



Absent, Anxious, and At Risk: Navigating the Crossroads of Attendance, Disabilities, and Changes in Placement

Presented by:
Kendra Eaton and Stephanie Adams

Tulare County Office of Education
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Overview

Kendra G. Eaton is Senior Counsel in Lozano Smith's Sacramento office. Her practice is focused on special education, student, charter schools, and labor and employment issues affecting public school district clients.

Experience

Ms. Eaton represents school districts in a variety of special education matters, including at IEP meetings, mediations, and due process hearings. She also advises clients on student matters including free speech, discipline, Uniform Complaint Procedures, expulsion hearings, and Title IX. Ms. Eaton represents clients in labor & employment issues, such as layoffs, employee discipline, leaves, and responding to claims of discrimination filed with the DFEH, EEOC and DIR. Ms. Eaton also advises charter school authorizers regarding legal responsibilities and general relations with charter schools.

Education

Ms. Eaton earned her Juris Doctor from University of San Diego School of Law. During law school, Ms. Eaton served as President of a student organization, Advocates for Children and Education, as well as took first place in the National Moot Court Competition in Child Welfare & Adoption Law at Capital University Law School. She also interned at both the San Diego Volunteer Lawyer Program, Education Law Project, and the University of San Diego Education and Disability Legal Clinic. Ms. Eaton earned her Bachelor of Arts in Elementary Education from Arizona State University. Prior to practicing law, Ms. Eaton taught in a public elementary school and worked as a paraeducator in a special education classroom.

Practices

Special Education
Student
Labor & Employment
Charter Schools

Education

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Overview

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Experience

Ms. Adams' experience includes drafting motions related to due process matters for special education students, handling assessments, notices, and settlement agreements. She conducts student record investigations and manages California Public Records Act requests by reviewing and drafting responses. Additionally, she has drafted a Client News Brief discussing legislative updates on student attendance, truancy, and excused absences.

Education

Ms. Adams earned her Juris Doctor from San Joaquin College of Law. She earned her Bachelor of Science in Human Resources from Western Governor's University.

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Law Seminar | September 17, 2025

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Stephanie Adams

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Topics



- Attendance, Legal Framework, and SARB
- Child Find
- Section 504 and IDEA
- Discipline in Section 504 and Special Education
- Interdistrict Transfers, Revocations, and Appeals

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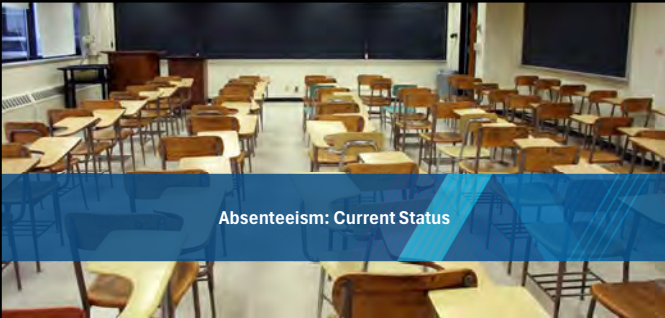
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At the Intersection:
Attendance, Legal
Framework, and SARB

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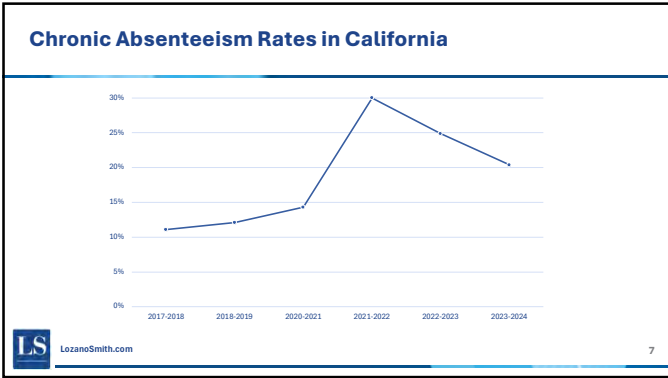


Absenteeism: Current Status

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Why Attendance Matters



- Absenteeism in September predicts poor attendance all year.
- Half of students missing 2-4 days in September miss nearly a month of school.
- Children chronically absent between preschool and 2nd grade are much less likely to read at grade level by 3rd grade.
- Interrupts normal developmental milestones.
- Gaps compound over time and become harder to close.

