
The Board's Consideration of the Appeal:

1. If any of the following conditions exist, the County Board may deny the appeal:
 - a. The pupil is under suspension or expulsion from any school district.
 - b. Attendance of pupil from out of district will increase a district's class size above the maximums.
 - c. Pupil, parent or guardian have falsely claimed residence in a district for the purpose of school attendance in that district.
 - d. Pupil, parent or guardian have not exhausted the interdistrict appeal process in the denying district.
 - e. Pupil, parent or guardian have not shown that attendance at the requested district is necessary.
2. The County Board will consider the following conditions:
 - a. The welfare of the pupil will be kept foremost.
 - b. A substantial and manifest improvement in educational services would result if the pupil attended a district other than district of residence.
 - c. A substantial danger to the pupil's health or safety exists in the district of residence.
 - d. Graduation with class.
 - e. Verified inability of a district to meet specific educational needs of the child.
 - f. Child care needs of the pupil.
3. The County Board may also consider the following welfare and concerns of other family members:
 - a. Substantial hardship or cost of before- and/or after-school supervision or transportation.
 - b. Relationship to health or welfare of other members of the pupil's family.

Interdistrict Attendance Appeal

A Guide for Parents

This guide contains information that will assist you with your Appeal before the Merced County Board of Education.

It is the intent of the County Board to conduct the hearing in a fair and informal manner to encourage open communication and understanding of the system. No special legal expertise is necessary and you will have the opportunity to present your case fairly and completely; however, the law does provide that you may have legal counsel or an advocate present if you wish, although formal hearing procedures are not in effect.

Merced County Office of Education
632 West 13th Street
Merced, CA 95341
(209) 381-6601

Steve M. Tietjen, Ed.D.
County Superintendent of Schools

What Happens at the Hearing?

- The hearing will be conducted in open session, unless you request at least 48 hours in advance of the hearing that the hearing be held in closed session. If the hearing is held in open session, any discussion which conflicts with the rights of privacy of any student other than the student on whose behalf the public meeting was requested shall be conducted in closed session.
- Families with multiple appeals may have them heard separately or as one. Please understand that if you have all your children's appeals heard as one, there will only be one decision affecting all the children.

Procedure for the Hearing:

1. After introduction of all parties, the County Board Secretary will swear in all parties and conduct the hearing as follows:
2. You will be invited to state the reasons for believing the appeal should be granted. You may also ask others to speak for you if they have pertinent information or arguments to introduce. School district representatives and the County Board may ask questions of you.
3. The representative(s) of the school district that denied the request will be invited to present the district's reasons for denial. You may ask questions. The County Board may ask questions concerning the statements made.
4. The representative of the other district involved may similarly present material.
5. The County Board may call for additional testimony or documentary evidence, as it deems necessary.
6. You will be given the opportunity to make a summary; the same opportunity will be offered to the school district representatives. The County Board may ask questions.
7. If new information is presented that has not been considered at the local level, the matter may be returned to the school district for reconsideration.
8. If a closed hearing is held:
 - a. The County Board Chair will excuse the public not involved in the hearing and conduct the hearing in closed session.

Procedure (continued)

- b. Upon completion of the hearing, the County Board Chair will return the hearing to open session and the Board will deliberate the matter.
9. If an open hearing is requested, the County Board will hear and deliberate the matter in open session.
10. When deliberations are complete, the County Board Chair will call for a motion and vote. At least three members must vote "yes" for appeal to be granted.
11. If the appeal is approved, the length of time of the interdistrict transfer will be for the remainder of the current school year.
12. A written statement of the County Board's action will be mailed to you and to each of the districts involved.
13. The hearing will be recorded.

