

AMENDED IN SENATE APRIL 6, 2011

**SENATE BILL**

**No. 268**

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**Introduced by Senator Wright**

February 14, 2011

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An act to amend ~~Sections 46601, 46603, and 48204~~ *Section 46601* of the Education Code, relating to school attendance.

LEGISLATIVE COUNSEL'S DIGEST

SB 268, as amended, Wright. School attendance: interdistrict attendance.

(1) Existing law authorizes the governing boards of 2 or more school districts to enter into an agreement for the interdistrict attendance of pupils who are residents of the *school* districts. If either *school* district fails to approve the interdistrict attendance of a pupil, or in the case of the failure or refusal of the *school* districts to enter into an agreement, existing law authorizes the person having legal custody of the pupil to appeal to the county board of education in accordance with a prescribed procedure.

This bill would require the county board of education to conduct ~~an impartial~~ *a* hearing within 30 days of the filing of the appeal. The bill would specify the issues to which the county board's review of the decision would be limited. ~~The bill would provide that, after 2 school months have passed, if no decision with respect to a pupil's interdistrict attendance has been made by the 2 governing boards or the county board, the school district of residence would receive the revenue limit and state apportionment funding attributable to that pupil.~~ Because this bill would create new duties for county boards of education, it would constitute a state-mandated local program.

~~(2) Existing law, among other things, until July 1, 2012, provides that a school district may deem a pupil to have complied with residency requirements for school attendance in a district if at least one parent or the legal guardian of the pupil is physically employed within the boundaries of that district.~~

~~This bill would instead provide that, until July 1, 2013, a school district may deem a pupil to have complied with residency requirements for school attendance in a district if at least one parent or legal guardian of the pupil is physically employed within the boundaries of that district during a majority of the time that the pupil is scheduled to be in school.~~

~~(3)~~

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 46601 of the Education Code is amended  
2 to read:  
3 46601. (a) If, within 30 calendar days after the person having  
4 legal custody of a pupil has so requested, the governing board of  
5 either school district fails to approve interdistrict attendance in the  
6 current term, or, in the absence of an agreement between the  
7 districts, fails or refuses to enter into an agreement, the district  
8 denying the permit, or, in the absence of an agreement, the district  
9 of residence, shall advise the person requesting the permit of the  
10 right to appeal to the county board of education.  
11 (b) If, within 14 calendar days after the commencement of  
12 instruction in a new term in each of the school districts,  
13 respectively, when the person having legal custody of a pupil has  
14 so requested separately of each district not later than 30 calendar  
15 days prior to the commencement of instruction in that term in that  
16 district, the governing board of either district fails to approve  
17 interdistrict attendance in that term, or, in the absence of an

1 agreement between the districts to permit that attendance, fails or  
2 refuses to enter an agreement, the district denying the permit, or,  
3 in the absence of an agreement, the district of residence, shall  
4 advise the person requesting the permit of the right to appeal to  
5 the county board of education.

6 (c) Notifying districts shall also, in all instances, advise persons  
7 making unsuccessful requests for interdistrict attendance of all of  
8 the following:

9 (1) The person having legal custody may appeal, within 30  
10 calendar days of the failure or refusal to issue a permit, or to enter  
11 into an agreement allowing the attendance, to the county board of  
12 education having jurisdiction over the district of residence of the  
13 parent or legal guardian or person having legal custody. Failure  
14 to appeal within the required time is good cause for denial of an  
15 appeal. An appeal shall be accepted only upon verification by the  
16 county board's designee that appeals within the districts have been  
17 exhausted. If new evidence or grounds for the request are  
18 introduced, the county board may remand the matter for further  
19 consideration by the district or districts. In all other cases, the  
20 appeal shall be granted or denied on its merits.

21 (2) (A) The county board of education shall, within 30 calendar  
22 days after the appeal is filed, ~~conduct an impartial~~ a hearing to  
23 determine whether the pupil should be permitted to attend in the  
24 district in which the pupil desires to attend and the applicable  
25 period of time. In the event that compliance by the county board  
26 within the time requirement for determining whether the pupil  
27 should be permitted to attend in the district in which the pupil  
28 desires to attend is impractical, the county board or the county  
29 superintendent of schools, for good cause, may extend the time  
30 period for up to an additional five school days. The county shall  
31 provide adequate notice to all parties of the date and time of any  
32 hearing scheduled and of the opportunity to submit written  
33 statements and documentation and to be heard on the matter  
34 pursuant to rules and regulations adopted by the county board of  
35 education in accordance with this chapter. The county board rules  
36 may provide for the granting of continuances upon a showing of  
37 good cause. The county board of education shall render a decision  
38 within three schooldays of any hearing conducted by the board  
39 unless the person who filed the appeal requests a postponement.

1 (B) The review by the county board of education of the decision  
2 of the district governing board under subparagraph (A) shall be  
3 limited to the following questions:

4 (i) Whether the district acted in accordance with an interdistrict  
5 attendance agreement, where applicable.

6 (ii) Whether the district followed the district's policy on  
7 interdistrict attendance.

