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MONTEREY COUNTY OFFICE OF EDUCATION

INTERDISTRICT APPEAL HANDBOOK

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MONTEREY COUNTY OFFICE OF EDUCATION

Interdistrict Appeal Handbook

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INTRODUCTION

The Monterey County Board of Education has prepared this Handbook to provide direction and information to pupils and the parents/guardians who wish to appeal a school district's decision not to grant an interdistrict attendance agreement.

This Handbook constitutes the official procedures adopted by the County Board of Education for conducting interdistrict attendance appeals. Particular attention should be paid to issues noted in *"italics."* These issues have been found confusing to those filing appeals in the past.

The County Board of Education is committed to an objective review of the consideration of appeals for pupils denied interdistrict attendance agreements from local school districts.

The laws on pupil attendance, interdistrict attendance agreements, and interdistrict attendance appeals in the *California Education Code §§ 46600-46611*, as well as the local school district's policies and administrative regulations for interdistrict attendance, also apply in these appeals.

Pupils and/or parents/guardians have the right to review pupil records at the school district, and you have the right to consult with and engage the services of an advocate or an attorney.

INTERDISTRICT ATTENDANCE APPEALS

County Board Authority

The County Board of Education has legal authority to review the procedures and reasoning followed by the school district(s) after the school district(s) have rejected or failed to rule on a pupil's interdistrict attendance request. The County Board of Education will determine whether to grant or deny an interdistrict attendance agreement after reviewing the relevant facts from the pupil, parent/guardian, and local school district(s) involved.

Limitations on County Board Authority

There are limits on the types of appeals the County Board of Education can hear. For example, the County Board has no authority to consider the following interdistrict attendance appeals or issues:

- 1. To determine the specific school within the school district where the pupil will be enrolled. This authority is reserved for the school district of attendance, after the County Board has made its final decision;*

2. Denial of an interdistrict transfer request based upon parent employment within the district [Ed. Code § 48204(b), commonly referred to as “Allen Bill Transfers”];
3. Denial of an interdistrict transfer request by a pupil under consideration for expulsion or who has been expelled [Ed. Code § 46601(e)];
4. Denial of an intradistrict transfer between schools within the same district [Ed. Code § 35160.5(b)];
5. A dispute over the placement of a special education pupil or the services provided to a pupil with disabilities. Such a dispute should be handled by the district of residence through special education procedures [Ed. Code §§ 56505(g)-(i); 20 U.S. Code § 1415(f)]; or
6. A determination by a school district regarding the validity or invalidity of a caregiver affidavit [Ed. Code § 48204(a)(1)(B)(4) and Family Code §§ 6550, et seq.].

County Board Authority in Appeals Involving Two Counties

If the interdistrict attendance involves school districts located in different counties, the appeal will be heard by the County Board of Education for the district denying an agreement or refusing or failing to enter into an agreement. If both districts in different counties deny an agreement, or refuse or fail to enter into an agreement, the County Board for the district of residence shall hear the appeal. If the appeal is granted, the County Board for the other district will be asked to agree. If the two County Boards do not then agree, the pupil’s appeal shall be denied.

What Actions the County Board of Education May Take

The County Board of Education’s review of the appeal may result in:

1. Granting the interdistrict attendance appeal and enrolling the pupil in the new school district;
2. Denying the appeal and ordering the pupil returned to the school district of residence; or
3. In rare cases, returning the case to the local school district for further consideration of new evidence or new grounds for the request for interdistrict attendance.

**REQUESTING AN INTERDISTRICT ATTENDANCE
APPEAL**

Timeliness of Appeals

You must request an appeal hearing **within thirty (30) calendar days** of when your interdistrict attendance request was denied by the school district.

Failure to appeal within the required time will result in denial of your appeal unless you can show "good cause for the late appeal." The explanation of "good cause" must be filed with the appeal. An example of "good cause" would be where the parent appeal is mailed timely, but the parent proves that document was lost by the U.S. mail.

Filing an Appeal and Requesting a Hearing

The appeal process begins with completing and filing a written form called: "**Appeal of Denial of Interdistrict Attendance.**" This form is attached to the Handbook. You may deliver the form in person or by placing it in the mail to the following address:

**Monterey County Board of Education
901 Blanco Circle, P.O. Box 80851
Salinas, CA 93912-0851
Attention: County Superintendent**

This form must be completed, signed, and returned within the applicable time limits (see above). *Complete all sections of the form legibly.*

Read the entire Handbook before completing the form. We especially recommend that you read the section "Facts the County Board Will Consider," on page 9 of this document before completing the section of the attached form entitled, "Explain why you have requested an interdistrict transfer."