Guidelines:

- A. With few exceptions, children should attend school in the district of residence. Any request for attending school in another school district should be based upon exceptional circumstances unique to the child concerned.
 - B. It is noted that the changing of schools due to family moves often produces anxiety in children and is viewed as a normal situation that is a natural part of growing up. It often results in positive social and emotional growth and is not cause, in and of itself, for the granting of an interdistrict attendance request.
 - C. Other frequently stated reasons for requesting out of district attendance includes a parent's perception that one school district is better than another, convenience of transportation, continuance of social contacts and the proximity of a parent's work place. None of these should be cause for granting such a request unless it can be clearly demonstrated that there are exceptional circumstances unique to the child concerned that justify disrupting the normal pattern of school attendance.
 - D. It should be noted that each school district establishes its own policy. In considering appeals, the County Board follows its own policy and not the policies of the districts concerned.
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MERCED COUNTY BOARD OF EDUCATION

***Appeal of Denial of
Interdistrict Attendance Request***

To Be Filed With: *County Superintendent of Schools
Merced County Office of Education
632 West 13th Street
Merced, CA 95341*

This appeal must be delivered, by mail or in person, to the address shown within thirty (30) calendar days after denial of the request for interdistrict attendance by either district.

Name of person(s) making appeal:		
Address:	City:	Zip: Phone number:
Student's name:		
School attending:	Grade:	
School district:		
District of residence :		
Has application been filed with district of residence: Yes: () No: ()		
Has application been acted upon? Yes: () No: ()	If yes, was it Approved () Denied ()	
District of desired attendance:		
Has application been filed with district of desired attendance: Yes: () No: () If yes, who did you speak with?		
Has application been acted upon? Yes: () No: ()	If yes, was it Approved () Denied ()	
Reasons for request: <i>(Attach additional sheets if necessary. Also attach any supporting documentation.)</i>		
Please indicate if you want your appeal heard in open or closed session. If you do not specifically request a closed session, it will be heard in open session. A closed session is normally held when the case of the person appealing includes allegations against staff members and/or other students, or when the case is such that it will require using information of a personal nature concerning the pupil requesting the transfer. Since this appeal could involve a discussion about your child's health, security or confidential school records the County Superintendent recommends you request a closed hearing.		Please schedule my hearing: Closed () Open ()
Date:	<i>I certify that the foregoing is true and accurate to the best of my knowledge.</i> Signature of Guardian:	

Receipt of a copy of the foregoing is acknowledged this _____ day of _____, 20_____

Merced County Superintendent of Schools

<p>1. Have you completed an application at both districts? _____ _____ _____</p>
<p>2. Is the appeal to Merced County Office of Education filed within 30 calendar days? _____ _____ _____</p>
<p>3. Is the interdistrict transfer request based on severe hardship to pupil/parent child care needs? _____ _____ _____</p> <p>Needs would include:</p> <ul style="list-style-type: none"><input type="checkbox"/> Before/after school child care<input type="checkbox"/> Transportation<input type="checkbox"/> Other
<p>4. Does the student currently attend the desired district? _____ _____ _____</p> <p>If so, how long? _____ _____</p>
<p>5. Does the student have siblings in the desired school? _____ _____ _____</p>
<p>6. Is this transfer request necessitated by a family relocation? (i.e. moved to new house, divorced) _____ _____ _____</p>
<p>7. Is this student currently an 8th or 12th grader in the desired district? _____ _____ _____</p>
<p>8. Is the student currently under order of suspension or expulsion from current district/school? _____ _____ _____</p>
<p>9. Is the student currently under the SELPA placement IEP? _____ _____ _____</p>

INTERDISTRICT ATTENDANCE APPEALS

I. INTRODUCTION

- A. This bylaw shall apply only to appeals that arise from an application made by a parent, guardian, or other legal custodial person of a student to have that student attend a school in a district that is not located in the child’s district of residence. (Education Code 46600-46611)
- B. This bylaw does NOT apply to interschool transfers within a school district. (Education Code 35160.5(b))
- C. This bylaw does NOT apply to the so called “Allen Bill” transfers. (Education Code 48204) This provision of law is not technically about transfers as it is a list of alternative methods for meeting residency requirements. The “Employment with the District” residency alternative expires July 1, 2012.
- D. This bylaw does NOT apply to District of Choice transfers. (Education Code 48300)
- E. Finally, this bylaw does NOT apply to transfers from a school or district identified for improvement under Federal law (Elementary and Secondary Education Act of 1965 as amended by No Child Left Behind Act of 2001 referring to schools that are identified as underperforming).