8 (iii) Whether the district provided the parent or guardian with  
9 an opportunity to provide information relevant to the interdistrict  
10 attendance request.

11 (iv) ~~Whether there is relevant and material evidence that was~~  
12 ~~not considered by the district~~ *information that, in the exercise of*  
13 *reasonable diligence, could not have been produced, or that was*  
14 *improperly excluded, at the hearing before the district governing*  
15 *board.*

16 (C) In a class 1 or class 2 county, the county board rules may  
17 provide for any hearing pursuant to this section to be conducted  
18 by a hearing officer pursuant to Chapter 14 (commencing with  
19 Section 27720) of Part 3 of Division 2 of Title 3 of the Government  
20 Code, or by an impartial administrative panel of three or more  
21 certificated persons appointed by the county board of education.  
22 Section 27722 of the Government Code is applicable to a hearing  
23 by any impartial administrative panel and, for purposes of this  
24 section, the term "hearing officer" in Section 27722 of the  
25 Government Code includes an impartial administrative panel. No  
26 member of the impartial administrative panel shall be a member  
27 of the county board of education, nor be employed by the school  
28 district of residence or the district of desired attendance. The  
29 definitions of "class 1 county" and "class 2 county" in subdivision  
30 (e) of Section 48919.5 apply to this section. If the hearing officer  
31 is not authorized to decide whether the pupil should be permitted  
32 to attend in the district in which the pupil desires to attend, the  
33 county board of education, within 10 days of receiving the  
34 recommended decision pursuant to subdivision (b) of Section  
35 27722 of the Government Code, shall render a decision.

36 (3) The county supervisor of attendance, or other designee of  
37 the county superintendent of schools, shall investigate to determine  
38 whether local remedies in the matter have been exhausted and to  
39 provide any additional information deemed useful to the county  
40 board in reaching a decision.

1 (4) If the interdistrict attendance involves school districts located  
2 in different counties, the county board of education having  
3 jurisdiction over the district denying a permit, or refusing or failing  
4 to enter into an agreement to allow for the issuance of a permit,  
5 shall have jurisdiction for purposes of an appeal. If both districts  
6 deny a permit, or refuse or fail to enter into an agreement to allow  
7 for the issuance of a permit, the county board having jurisdiction  
8 over the district of residence shall have jurisdiction for purposes  
9 of an appeal and, upon granting a pupil's appeal, shall seek  
10 concurrence in the decision by the county board of the other county,  
11 which shall provide adequate opportunity for the district under its  
12 jurisdiction to be heard on the matter before making a decision. If  
13 the two county boards do not then concur, the pupil's appeal shall  
14 be denied.

15 (5) ~~Students who are~~ *A pupil who is* under consideration for  
16 expulsion, or who ~~have~~ *has* been expelled pursuant to Sections  
17 48915 and 48918, may not appeal ~~interdistrict attendance denials~~  
18 ~~or rescissions while expulsion proceedings are an interdistrict~~  
19 ~~attendance denial or rescission while an expulsion proceeding is~~  
20 pending, or during the term of the expulsion.

21 ~~SEC. 2. Section 46603 of the Education Code is amended to~~  
22 ~~read:~~

23 ~~46603. (a) For a period not to exceed two school months, the~~  
24 ~~governing board of a school district may provisionally admit to~~  
25 ~~the schools of the district a pupil who resides in another district,~~  
26 ~~pending a decision of the two boards, or by the county board of~~  
27 ~~education upon appeal, regarding the interdistrict attendance.~~

28 ~~(b) Regardless of whether the decision on interdistrict attendance~~  
29 ~~is allowed, the provisional attendance may be counted by the~~  
30 ~~district of attendance for revenue limit and state apportionment~~  
31 ~~purposes. After two school months have passed, if no decision has~~  
32 ~~been made by the two governing boards or the county board of~~  
33 ~~education under subdivision (a), the school district of residence~~  
34 ~~shall receive the revenue limit and state apportionment funding~~  
35 ~~attributable to that pupil.~~

36 ~~SEC. 3. Section 48204 of the Education Code, as amended by~~  
37 ~~Section 1 of Chapter 33 of the Statutes of 2007, is amended to~~  
38 ~~read:~~

1 48204. (a) Notwithstanding Section 48200, a pupil complies  
2 with the residency requirements for school attendance in a school  
3 district, if he or she is any of the following:

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

10 (B) An agency placing a pupil in a home or institution described  
11 in subparagraph (A) shall provide evidence to the school that the  
12 placement or commitment is pursuant to law.

13 (2) A pupil for whom interdistrict attendance has been approved  
14 pursuant to Chapter 5 (commencing with Section 46600) of Part  
15 26.

16 (3) A pupil whose residence is located within the boundaries of  
17 that school district and whose parent or legal guardian is relieved  
18 of responsibility, control, and authority through emancipation.