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Absenteeism: What the Law Requires

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Compulsory Education




All children ages 6-18 years old

Must attend public full-time day school or continuation school

Must attend for the full time designated as the length of the school day

Very limited exceptions to this requirement

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Compulsory Education

Parent Obligations:

Send child to school for full school day.

Ensure compliance with attendance laws.

Failure to comply may result in criminal charges.


District Obligations:

Enforce compulsory attendance laws.

Track and report attendance accurately.

Intervene when students are not attending.

Address disability-related concerns.

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Key Definitions


Chronic Absentee:

Truant:

Habitual Truant:

Chronically Truant:

- Absent at least 10% of school days (excused/unexcused).
- 3+ unexcused absences or tardies (30+ minutes).
- 3+ trancies, so long as the District made a conscientious effort to hold at least one conference.
- Absent at least 10% of school days (unexcused).

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SB 691 - Required Notifications: Initial Truancy Classification (Operative July 1, 2025)



Starting July 1, 2025, School Districts Must Notify Parent/Guardian That:

- Student is truant and subject to compulsory education.
- Parents are obligated to compel attendance.
- Alternative educational programs are available.
- Parents have the right to meet with school personnel to discuss solutions.
- Mental health and supportive services may be available to the student and family.
- School personnel are available to meet with the student and the family to develop strategies to support the student's attendance at school.
- Research shows that missing 10 percent of school for any reason can translate into pupils having difficulty learning to read by third grade, achieving in middle school, and graduating from high school.



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(Ed. Code, § 48260.5)

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SB 153 – Attendance Recovery Program

- Adds new voluntary program to make up lost instructional time.
- Allows LEAs to use Expanded Learning Opportunities Program ("ELOP") funds for attendance recovery when certain conditions are met.
- LEAs may begin offering Attendance Recovery on July 1, 2025.
- Attendance Recovery is created by new Education Code sections 46210- 46211.



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Hypothetical

A student was absent on Monday for a doctor's appointment, Tuesday because they didn't feel like coming to school, and Wednesday because they wanted to visit their grandmother. On Thursday, Student was late to school by 50 minutes because he overslept.

How would we classify this student?

- A. Chronic Absentee
- B. Truant
- C. Habitually truant
- D. Chronically truant
- E. None of the above



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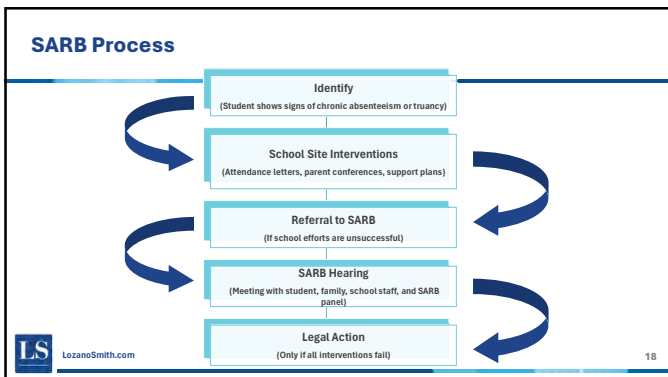
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Purpose of SARB

- Established to address chronic absenteeism and truancy.
- Promotes student success through early intervention.
- Coordinates community resources to support families.

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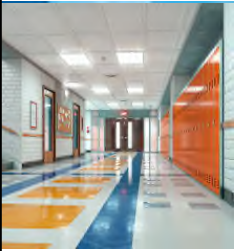


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Child Find: The Critical Juncture

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Child Find



The Rule:

States and school districts have an affirmative, ongoing duty to **identify, locate, and evaluate** all children with disabilities residing within the jurisdiction that are in need of special education and related services.

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Triggers


Private reports	Bullying	Disciplinary code violations
Absenteeism and difficulty remaining in class	Suicide attempts	Decline in grades
Inappropriate behavior in classroom	Difficulty with the social relationships	Mental State

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Identification Difficulties

- Public perception of mental illness
- Parents and children may hide mental illness
- Symptoms potentially more active at home
- Some staff are unfamiliar with symptoms of mental illness



An iceberg floating in the ocean. The small tip above the water represents the visible symptoms of mental illness, while the much larger portion submerged below the water represents the hidden, internal struggles and complexities of the condition.