II. BEGINNING THE APPEAL PROCESS

- A. JURISDICTION – County Board Authority
 - 1. The County Board shall consider an appeal against any school district within the county for its failure or refusal to issue an interdistrict attendance permit to a student, or for its failure or refusal to enter into an interdistrict attendance agreement with another school district for the student’s attendance. (Education Code 46601)
 - 2. If the request for interdistrict attendance involves a school district located within the 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)

INTERDISTRICT ATTENDANCE APPEALS

3. *Comment:* Some parents or custodians of children may be tempted to contact only one school district to being this process and if a denial of the transfer request is made to file an appeal. The Merced County Board of Education encourages all persons seeking an interdistrict transfer under Education Code 46600-46611 to file the transfer application with both the district of residence and the district desired enrollment. An appeal after application to only one district can result in duplicated and potentially wasted effort by all parties unless both districts are involved of have commented in the appeal process.

B. STANDING – Who May Appeal

1. The person having legal custody may request an appeal hearing to Merced County Board of Education after his/her request for an interdistrict transfer has been denied by any of the following:
 - a. District Denial
 - 1) By district of residence
 - 2) By the district of requested attendance
 - 3) By both district of residence and district of requested attendance; OR
 - b. When the district(s) has failed to respond during the current academic school year to the request for a transfer within 30 calendar days; OR
 - c. When the district(s) has failed to respond to the request for a transfer for the next instructional school year and it is:
 - 1) 14 calendar days after both district’s instructional year begins, AND
 - 2) 30 or more calendar days after the written request was submitted to the district of residence.
2. In addition, the person having legal custody must have exhausted the appeal process of the denying district(s). The appeal process for each district may vary, so one will need to check with the denying district or in the absence of an agreement, the district of residence and follow its appeal procedure. The County Board of Education does NOT have appeal jurisdiction unless the appeal is completed.
3. Students who are under consideration for expulsion, or who have been expelled pursuant to Sections 48915 and 48918, may not appeal interdistrict attendance denials or recisions while expulsion proceedings are pending, or during the term of the expulsion.

INTERDISTRICT ATTENDANCE APPEALS

C. FILING

1. To request an Appeal Hearing the person having legal custody of the student can begin the appeal process by requesting an Appeal of Denial of Interdistrict Attendance Request form from Merced County Office of Education

In Person:
632 West 13th Street
Merced, CA 95341-5908
Room C-1

By Phone:
(209) 381-6601

2. The Appeal of Denial of Interdistrict Attendance Request form and the Rules and Regulations should be read carefully before completion of the form. The reason(s) for an appeal must be the same as those stated on the original Interdistrict Attendance Agreement form; should the reasons change substantially, the appellant will be asked to reapply with the denying district.
3. The Appeal of Denial of Interdistrict Attendance Request form must be legibly completed, signed, and returned within 30 calendar days of the denial of the Request of an Interdistrict Agreement.
4. The completed Appeal of Denial of Interdistrict Attendance Request form shall be submitted with:
 - a. A copy of the original Request for an Interdistrict Agreement;
 - b. The district's denial; and
 - c. Any supporting documentation for the Board's consideration.

Questions about completing the form may be directed to Merced County Superintendent of Schools Office at (209) 381-6601.

D. REVIEW OF APPEAL AND SCHEDULING

1. The County Superintendent's Office will review the submitted request form and documents and determine that all rights and timelines have been honored.
2. If the County Superintendent's Office determines that a hearing is in order, it will notify the person having legal custody of the student and the school district(s) involved of the date, time, and place of the appeal hearing.