Your completed appeal form should be accompanied by: (1) a copy of your original request for an interdistrict attendance agreement; (2) the district's denial if there was one; and (3) any other supporting documentation you want the County Board to consider.

The Board will accept a date-stamped copy of your request for an interdistrict attendance agreement filed with the district as evidence that you have complied with district procedures in the event that the district fails to act on your original request.

The reason(s) for your appeal must be the same as those stated on your original request for an interdistrict permit or agreement. If the reasons on the appeal are substantially different, you may be asked to reapply for an interdistrict transfer with your district of residence.

If you have any questions about completing the form, you may contact the Executive Assistant to the Superintendent at the Monterey County Office of Education, (408) 755-0303.

The effective date of the appeal is the date on which the completed and signed appeal document is received by the County Superintendent of Schools.

PROCESSING THE REQUEST FOR AN APPEAL

County Superintendent or Designee Will Verify Information

After receiving your appeal request, the County Superintendent's office will review it and seek to verify certain information before a hearing date is scheduled. The County Superintendent will verify whether the pupil is subject to expulsion. A parent cannot appeal the denial of an interdistrict attendance agreement if the pupil is up for expulsion or is currently serving an expulsion term.

The County Superintendent's office will also check to see if you have exhausted all appeal processes in the local school districts. If you have not used the local appeal channels you will be asked to complete the local appeal process before going forward. [Ed. Code Section 46601(a)]

The County Superintendent's office will review the case to determine that all time lines have been honored prior to setting a hearing. Misinformation and/or falsification of information may cause rejection of an appeal.

Setting a Hearing Date

If the written appeal is complete and appropriately filed with the County Board of Education, the County Superintendent will place the matter on the County Board of Education's agenda for a regular or special meeting to be held no later than thirty (30) calendar days following the effective date of the appeal. The County Board may extend this thirty (30) day period an additional five (5) calendar days for good cause [Ed. Code § 46601(b)].

The County Superintendent has discretion to approve a request for postponement filed by you or by the school district for good cause provided the request is filed in writing at least five (5) calendar days prior to the hearing date,

except in an emergency. A postponement by the person who filed the appeal extends the time line for the County Board of Education to make a decision.

Notification of Hearing Date

The County Superintendent's office will notify you and the district(s) involved of the date, time, and place of the appeal hearing, and of the opportunity to submit written statements and documentation and to be heard on the matter pursuant to the rules and regulations adopted by the County Board of Education.

Translation Services

If you require translation into a language other than English, including sign language interpretation, please notify the County office at 755-0303 at least 48 hours prior to the time of the hearing.

PREPARING FOR THE HEARING

Attach Documentation to Your Written Argument

Adequate documentation is helpful when presenting your case. You will find that evidence is most effective when it is provided in writing, related to the issue(s) at hand and is the type of evidence upon which reasonable persons can rely in the conduct of serious affairs. Some examples of documentary evidence include:

1. A copy of your original request for an interdistrict attendance permit or agreement and any written denial(s) (if not already provided with your appeal form).
2. Documents to support your request for an interdistrict transfer. For example, when you review the factors that the County Board will consider, you will see that certain documents may support your position. Those documents could be professional recommendations by doctors, educators, psychologists, or others. Verifications of participation or non-availability of child care providers, transportation providers, teachers, or others could be helpful. Brochures or written information about special programs in the school district or community of requested attendance may be supportive evidence.

Waiver of Privacy of Documents Provided

There are numerous laws which protect the release of confidential records. For example, there are certain laws regarding the privacy and confidentiality of pupil records. (See Ed. Code §§ 49060, *et seq.*) There are also laws regarding the confidentiality of juvenile court records and medical records. *If you wish to have the County Board consider material from confidential records, you must understand that turning the records over to the County Board for the purpose of the interdistrict attendance hearing is a waiver of the privacy rights in those records.* You may wish to consult legal counsel regarding such documents.

Multiple Appeals

Families with multiple appeals may have the appeals heard separately or as one. If you have all the appeals heard as one, there will be a separate vote on each child, but only one written decision.

Legal Advocate at the Hearing

Although the hearing is informal, you may bring legal counsel or a legal advocate. The use of any legal counsel will be at your expense.