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What Do You Do When a Student Won't Come to School?

- Figure out *why* the student isn't coming
 - Related to disability? For example, anxiety, depression, bullying, sleep disorder
 - Not related to disability? For example, lack of parental control, staying up late playing video games, transportation issues.
- If potentially related to disability...
 - and the student is NOT already eligible for special education, ASSESS.
 - and the student is already eligible for special education, the IEP team must address, such as through services (e.g., counseling, psychological services, aide) and/or behavioral interventions.



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Hypothetical - Jordan

Jordan is a 14-year-old 9th grader with a 2.7 GPA in general education. He performs adequately in some areas, but teachers note inconsistent engagement and incomplete work, often linked to poor attendance. Over the year, Jordan has missed over 30 school days without valid documentation. Despite multiple school-level interventions, he continued to be absent, and his case was referred to SARB and an attendance contract was issued. He continued to violate the agreement, and the district began steps to disenroll him. In response, Jordan's parents submitted a doctor's letter stating he has clinical anxiety and requested a special education evaluation, citing anxiety as the cause of his absences. The district denied the request, stating it was too late in the process.

Is this acceptable?
What obligations does the district have?



A portrait of a young man, Jordan, smiling. He has dark hair and is wearing a light blue collared shirt.



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The Laws that Govern



Hierarchy of Laws:

- IDEA
- Federal Regulations
- Federal Court Cases
- State Education Code
- State Regulations
- Local Policy
- State guidance and case law (OAH, OCR, OSEP)



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Overview

Section 504 is a civil rights law.

IDEA is a special education law.

- BOTH Section 504 and the IDEA require schools to provide a Free Appropriate Public Education ("FAPE") to eligible students with disabilities.





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Section 504: General Overview

Section 504

- “No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity **which receives Federal financial assistance.**”
(34 C.F.R. § 104.4.)



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Section 504: Key Concepts

To be protected under Section 504, a student must be determined to...

Have a physical or mental impairment that substantially limits one or more major life activities;

Have a record of such an impairment;
or

Be regarded as having such an impairment.



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Section 504: Key Concepts

Two Duties:

- Anti-Discrimination/Equal Access
- FAPE

Non-Discrimination

- Requires that disabled students receive access to educational services and the learning process equal to that of students without disabilities.
- Cannot exclude or deny benefit of participation in school program or activities.
- Cannot discriminate solely on disability.



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Eligibility

To be eligible for special education under the IDEA (i.e., to be entitled to an IEP), a student must be a child with a disability who requires special education and related services.



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What Does it Mean to be Eligible for Special Education?

Must meet the definition of one or more categories of disabilities:

- Intellectual disability
- Hearing impairment (including deafness)
- Speech or language impairment
- Visual impairment (including blindness)
- Emotional disturbance
- Orthopedic impairment
- Autism
- Traumatic brain injury
- Other health impairment
- Specific learning disability
- Deaf-blindness
- Multiple disabilities

... and needs special education and related services

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Eligibility: At a Glance

- The list of disability categories in 34 CFR 300.8(c) is exhaustive.
- However, the list of specific impairments included within the definition of each of the categories of disabilities, particularly OHI, is not meant to be exhaustive.
- The IDEA permits states to recognize children age 3 through 9 who need special education and related services because of specified developmental delays. 34 CFR 300.8(b).
- Of the 13 categories of disabilities recognized by the IDEA, SLD is the only disability category for which the IDEA establishes special evaluation procedures in addition to the general evaluation requirements.

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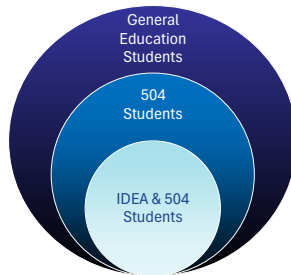
IDEA: What is Special Education?

Special education means

- Instruction specially designed, at no cost to the parent, to meet the unique needs of a child with a disability.

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Section 504: General Overview



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What is a Free Appropriate Public Education (FAPE)?