INTERDISTRICT ATTENDANCE APPEALS

3. The County Superintendent’s Office staff is available at any time to explain rights and procedures to the person having legal custody of the student and to the school districts involved.
4. The County Superintendent’s Office may recommend or request that certain materials or documents be made available for the hearing to assist the County Board of Education in making its determination.
5. The County Board of Education will request that the local school district provide the district’s rules and regulations dealing with Interdistrict Attendance Requests.
6. The County Board of Education has 30 calendar days after the person having legal custody of the student has filed the Request for Appeal to conduct a hearing and determine where the student shall attend. The County Board or County Superintendent may extend this period an additional five school days for good cause.
7. *Continuances:* Either the parent/guardian or the district(s) may request a continuance for good cause. Upon the demonstration of good cause (determined by either the Board of Education during the hearing or the Merced County Superintendent of Schools prior to the hearing) the County Board may permit the continuance notwithstanding the provisions of section 6 above. A continuance at the request of the district shall not normally be for greater than thirty (30) days. No continuance will be granted for any district that did not respond to the parent/guardian’s initial transfer request.

III. HEARING

A. CONDUCT OF HEARING

1. The hearing is conducted during regular or special Merced County Board of Education meetings held at:

Merced County Office of Education
632 West 13th Street
Merced, California

2. The hearing will normally be conducted in open session. The matter will be published on the Board Agenda as follows:

CLOSED SESSION:

INTERDISTRICT ATTENDANCE APPEALS

DISCUSSION/ACTION: In the event that agenda items ___ through and including ___, or any of them, may require the discussion or consideration of, or action upon, materials or evidence considered confidential pursuant to Education Code 49060, et. seq., or pursuant to the Family Educational and Privacy Act (FERPA), 20 U.S.C. 1232g, the matter may be referred to closed session – Government Code 54962 (Education Code exception).

NOTE: These matters pertain to confidential student records, or to materials to be presented that would be confidential student records, or that would be retained in the student record and would thereafter be confidential. In the latter case, an offer of proof must be made in open session as to the general nature of the material to be presented. A requesting Party should be aware that new material presented may result in the remand of the appeal to the District(s) for consideration (Education Code 46601(a)).

A determination of this issue may be made at the request of a parent or legal guardian who is an appellant, by a school district party to the matter, or on the Board’s own motion.

3. It is the intent of Merced County Board of Education to conduct the hearing in a fair and appropriately informal manner to encourage open communication and understanding of the system. The hearing will also be conducted in such a manner that no special legal expertise is necessary and so that all parties have the opportunity to present their case fairly and completely. The law does provide that any party may have legal counsel or an advocate present if it wishes, although formal hearing procedures are not in effect.
4. Families with multiple appeals may have them heard separately or as one; parents should understand that if they have all their children’s appeals heard as one, there will only be one decision affecting all the children.
5. The County Board Chairperson or Secretary to the County Board will briefly explain the procedures to be followed in the hearing.
6. Conduct of Hearing
 - a. After introduction of all parties, the County Board Chairperson or Secretary to the County Board will swear in all parties and conduct the hearing as follows.
 - b. The person appealing will be invited to state the reasons for believing the appeal should be granted. He/she may also ask others to speak in his/her behalf if they have pertinent information or arguments to introduce. District representatives and the County Board may ask questions of those supporting the appeal.

INTERDISTRICT ATTENDANCE APPEALS

- c. The representative of the school district which originally denied the request will be invited to present the district's reasons for denial, with additional witnesses speaking on the district's behalf if requested. The person appealing may ask questions. The County Board may ask questions concerning the statements made.
 - d. The representative of the other district involved may similarly present material.
 - e. The County Board may call for additional testimony or documentary evidence, as it deems advisable or necessary.
 - f. The person appealing will be given the opportunity to make a summary; the same opportunity will be offered to the school district representatives. The County Board may ask questions.
7. ***Important Note:*** About new evidence or new grounds for appeal. If new information is presented that has not been considered at the local level, the matter may be remanded to the district for reconsideration.
8. If a closed hearing is open, deliberations shall be; open session. If a closed hearing is held the public not involved in the hearing will be excused and the hearing conducted in closed session.
- a. Because a closed hearing necessarily involves student records, health, security or other underlying issues and evidence the deliberation of the case will likely include a discussion of those matters as well, deliberation on closed hearings shall be completed in closed session.
 - b. Upon completion of deliberations but before action, the County Board Chairperson will return the hearing to open session.
 - c. When the County Board Chairperson determines that deliberations are complete, he/she will call for a motion and vote. At least three members must vote "yes" for appeal to be granted.
9. A written statement of the decision by the County Board of Education will be mailed to the parties.
10. All proceedings of the hearing shall be recorded.

