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OPAD 16-25

To: District Superintendents  
Regional Occupational Program Superintendents  
Assistant Superintendents of Business  
Assistant Superintendents of Human Resources  
Assistant Superintendents of Instruction  
Directors of Child Welfare and Attendance

From: Ronald D. Wenkart  
General Counsel

Re: Interdistrict Permits, Student Residency Based on Parental Employment (Allen Bill),  
School Districts of Choice and Open Enrollment Act

The Legislature has enacted four separate statutory schemes relating to interdistrict attendance. These statutory schemes overlap and are not necessarily mutually exclusive.<sup>1</sup>

In addition, a separate statutory scheme regulates intradistrict transfers within a school district.<sup>2</sup> Districts typically grant intradistrict transfers prior to granting interdistrict transfers. This practice is consistent with state law.

First, a system of interdistrict permits found at Education Code section 46600 et seq. Second, a system by which students may obtain residency in a school district based on parental employment found in Education Code section 48204. Third, school districts may, but are not required to, adopt a resolution to become school districts of choice found at Education Code section 48301 et seq. Fourth, the most recent legislation is the Open Enrollment Act which begins with Education Code section 48350.

Effective January 1, 2011, Education Code section 46600 was amended.<sup>3</sup> Section 46600 authorizes school districts to enter into interdistrict attendance agreements and to stipulate the terms and conditions under which interdistrict attendance will be permitted or denied. The

<sup>1</sup> This memo updates our memo on the same subject dated July 18, 2013 (OPAD 13-19).

<sup>2</sup> See, Education Code section 35160.5(b).

<sup>3</sup> Stats. 2010, ch. 263 (A.B. 2444).

agreement may contain standards for reapplication agreed to by the district of residence and the district of attendance, and may stipulate terms and conditions established by the district of residence and the district of enrollment under which the permit may be revoked.<sup>4</sup> If the interdistrict attendance agreements do not stipulate such terms and conditions the provisions of Section 46600(a)(1) apply and once a pupil in Kindergarten or any of grades 1 to 12, inclusive, is enrolled in school pursuant to an interdistrict permit, the pupil does not have to reapply for an interdistrict transfer and the governing board of the school district must allow enrollment to continue in the school in which he or she is enrolled.

However, if the two districts involved have entered into interdistrict attendance agreements which contain standards for reapplication which require reapplication each year, the districts may enforce these provisions and require students to reapply for interdistrict attendance permits each year. However, the reapplication provisions of the interdistrict attendance agreement cannot be applied to students entering grades 11 or 12 in the subsequent school year and these students cannot be required to reapply each year. The addition of this language to Section 46600 also prohibits districts from enforcing attendance and behavior requirements for 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> grade students by revoking the interdistrict attendance agreements. However, districts may suspend or expel 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> grade students on interdistrict transfer permits under Education Code section 48900.

In summary, districts may continue to grant interdistrict permits in grades K-9 for a one year period and may revoke interdistrict permits or refuse to renew interdistrict permits for students in grades K-9 pursuant to the terms and conditions set forth in the interdistrict attendance agreements.<sup>5</sup>

Effective July 1, 2012,<sup>6</sup> Education Code section 46600(b) states that 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, as defined in Education Code section 48900(r), committed by a pupil of the district of residence shall, at the request of the person having legal custody of the pupil be given priority for interdistrict attendance. The statute does not define the level of evidence or proof needed to determine whether bullying has occurred and leaves the determination of bullying to the discretion of the school district. Education Code section 48900(r) states:

“(r) Engaged in an act of bullying. For purposes of this subdivision, the following terms have the following meanings:

(1) “Bullying” means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic

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<sup>4</sup> Education Code section 46600(a)(2).

<sup>5</sup> Since 10<sup>th</sup> grade students would be entering 11<sup>th</sup> grade in the subsequent school year, 10<sup>th</sup> grade students cannot be required to reapply and cannot have their interdistrict permits revoked.

<sup>6</sup> Stats. 2011, ch. 232 (A.B. 1156), Section 5, operative July 1, 2012.

act, and including one or more acts committed by a pupil or group of pupils as defined in Section 48900.2, 48900.3, or 48900.4, directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following:

(A) Placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property.

(B) Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health.

(C) Causing a reasonable pupil to experience substantial interference with his or her academic performance.

(D) Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.

(2)(A) "Electronic act" means the transmission, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:

(i) A message, text, sound, or image.

(ii) A post on a social network Internet Web site including, but not limited to:

(I) Posting to or creating a burn page. "Burn page" means an Internet Web site created for the purpose of having one or more of the effects listed in paragraph (1).

(II) Creating a credible impersonation of another actual pupil for the purpose of having one or more of the effects listed in paragraph (1). "Credible impersonation" means to knowingly and without consent impersonate a pupil for the purpose of bullying the pupil and such that another pupil would reasonably believe, or has reasonably believed, that the pupil was or is the pupil who was impersonated.

(III) Creating a false profile for the purpose of having one or more of the effects listed in paragraph (1). "False profile" means a profile of a fictitious pupil or a profile using the likeness or attributes of an actual pupil other than the pupil who created the false profile.

(B) Notwithstanding paragraph (1) and subparagraph (A), an electronic act shall not constitute pervasive conduct solely on the basis that it has been transmitted on the Internet or is currently posted on the Internet.

(3) “Reasonable pupil” means a pupil, including, but not limited to, an exception needs pupil, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with his or her exceptional needs.”

Our office has previously sent out memoranda summarizing the provisions of these statutes.<sup>7</sup> We thought it would be helpful to provide a question and answer summary of all of these provisions which we have attached. It should be noted that legislation is typically introduced in the Legislature each year to amend the interdistrict permit, student residency based on parental employment and other related provisions. We will keep districts updated on any future changes.

This memo is intended as general information and does not constitute legal advice. If you have questions regarding this issue, please do not hesitate to contact our office.

RDW:bjf  
Attachment

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<sup>7</sup> See, Memorandum dated September 4, 2008 (OPAD 08-31), October 17, 2008 (OPAD 08-34), October 28, 2009 (OPAD 09-65), January 29, 2010 (OPAD 10-06), April 5, 2010 (OPAD 10-18), May 19, 2011 (OPAD 11-31), and July 18, 2013 (OPAD 13-19).