19 (4) A pupil who lives in the home of a caregiving adult that is  
20 located within the boundaries of that school district. Execution of  
21 an affidavit under penalty of perjury pursuant to Part 1.5  
22 (commencing with Section 6550) of Division 11 of the Family  
23 Code by the caregiving adult is a sufficient basis for a  
24 determination that the pupil lives in the home of the caregiver,  
25 unless the school district determines from actual facts that the pupil  
26 is not living in the home of the caregiver.

27 (5) A pupil residing in a state hospital located within the  
28 boundaries of that school district.

29 (b) A school district may deem a pupil to have complied with  
30 the residency requirements for school attendance in the district if  
31 at least one parent or legal guardian of the pupil is physically  
32 employed within the boundaries of that district during a majority  
33 of the time that the pupil is scheduled to be in school.

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

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

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

13 ~~(4) The governing board of a school district that prohibits the~~  
14 ~~transfer of a pupil pursuant to paragraph (1), (2), or (3) is~~  
15 ~~encouraged to identify, and communicate in writing to the parents~~  
16 ~~or the legal guardian of the pupil, the specific reasons for that~~  
17 ~~determination and is encouraged to ensure that the determination,~~  
18 ~~and the specific reasons therefor, are accurately recorded in the~~  
19 ~~minutes of the board meeting in which the determination was made.~~

20 ~~(5) The average daily attendance for pupils admitted pursuant~~  
21 ~~to this subdivision is calculated pursuant to Section 46607.~~

22 ~~(6) Unless approved by the sending school district, this~~  
23 ~~subdivision does not authorize a net transfer of pupils out of a~~  
24 ~~school district, calculated as the difference between the number~~  
25 ~~of pupils exiting the district and the number of pupils entering the~~  
26 ~~district, in a fiscal year in excess of the following amounts:~~

27 ~~(A) For a school district with an average daily attendance for~~  
28 ~~that fiscal year of less than 501, 5 percent of the average daily~~  
29 ~~attendance of the district.~~

30 ~~(B) For a school district with an average daily attendance for~~  
31 ~~that fiscal year of 501 or more, but less than 2,501, 3 percent of~~  
32 ~~the average daily attendance of the district or 25 pupils, whichever~~  
33 ~~amount is greater.~~

34 ~~(C) For a school district with an average daily attendance of~~  
35 ~~2,501 or more, 1 percent of the average daily attendance of the~~  
36 ~~district or 75 pupils, whichever amount is greater.~~

37 ~~(7) Once a pupil is deemed to have complied with the residency~~  
38 ~~requirements for school attendance pursuant to this subdivision~~  
39 ~~and is enrolled in a school in a school district the boundaries of~~  
40 ~~which include the location where at least one parent or the legal~~

1 guardian of a pupil is physically employed, the pupil does not have  
 2 to reapply in the next school year to attend a school within that  
 3 district and the district governing board shall allow the pupil to  
 4 attend school through grade 12 in that district if the parent or legal  
 5 guardian so chooses and if at least one parent or the legal guardian  
 6 of the pupil continues to be physically employed by an employer  
 7 situated within the attendance boundaries of the district, subject  
 8 to paragraphs (1) to (6), inclusive.

9 (e) This section shall become inoperative on July 1, 2013, and  
 10 as of January 1, 2014, is repealed, unless a later enacted statute,  
 11 that becomes operative on or before January 1, 2014, deletes or  
 12 extends the dates on which it becomes inoperative and is repealed.

13 SEC. 4. Section 48204 of the Education Code, as amended by  
 14 Section 2 of Chapter 33 of the Statutes of 2007, is amended to  
 15 read:

16 48204. Notwithstanding Section 48200, a pupil complies with  
 17 the residency requirements for school attendance in a school  
 18 district, if he or she is:

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

25 (2) An agency placing a pupil in the home or institution  
 26 described in paragraph (1) shall provide evidence to the school  
 27 that the placement or commitment is pursuant to law.

28 (b) A pupil for whom interdistrict attendance has been approved  
 29 pursuant to Chapter 5 (commencing with Section 46600) of Part  
 30 26.

31 (c) A pupil whose residence is located within the boundaries of  
 32 that school district and whose parent or legal guardian is relieved  
 33 of responsibility, control, and authority through emancipation.

34 (d) A pupil who lives in the home of a caregiving adult that is  
 35 located within the boundaries of that school district. Execution of  
 36 an affidavit under penalty of perjury pursuant to Part 1.5  
 37 (commencing with Section 6550) of Division 11 of the Family  
 38 Code by the caregiving adult is a sufficient basis for a  
 39 determination that the pupil lives in the home of the caregiver,

1 unless the school district determines from actual facts that the pupil  
2 is not living in the home of the caregiver.

3 (e) ~~A pupil residing in a state hospital located within the~~  
4 ~~boundaries of that school district.~~

5 (f) ~~This section shall become operative on July 1, 2013.~~

6 ~~SEC. 5.~~

7 *SEC. 2.* If the Commission on State Mandates determines that  
8 this act contains costs mandated by the state, reimbursement to  
9 local agencies and school districts for those costs shall be made  
10 pursuant to Part 7 (commencing with Section 17500) of Division  
11 4 of Title 2 of the Government Code.