INTERDISTRICT ATTENDANCE APPEALS

IV. DELIBERATION AND ORDER

A. GUIDELINES

1. With few exceptions, children should attend school in the district of residence. Any request for attending school in another school district should be based upon exceptional circumstances unique to the child concerned.
2. It is noted that the changing of schools due to family moves often produces anxiety in children. This is viewed as a normal situation that is a natural part of growing up and that often results in positive social and emotional growth. It is not cause, in and of itself, for the granting of an interdistrict attendance request.
3. Other frequently stated reasons for requesting out of district attendance includes a parent's perception that one school district is better than another, convenience of transportation, continuance of social contacts and the proximity of a parent's work place. None of these should be cause for granting such a request unless it can be clearly demonstrated that there are exceptional circumstances unique to the child concerned that justify disrupting the normal pattern of school attendance.
4. It should be noted that each school district establishes its own policy regarding interdistrict attendance requests. In considering appeals, the County Board of Education follows its own policy as stated in this document and not the policies of the districts concerned.

B. In its discussion and deliberations on an appeal, the County Board will consider the conditions of and reasons for requesting a transfer.

1. If the County Board finds that any of the following conditions exist in a case, then it may deny the appeal.
 - a. Attendance of student from out-of-district will increase a district's class size above the maximums established by the State of California or above the maximums provided for in an agreement between the governing board of the district and a representative of an employee bargaining unit.
 - b. The student, or the parent/guardian of the student, has falsely claimed residence in a given school district for the purpose of school attendance in that district.
 - c. The student, or the parent/guardian of the student, has not exhausted the interdistrict appeal process in the denying district(s).

INTERDISTRICT ATTENDANCE APPEALS

- d. The student, or the parent/guardian of the student, has not shown that attendance in the requested district is necessary.
 - e. Failure to appeal within 30 calendar days of the denial.
2. Among other variables that will be considered, the welfare of the student will be kept foremost. Evaluations regarding the student’s welfare will take into consideration such aspects as the following:
- a. Such condition exists which would result in a substantial and manifest improvement in educational services for a student were he/she to attend a district other than his/her district of residence.
 - b. A substantial danger to the student’s health or safety to and from school in the district of his/her residence would be removed or substantially mitigated by his/her attendance in another district.
 - c. Graduation with class (if legally enrolled in seventh or eleventh grades in June in district requesting to attend).
 - d. Verified inability of a district to meet specific educational needs of the child, which clearly can be provided for in another district.
 - e. Child care needs of the student.
3. The welfare and concerns of other family members may also have a bearing on the decision, including such possibilities as the following:
- a. Substantial hardship or cost of before-school and/or after-school supervision or transportation of a student would result were such student required to attend the district of his/her residence.
 - b. Relationship to health or welfare of other members of the student’s family.
4. Detrimental or adverse effects which may accrue to either district should the agreement be approved will normally be taken into consideration. For example:
- a. Prohibitive financial requirements.
 - b. Inability of a district to accept one or more additional students because of a condition of overcrowding or an adverse impact on the District’s or School’s Class Size Reduction Program (SB 1777 and 1789).