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Compare: Definitions of FAPE

FAPE UNDER SECTION 504

The provision of **general or special education** and **related aids and services** that are designed to meet individual educational needs of disabled students **as adequately as** the needs of non-disabled persons are met, and that are provided without cost (except for fees imposed on nondisabled students or their parents).



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FAPE UNDER THE IDEA

Special education and related services that: a) are provided at public expense, under public supervision and direction, and without charge; b) meet state standards (including IDEA requirements); c) include an appropriate preschool, elementary school, or secondary school education; and d) are provided in accordance with a **properly developed IEP**.

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What does this mean for absences?

- After we've assessed, if the student is eligible under Section 504 or IDEA, we have an obligation to serve any *disability related needs* that *impact educational access and progress*.
- If a student's disability is preventing them from coming to school, we likely have an obligation to address the need through a Section 504 Plan or IEP.



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Do we have to go inside the home?

- Maybe.
- If in-home services are necessary to ensure a free appropriate public education and/or access to the educational program as a direct result of the student's disability, we may be required to go in the home for several reasons:
 - To conduct assessments;
 - To provide mental health services;
 - To provide behavioral services; and
 - To assist the student in getting up, getting ready for school, and/or getting out the door to the transportation.
- This is based on individualized need.



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Fairness in Focus: Discipline in Section 504 and Special Education

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Schools Must Keep Students Safe on Campus

- “All students and staff of primary, elementary, junior high, and senior high schools . . . have the inalienable right to attend campuses which are safe, secure, and peaceful.” (Cal. Const., art. I, § 28(f)(1).)
- The Safe Place to Learn Act requires that all school districts improve student safety at schools and reduce all acts of discrimination, harassment, violence, intimidation, and bullying.

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Do Supports Apply: Exploring Student Protections

Gen-ed
Discipline



Special Ed
Discipline
(MDR)

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Special Education Discipline - Who

Students Entitled to Discipline Protections

Special education students (identified with a disability under IDEA)	Students not identified as having a disability under IDEA or Section 504 for whom District had "basis of knowledge"	Students with disabilities under Section 504
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Is there a "basis of knowledge"?


- Look for a **basis of knowledge** of student's potential disability.
 - Parent expresses concern in writing
 - Parent requests evaluation
 - Teacher or other staff expresses specific concerns about pattern of behavior to supervisory personnel
- "Knowledge" does **not** exist when:
 - The parent has refused to allow the District to assess the student;
 - The parent refused special education services; or
 - The District assessed the student and found that the student did not qualify for special education.

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Special Education Discipline



- Special education student discipline protections apply whenever a District makes a **change in placement** for:
 - (1) special education students (504 or IEP); **or**
 - (2) the District has "knowledge," **before** the conduct in question, that the student is a child with a disability.

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Change of Placement



- A change of placement occurs if:
 - More than **10 consecutive school days** (recommendation for expulsion); or
 - More than **10 cumulative days** of short-term removals and constitute a pattern.

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Manifestation Determination: The Key to Fair Discipline

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Manifestation Determinations

- What is a Manifestation Determination?
 - The manifestation determination review (MDR) is an evaluation of a child's misconduct to determine whether that conduct is a manifestation of the child's disability.
- When is a Manifestation Determination Required?
 - Must be held within 10 school days of a decision to make a disciplinary change of placement.

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Manifestation Determinations

- The MDR team will determine whether the student's behavior that led to the discipline was:
 1. Caused by, or had a direct and substantial relationship to, the child's disability; or
 2. The direct result of the District's failure to implement the student's IEP.



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Manifestation Determination

- If answer to both is **no**: you may proceed with discipline like a regular education student, but must:
 - Provide educational services to enable the child to participate in general education curriculum and progress towards IEP goals.
 - Provide, as appropriate, a functional behavioral assessment and interventions to ensure behavior does not recur.



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Manifestation Determination

If either answer is **yes**:

- **STOP**. You may not proceed to discipline.
- Next steps may include: holding an IEP team meeting, returning the student to their previous placement, consideration of an IAES or injunction.



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"Day 11" Services

- IEP team must determine and provide services necessary for progress in general curriculum upon 11th day of suspension.
- Such services could be provided in a separate setting e.g. community school, virtual, or in-home, depending on the facts at hand.