A Brief Verbal Presentation

The County Board of Education will rely on the written information that you and the school districts provide before the hearing, as well as the verbal presentation that is made at the hearing. You should be prepared to make a brief verbal presentation which focuses on the factors that the County Board will consider in deciding an appeal. You may bring a witness or someone who might make a special statement on behalf of the pupil. Please make sure any witnesses are prepared to make a brief presentation.

THE APPEAL HEARING

Hearings are conducted during regular or special Monterey County Board of Education meetings held at the:

**MONTEREY COUNTY OFFICE OF EDUCATION
901 Blanco Circle, Salinas Ca
Dr. Ray Charlson Board Chambers**

The County Board will hold a hearing within thirty (30) calendar days following receipt of the transcript and supporting documents unless the Parent or the district requests a postponement. Either the Parent or the local school district

may request a postponement by submitting a written request, including the reason, to the County Office of Education at least five (5) calendar days prior to the hearing. The request shall be acted upon by the County Superintendent of Schools within two (2) days after determining whether the request is based upon good cause. Any request for postponement made less than five (5) calendar days prior to the hearing will be considered by the Board of Education at the hearing. The request will be granted only upon a finding that a compelling reason or an emergency exists.

Both the Parent and the school district will be sent notice of the hearing date by mail before the hearing. The notice will specify the date, time, and place of the hearing.

It is the intent of the County Board of Education to conduct the hearing in a fair and sufficiently 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. Strict rules of evidence as required in court proceedings will not be applied. Persons to be heard will be limited to the student(s), his/her parent(s) or guardian(s) or other representative, representatives of the districts involved, and the County Superintendent and/or designee(s). The law provides that you may have legal counsel or an advocate present if you wish. A record of the hearing will be made.

During your appeal hearing, you, the pupil (optional), and the representatives of the districts, will take seats at a table in front of the County Board. The Board will consider the appeal in open session. In order to prevent disclosure of the confidentiality of the student's record information, the hearing may be closed only for that portion of the hearing.

The hearing will be conducted as follows:

1. Four (4) members of the County Board of Education must be present for a quorum to conduct the hearing.
2. After introduction of all parties, the Board President or designee, who will conduct the hearing, will explain the procedures to be followed during the hearing. All discussion shall be directed to the President or to a Board member in response to an inquiry.
3. The pupil, the parent or guardian, or a representative of the pupil will present the reasons for requesting the pupil attends the district of requested attendance. The speaker will have a specified amount of time (normally five (5) minutes) to summarize his/her position. During this

time, the speaker will also respond to questions from the County Board, if any.

4. If applicable, a representative of the district of residence will be given the opportunity to describe its position and the action(s) taken by that district (normally five (5) minutes). During that time, the district representative will respond to questions from the County Board, if any.
5. If applicable, a representative of the district of requested attendance will be given the opportunity to describe its position and the action(s) taken by that district (normally five (5) minutes). During that time, the district representative will respond to questions from the County Board, if any.
6. You will be given additional time to present any rebuttal information to the information presented by the school district(s) and give any closing remarks. Each district will also have additional time for closing and/or response.
7. Members of the County Board may ask questions to clarify the issues. The County Board may also ask questions of the staff and/or legal counsel if appropriate.
8. The County Superintendent or the Board's legal counsel may, at this time, present any factual information or other consideration not already covered by others present.
9. Deliberation and Decision: Following the closing of the hearing, the Board will deliberate and render a decision.

The decision by the County Board of Education may only be to:

1. Approve the appeal,
2. Deny the appeal, or
3. Remand (send) the case back to the district for reconsideration in the event new evidence is presented at the hearing that was not revealed previously.

FACTS THE COUNTY BOARD WILL CONSIDER

In its discussion and deliberations on your appeal, the County Board of Education will consider the conditions of, and your reasons for, your request for a transfer.

In deciding whether to grant or deny an appeal, the County Board weighs the facts which support the criteria favoring a transfer against the adverse impacts presented by the school district(s). If you are unable to present sufficient evidence to justify a transfer, the County Board may rule against the appeal request without considering the school district's evidence of an adverse impact.

If you are able to submit sufficient evidence to justify a transfer, the school district will have an opportunity to rebut the evidence and submit evidence of an adverse impact. You then have an opportunity to respond and offer evidence as to how some or all of the adverse impact on the school district(s) could be alleviated.

Misinformation and/or falsification of information provided by either party shall be good cause for deciding against that party.