INTERDISTRICT ATTENDANCE APPEALS

5. If the interdistrict attendance involves school districts located in different counties, the County Board of Education having jurisdiction over the district denying a permit, or refusing or failing to enter into an agreement to allow for the issuance of a permit, shall have jurisdiction for purposes of an appeal. If both districts deny a permit, or refuse or fail to enter into an agreement to allow for the issuance of a permit, the County Board having jurisdiction for purposes of an appeal and upon granting a student's appeal, shall seek concurrence in the decision by the County Board of the other county which shall provide adequate opportunity for the district under its jurisdiction to be heard on the matter before making a decision. If the two county boards do not then concur, the student's appeal shall be denied.
 6. A parent/guardian appealing a local board decision to deny a permit shall bear the burden of showing why the local board should be overruled. If the local board acted within its reasonable rules, then the appellant should show why an exception or preferential treatment is justified in a given case.
- C. In making its decision, the County Board will normally consider the answers to these questions:
1. Is the stated reason of the parent/guardian supported by the evidence to be the only reason for the request?
 2. Is the stated reason of the parent/guardian supported by the evidence to be the only reason for such denial?
 3. Would granting the appeal establish a precedent which might legitimately be cited in other appeals? If so, what would be the impact?
 4. Were there errors in procedure or other circumstances that warrant a rehearing at the local level?
 5. Has the parent/guardian supplied convincing evidence to support the stated need for the transfer and to warrant the overruling of local board action?
- D. Written notice of the decision by the County Board of Education shall be delivered to the person having legal custody of him/her, and to the school district involved.
- E. The County Board/hearing officer/administrative panel shall render its decision within three school days of the hearing unless the student requests a postponement. (Education Code 46601)

INTERDISTRICT ATTENDANCE APPEALS

F. All parties shall be notified in writing of the decision of the County Board. (Education Code 46602)

G. DECISION FACTORS FOR APPEALS

Pursuant to Education Code 46601(b)(1), the Merced County Board of Education adopts the following factors to guide its decisions in interdistrict appeals. When writing appeals or responses the parties are encouraged to consider the following factors:

1. Exhaustion of District Level Procedures
 - a. Has the parent completed the application process at both districts?
2. Appeal Timelines
 - a. Have they been followed?
3. Child Care Needs of the Student, or other Severe Family Consideration
 - a. Before or after school child care of the pupil will result in severe hardship to the pupil or the parent/guardian in terms of time and/or costs if pupil attends school in the district of residence.
 - b. Are there transportation considerations?
4. Continuous Attendance
 - a. Where are the siblings attending school?
 - b. Is the family in transition, that is, about to relocate? (Supported by written evidence)
 - c. Has the family already moved, but the student wishes to finish up the current school year, 8th grade or 12th grade?
 - d. Will such attendance allow completion of the school year in the student's current school, provided the request is made after the start of the second semester or upon completion of over 50% of the school year in case of year-round education?
5. Current Student Disciplinary Status
 - a. Is the student currently under an order of suspension or expulsion?

INTERDISTRICT ATTENDANCE APPEALS

6. Special Needs of the Student
 - a. Is the student currently under the SELPA placement IEP?
 - b. Is the request made because requiring the child to attend school in the district of residence would result in severe physical or emotional condition as supported by appropriate professional verification?
7. Class-size and School Housing Concerns
 - a. Is the proposed district of attendance overcrowded?
 - b. Would additional student(s) result in issues for class-size formula considerations?
8. Improper conduct by a parent in attempting to secure Interdistrict Attendance without following established procedures
 - a. Did the parent falsify records or conceal the true residence of the student?
9. Adequacy of the academic offerings at the district of residence
 - a. The district of residence cannot place the pupil in the particular educational program required by the pupil and the district of requested attendance does offer such a program.
10. Is there a secondary versus elementary student cost consideration?
11. Would there be an impact to either district due to significant numbers of students requesting interdistrict attendance?

Legal Reference:

EDUCATION CODE

- 46600-46611 Interdistrict attendance agreements*
- 48204 Residency requirements for school attendance*
- 48209-48209.17 Student attendance alternatives*
- 48660-48666 Community day schools*
- 48900-48926 Suspension and expulsion*
- 48950 Speech and other communication*
- 49073-49079 Privacy of student records*

GOVERNMENT CODE

- 11455.20 Contempt*
- 54950-54962 Ralph M. Brown Act (re closed sessions)*