partially a misnomer, however, as the Allen Bill in essence provides for an alternative basis for a student to establish his or her residency and concomitant school district of residence. As such, in addition to establishing residency under one of the five categories enumerated in Education Code section 48204, subdivision (a), a student may be deemed to comply with the residency requirements for attendance in a district based on his or her parent or guardian’s employment in the district.

Education Code section 48204, subdivision (b), commonly referred to as the “Allen Bill,” was reauthorized by the Legislature and signed into law by the Governor on July 6, 2007. The Legislature extended the Allen Bill through June 30, 2012. In reauthorizing the Allen Bill, the Legislature added a new requirement that the parent or guardian must be physically employed in the district in order for a student to be eligible for residency under the Allen Bill. While the Legislature did not

## Legal Citation

Education Code § 48204(b)(1)-(4)

“(1) This subdivision does not require the school district within which at least one parent or the legal guardian of a pupil is employed to admit the pupil to its schools. A school district shall not, however, refuse to admit a pupil under this subdivision on the basis, except as expressly provided in this subdivision, of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.

(2) The school district in which the residency of either the parents or the legal guardian of the pupil is established, or the school district to which the pupil is to be transferred under this subdivision, may prohibit the transfer of the pupil under this subdivision if the governing board of the district determines that the transfer would negatively impact the court-ordered or voluntary desegregation plan of the district.

(3) The school district to which the pupil is to be transferred under this subdivision may prohibit the transfer of the pupil if the district determines that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer.

(4) The governing board of a school district that prohibits the transfer of a pupil pursuant to paragraph (1), (2), or (3) is encouraged to identify, and communicate in writing to the parents or the legal guardian of the pupil, the specific reasons 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.

specify what it means to be “physically employed” in a school district, this language is generally interpreted to mean that a parent has a physical workplace located in the school district which he or she regularly occupies.

Unlike the other enumerated ways to establishment of residency under Education Code section 48204, subdivision (a), which requires a district to accept as a resident any student who falls within one of the five enumerated categories, a school district has discretion under the Allen Bill whether or not to grant residency to a student based on parental employment. If a school district elects to grant residency to students based on parental employment, there are various statutory requirements related to such residency.

Section 48204, subdivision (b)(1), gives a receiving district the authority to deny Allen Bill transfers on any non-discriminatory and non-arbitrary basis. A receiving district may also prohibit the transfer if the additional cost of educating the student would exceed the amount of state aid received as a result of the transfer. (Ed. Code, § 48204, subd. (b)(3).) In terms of both sending and receiving schools under the Allen Bill, subdivision (b)(2) of section 48204 provides that a school district may prohibit a student from establishing residency and transferring under the Allen Bill if the district’s governing board determines that the transfer would negatively impact a court-ordered voluntary desegregation plan.

Finally, Education Code section 48204, subdivision (b)(6)(A)-(C), limits the number of students who may transfer out of a school district by establishing “net transfer” caps, which a sending school may waive by approving an Allen Bill transfer. A “net transfer” is calculated as the difference between the number of students exiting the district and the number of students entering the district in excess of 5 percent of the average daily attendance (“ADA”) for districts with an ADA for that fiscal year of less than 501 students, in excess of 3 percent of the ADA or 25 students, whichever is greater, for a district with an ADA of more than 501 but less than 2,501, or 1 percent of the ADA or 75 students, whichever is greater, for a district with ADA over 2,501.

The base year ADA for calculating the “net transfer” is the district’s ADA in the school year immediately prior to the school year in which the transfer would take effect. Otherwise, there is some ambiguity regarding the calculation of a “net transfer” change under the Allen Bill, and whether the net transfer calculation takes into consideration only Allen Bill transfers in and out of a sending school district or all interdistrict transfers in and out of a sending school district. The California Department of Education has not taken a position on which interpretation is accurate.

This said, because the law references a “net transfer,” as opposed to a net transfer of specifically Allen Bill transfers in and out of the school district, it is more likely that all interdistrict transfers in and out of the

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sending school district is the proper measure for calculating the net transfer cap. Under this view, for example, if a school district has 100 students, and five students transfer out of the district by way of any interdistrict transfer option, the sending school district has the authority to deny any further Allen Bill transfers out of the district, unless and until one or more students transfer into the district by way of any interdistrict transfer option.