The County Board may approve or deny the appeal after considering the facts of the request and the merits of the appeal. The Board will consider the following:

1. Whether all statutory and regulatory requirements have been satisfied including;
 - a. verification by the Board's designee of exhaustion of in-district appeals
 - b. exhaustion of other district remedies
 - c. receipt of an appeal within thirty (30) calendar days of the failure or refusal of a district to issue a permit or enter into an agreement allowing interdistrict attendance
2. The needs of the concerned districts and their communities as a whole in light of space availability and long and short term fiscal impact;
3. The basis for the local board's actions which gave rise to the appeal and determine whether there are unusual conditions which justify the rejection of the request.
4. The district of residence does not offer the particular educational program required by the pupil and the district of desired attendance does offer such a program

5. Severe hardship, in terms of time and/or costs to the person having custody or to the pupil for before-or-after school supervision of the pupil, will result if the pupil is required to attend the district of residence.
6. Child care considerations.
7. A substantial danger to the pupil's health or safety will be removed or greatly mitigated by granting the appeal.
8. Such other condition exist which will result in substantial and manifest improvement in educational services for the pupil by attending the district requested.
9. Whether good cause otherwise exists; and
10. Information deemed useful to the Board as disclosed by the County Superintendent's investigation.

The burden of proof and presenting evidence in the matter of an interdistrict attendance appeal shall rest with the party requesting the interdistrict transfer. The requesting party shall be required to provide clear and convincing evidence that the transfer is necessary for any/or all of the following reasons:

1. To facilitate a student's access to specific, important educational and related opportunities which would not otherwise be available on a comparable basis?
2. To remedy a specific and serious existing or reasonably imminent threat to a student's health, physical safety, or well being; and/or
3. To accommodate a specific, serious family crisis or medical condition for which no reasonable alternative exists.

Documentation from all parties supporting their respective positions regarding the appeal before the County Board must be provided at the hearing.

AFTER THE HEARING

Following action by the County Board, a written decision incorporating the County Board's rationale will be mailed to all parties.

If the County Board determines that the interdistrict attendance appeal should be approved, the County Board may order:

1. The attendance is for any school in a district, not in a specific school.
2. The student's attendance in that district shall not exceed one (1) year (unless the district agrees to a longer period); and
3. The student shall be admitted to a school district of requested attendance without delay (Ed. Code §46602).

The decision of the County Board shall be final and binding upon the appellant and the district. The order shall be come final when rendered.

This decision completes the administrative appeal procedure. Any further action would be at the court level.

Adopted: February, 2009
Revised: April, 2009

APPEAL OF A DENIAL OF AN INTERDISTRICT TRANSFER REQUEST

(Please print or type all material except signature)

TO: Monterey County Board of Education
901 Blanco Circle
Salinas, Ca. 93901-0851
(831) 755-0303

ATTN: Secretary to the Board of Education
Superintendent's Office

In accordance with Education Code § 46601, and the Monterey County Board of Education Policy, we hereby request a hearing for the purpose of Appealing an Interdistrict Transfer Denial.

Date _____

Appeallant Parent(s) or Guardian(s) _____

Residence _____

Telephone _____ Business Telephone _____

I am / we are requesting that the Monterey County Board of Education hear an appeal of the denial by the Governing Board of the _____ School District of an interdistrict attendance transfer request for my/our son(s)/daughter(s) to attend school in the _____ School District.

Student _____ Age _____ Grade _____

Student _____ Age _____ Grade _____

Student _____ Age _____ Grade _____

1. How many other children in the home? _____ Give ages: _____

2. Do they attend school in the district of residence? Yes _____ No _____

Explain if answer to number 2 is "No": _____

(over)

Explain why you have requested an interdistrict transfer. If you need more space, please attach a sheet to this form. _____

Should the parent/legal guardian wish to have the County Board consider sensitive personal information such as pupil or medical records, he/she must sign a waiver to that effect. Sensitive personal information which is pertinent to the appeal shall not be disclosed at the open session of the Board hearing, but will be included in the written report and may be discussed at a closed session of the Board hearing.

I understand that the Monterey County Board of Education will rely upon this information to decide my appeal. I hereby certify that is information is true and correct to the best of my knowledge.

Signature of Parent/Guardian or Adult Pupil Filing Appeal

Date

This information will be received by all County Board members to help them arrive at a decision regarding your appeal. Include any facts that you believe will help your appeal. You are invited to explain your request in more detail to the County Board when your appeal is considered.

Please attach to this form any documentation denying your interdistrict transfer request:

- (1) Your transfer request;
- (2) Any governing board notification from your district of residence regarding your request;
- (3) Any governing board notification from the denying district regarding your request;
- (4) Any additional documentation that is pertinent to your request.