Significantly, if a student is granted residency and a transfer under the Allen Bill, the student is not required to reapply annually for attendance and may continue his or her enrollment in the district if the parent or guardian so chooses and at least one parent or guardian of the student continues to be physically employed in the district. (Ed. Code, § 48204, subd. (b)(7).) Thus, when a district accepts Allen Bill students as residents for enrollment purposes, these students must be allowed to attend school in the district, without reapplying, until the students' parent or legal guardian ceases to be employed in the district or otherwise elects to remove the student from the district.

- **School District of Choice**

Education Code sections 48300 to 48315 establish the School District of Choice ("SDC") interdistrict transfer option, which allows a school district to accept interdistrict transfers, subject to certain conditions, separate and apart from the interdistrict transfer agreement and Allen Bill transfer alternatives. The SDC transfer option previously limited the number of school districts that could elect to be an SDC and was set to expire on January 1, 2010. However, Senate Bill 680, signed by Governor Schwarzenegger in October 2009, extended the option to January 1, 2017 and amended several Education Code provisions related to the option. (Ed. Code, § 48301, subd. (a).)

While a school district must formally elect to become a SDC, there are no specific notice or hearing requirements to become an SDC. The district electing to become an SDC must simply adopt a resolution to that effect. The resolution may state the number of transfers the district is willing to accept as an SDC and must provide that students will be selected through a random, unbiased process that prohibits an evaluation of whether or not the student should be enrolled based upon his or her academic or athletic performance. (Ed. Code, § 48301, subd. (a).) If the number of transfer applicants exceeds the number of transfer students the district has elected to admit, transfers must be determined by a public drawing. (*Id.*)

**Legal Citation**

Education Code § 48300 et seq.

The SDC transfer process is as follows:

- The parent or guardian of the student must submit an application to the SDC prior to January 1 preceding the school year in which the student will attend the SDC (Ed. Code § 48308(a)(1)-(2).) This deadline may only be extended or waived by agreement of both the SDC and the district of residence "(DOR)" (Ed. Code, § 48308, subd. (a)(1));
- The SDC may inform the parent or guardian within 90 days of the application whether the student has been provisionally accepted or rejected for transfer, or put on a waiting list (Ed. Code, § 48308, subd. (c));
- The SDC must provide final notice of acceptance or denial to the parent or guardian by May 15 following the January 1 deadline (*id.*); and
- Acceptance is effective for one school year but is automatically renewed each year unless the SDC withdraws, by resolution, from the SDC transfer program.

The SDC must give priority for attendance to siblings of children already in attendance in the SDC, and it may also give transfer preference to children of military personnel. (Ed. Code, § 48306, subd. (a)-(b).) Upon request of the student's parent and to the extent it otherwise provides transportation, the SDC may provide the student with transportation assistance within the boundaries of the SDC. (Ed. Code, § 48311.) Finally, in communicating with parents or guardians of students from outside the SDC, the SDC must "be factually accurate and not target individual parents or guardians or residential neighborhoods on the basis of a child's actual or perceived academic or athletic performance or any other personal characteristic." (Ed. Code, § 48301, subd. (d).)

Under the SDC program, a school district of residence may not adopt policies that block or discourage students from applying for transfer to an SDC. (Ed. Code, § 48301, subd. (c).) The SDC transfer option does, however, permit a district of residence to impose certain limits on SDC transfers. Specifically, as a district with below 50,000 in ADA, may limit the number of students transferring to a SDC on the following bases: (1) When the number of students transferring out to a SDC exceeds 3% of the district of residence's current year estimated ADA; (2) When the number of students transferring out to a SDC exceeds 10% of ADA of the district of residence for the duration of the SDC program's existence; (3) When the school district of residence is in negative or qualified status on its most recent budget certification; (4) An district of residence may limit transfers to a number identified by the County Superintendent of a Schools, if the County Superintendent determines that the district of residence will not meet the standards and criteria

## Legal Reference

Other than for purposes of a court-ordered desegregation plan, limiting transfers on the basis of race or ethnicity are likely unconstitutional under Proposition 209 and the California Constitution. (See *Crawford v. Huntington Beach Union High School Dist.* (2002) 98 Cal.App.4th 1275, 1286.)

## Legal Citation

Education Code § 48351

“The purpose of this article is to improve pupil achievement, in accordance with the regulations and guidelines for the federal Race to the Top Fund, authorized under the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and to enhance parental choice in education by providing additional options to pupils to enroll in public schools throughout the state without regard to the residence of their parents.”

for fiscal stability for the subsequent fiscal year due to the impact of transfers in that fiscal year; and/or (5) If a school district of residence’s governing board determines that allowing a student or students to transfer to a SDC would negatively impact a court-ordered desegregation plan, a voluntary desegregation plan, or the racial and ethnic balance of the school district of residence. (Ed. Code, §§ 48301, subd. (b)(1)-(3), 48307, subd. (b)-(d).)

Finally, the SDC transfer option requires a parent to submit an application to the SDC prior to January 1 preceding the school year for which the parent is requesting enrollment. The SDC transfer statutes define an SDC as “a school district for which a resolution is in effect . . . .” (See Ed. Code, § 48300, subd. (a), emphasis added.) To extent a school district has not elected to become an SDC by January 1 prior to the following school year, a school district cannot thereafter elect to become a SDC and accept SDC transfers for the following school year. For example, if a school district elects to become a SDC after January 1, 2010, the soonest school year for which the District could accept transfers as a SDC would be for the 2011-2012 school year, applications for which would be due by January 1, 2011.

### • Romero Bill Transfers

The Romero Bill transfer option, also known as Open Enrollment Act (Education Code section 48350 et seq.), is the newest to the menu of interdistrict transfer alternatives. Although initially adopted as part of the State’s attempt to obtain federal Race to the Top (“RTTT”) funds, it currently appears that the Romero Bill will in fact remain in effect despite California’s failure to receive RTTT funds to date.

The Romero Bill allows pupils attending one of a list of 1,000 low achieving schools, identified by the State based on the school’s Academic Performance Index (“API”) ranking, to transfer to a school in another school district not on the list of low-achieving schools and which has a higher API ranking. The list of 1,000 lowest performing schools excludes alternative schools such as community day and charter schools, and schools that would result in a given school district having more than 10% of its schools on the “low performance”/open enrollment school list.

For purposes of the 2010-2011 school year, by the first day of the school year and no later than September 15, 2010, school districts of residence with schools on the list must notify students of their transfer rights. The issuance of finalized 2010 API data later this month and a new open enrollment list generated based upon this data will trigger the obligation to issue notices to students of their transfer rights for the 2011-2012 school year to students attending schools on the new list.

School districts of residence may only prohibit students from transferring to another district under the Romero Bill if allowing the transfer would negatively impact a court-ordered or voluntary desegregation plan or the racial and ethnic balance of the district, so long as such action is consistent with State and federal law. As with similar statutory language for the School District of Choice program, a district runs the risk of legal challenge for denying transfers on the basis of race or ethnicity due to California Constitution, Article I, Section 31, otherwise known as Proposition 209, which prohibits preferential treatment on the basis of race and other factors in public education. School districts of residence are otherwise excluded from adopting any policy that prevents or discourages students from seeking to transfer under the Romero Bill.

The Romero Bill identifies school districts that a student may seek to transfer into as “school districts of enrollment,” which is a school district other than the student’s district of residence. All potential school districts of enrollment (which includes all school districts) must develop specific written standards regarding the acceptance and rejection of transfer students under the law. Such standards “may include consideration of the capacity of a program, class, grade level, school building, or adverse financial impact.” All school district communications regarding the Romero Bill must be factually accurate, and districts of enrollment cannot target their Romero Bill communications to specific individuals, families, or residential neighborhoods, or on the basis of students’ actual or perceived academic or athletic performance, or any other personal characteristic.

Any exercise of discretion by a school district under the Romero Bill, including presumably the decision to deny an Romero Bill transfer based on lawful factors may not be overturned absent the finding by a court (as opposed to the County Office of Education) that the school district acted arbitrarily or capriciously. This means that the County Office of Education cannot review Romero Bill transfer decisions, but students may challenge the denial of Romero Bill transfers in court, likely by way of a writ proceeding.

For the 2010-2011 school year, school districts are not required to accept Romero Bill transfer applications. Rather, only school districts that elect to waive the January 1, 2010 deadline for Romero Bill applications need accept transfers for this school year. In future years, and to the extent school districts receive Romero Bill applications for the 2011-2012 school year, while giving preference to students of residence, the prevailing interpretation is that school districts must accept such Romero Bill applications, absent a showing of a lack of capacity in a district, school, or class, or another “adverse impact” on the school district, school districts will have to accept Romero Bill student transfers.

Standards for acceptance of Romero Bill transfers “shall not include consideration of a pupil’s previous academic achievement, physical

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condition, proficiency in the English language, family income, or any of the individual characteristics set forth in Section 200” of the Education Code, such as race, ethnicity, gender, sexual orientation or religion. The Romero Bill sets forth a priority of enrollment to be applied when there is an excess of Romero Bill transfer students seeking admission into a district of enrollment. When transfers to a specific school of a district of enrollment exceed available space the district of enrollment must conduct a lottery for the random selection of students.

Other considerations under the new law include coordination of the timelines under which school districts process open enrollment application for their students of residence. The Romero Bill calls for school districts to allow open enrollment transfers for students of residence into a different school in their district before the district accepts non-resident student transfers under the Romero Bill. However, Romero Bill transfer applications are due by January 1 preceding the school year in which the student would transfer, and school districts must provide a response to the applicant within 60 days. To the extent a school district may waive the January 1 deadline, one option is to waive the deadline out to February or March 1, 2011, for example, and create an application window period of one to two months, thus allowing the school district to make its traditional open enrollment intradistrict transfer decisions first, giving preference to students of residence, and then turning to Romero Bill transfer applications. This said, while the pending final Romero Regulations do not address this issue, the final regulations adopted by the State Board of Education may be changed to do so.

Once a student’s transfer application is accepted, the Romero Bill appears to relieve students from the obligation of submitting a new application in subsequent years. The proposed final regulations make this explicit. In other words, although a student of residence cannot be displaced because of an initial Romero Bill transfer application by a non-resident student, much like an open enrollment transfer by a student of residence to another school within the student’s district of residence, a successful Romero Bill transfer applicant is presumed to be enrolled in their transfer school thereafter, without the need for any further applications. It is unclear under the law whether a student who successfully transfers to another elementary school district under the Romero Bill must then return to their high school district of residence upon enrollment into high school, or whether they may attend the high school district into which the student’s “open enrollment district” elementary school district feeds.

**Legal Citation**

Education Code § 47605

- **Charter Schools**

Another transfer option that may result in students transferring from a school in one district to a school located within the boundaries of another school district is a transfer to a charter school. Education Code section 47605, subdivision (d)(1), reads, “admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or legal guardian, within this state . . . .” Further, “[a] charter school shall admit all pupils who wish to attend the school.” (Ed. Code, § 47605, subd. (d)(2).) However, if the charter school’s attendance is at capacity, preference is given to district residents and those students who already attend the school. (Ed Code, § 47605, subd. (d)(3).)

All told, these provisions stand for the proposition that non-district residents may attend a charter school without having to go through the interdistrict transfer process. All that is necessary and as a prerequisite is that the students/their parents are California residents. This applies to both “dependent” charter schools (charters operated and governed by school districts, themselves) and “independent” charter schools (charter schools operated and governed by non-profit corporations, with school district oversight).

### Legal Citation

Education Code § 46601(a)

"The person having legal custody may appeal, within 30 calendar days of the failure or refusal to issue a permit, or to enter into an agreement allowing the attendance, to the county board of education having jurisdiction over the district of residence of the parent or legal guardian or person having legal custody. Failure to appeal within the required time is good cause for denial of an appeal. An appeal shall be accepted only upon verification by the county board's designee that appeals within the districts have been exhausted. 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. In all other cases, the appeal shall be granted or denied on its merits."

### Legal Citation

Education Code § 48361

"No exercise of discretion by a district of enrollment in its administration of this article shall be overturned absent a finding as designated by a court of competent jurisdiction that the district governing board acted in an arbitrary and capricious manner."

## Appeal Rights

For interdistrict transfer permits under Education Code section 46600 et seq., students denied an interdistrict transfer may appeal the denial to the County Office of Education. There is no other express appeal right in terms of any of the other interdistrict transfer options. In fact, under the Romero Bill, students that dispute the denial of an interdistrict transfer application may only seek remedy in the courts.

This said, to the extent a student transfers to another district, if an interdistrict transfer agreement is not in place, and there lack any other valid justification for the transfer under the other interdistrict transfer laws and options, a sending school arguably may seek relief or a decision from the County Board of Education of the impropriety of the transfer.

Outside of the above circumstances, the measure of relief for school districts is through the judicial relief, most likely in form of declaratory, injunctive or writ relief.