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Hypothetical – Dayvon

Dayvon is a 14-year-old 9th grader with a 3.88 GPA in honors and advanced courses. He's known as articulate, engaged, and a strong student with no prior referrals for special education or known disabilities. He was recently suspended and recommended for expulsion after a physical altercation with another student that resulted in the other student being hospitalized with a broken nose and a concussion. Following the suspension, Dayvon's parent submitted a doctor's letter stating he has anxiety and is undergoing medical evaluation for autism. The parents have requested he be given an IEP immediately and told the school he cannot be disciplined because he has a disability.

How should the district proceed with the disciplinary process while responding to the new claim of disability and request for special education evaluation?



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Assessment Timelines



Referral for assessment and assessment plan within 15 days of suspicion of disability.

Assessment plan within 15 days of request.

Completion of assessment and IEP meeting to review assessment results within 60 days of consent.

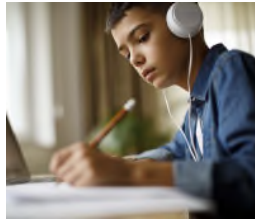


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Request for Assessment When Discipline is Pending

- Remember, the discipline timelines are still running while the special education assessment is pending.
- Recommendation:** have parent agree to pushing back discipline times, then complete assessment, and take findings into consideration accordingly.



Independent Educational Evaluations (“IEE”)

- A parent has the right to request an IEE if they disagree with an assessment already conducted by the District.
- In response to a request for an IEE, the District has only two options:
 - (1) Fund the requested assessment in accordance with SELPA policies;
 - (2) File a request for a due process hearing to defend the appropriateness of the District’s assessment.

Even if discipline is pending, **doing nothing is NOT an option.**

Hypothetical – Emily



Emily is an 8th-grade student with an IEP for a specific learning disability. Her accommodations include access to a quiet space, extended time on assignments, and counselor check-ins, and she receives specialized academic instruction in math. Over the past year, Emily has had several behavior incidents linked to anxiety, which is noted in her IEP, including physical responses when feeling overwhelmed or pressured by others in the classroom. Most recently, during a classroom disagreement, Emily became visibly upset, yelled at a peer, and when the peer approached her, she shoved them to the ground and fled the classroom. The school suspended her for 5 days, then extended her suspension, and the District is considering expulsion. The District convened a Manifestation Determination meeting and determined the conduct was not a manifestation of Emily’s disability because the conduct was unrelated to her specific learning disability in math.


Emily’s parents are concerned the discipline doesn’t account for her anxiety and have requested an IEE at public expense before she is expelled.

What are the district’s responsibilities in this situation, and how should they respond to the parents’ request for an IEE?

School Transfers: Rules, Revocations & Rights

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Interdistrict Transfer Agreement



- Two districts may enter into an agreement allowing a student to attend a district other than the district of residence.
- Agreement can be for one student or overarching agreement for ongoing relationship.
- Overarching agreements may be effective for up to five years.

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Notice Requirements

A school district must provide notice of interdistrict transfer policies and procedures. (Ed. Code § 46600.2)

These include:

- Date when the district will accept and process requests for the subsequent school year.
- Reasons why the district could approve or deny an interdistrict transfer request.
- Any information or documents that must be submitted as supporting evidence in a request.
- Process and timelines for appeal within the school district.
- Applicable timelines for processing a request.
- Notice that failure to adhere to timelines will be deemed an abandonment of the request.


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Revocation



- The agreement between the districts may stipulate terms and conditions under which the permit may be revoked.
- The terms and conditions under which an IDT permit may be revoked is the responsibility of the district of enrollment.

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Ed. Code § 46600(a)(2), (3).


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Limits on Revocation: 11th and 12th Graders

District of attendance shall not revoke existing IDT permits for students:

- In 10th grade, after June 30
- In 11th or 12th grades



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Is revocation of an IDT a disciplinary “change in placement”?

- Most likely, yes.
- IDTs are generally revoked due a student’s failure to comply with a code of conduct and maintain appropriate standards.
- If the conduct that led to the revocation was the result of the student’s disability, they likely have protections under Section 504 and IDEA.
- Therefore, within 10 school days of the decision to revoke the IDT, the District must convene a manifestation determination.
- If the conduct is a manifestation of their disability, they have a right to remain in their current placement, and the IDT cannot be revoked.

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Hypothetical – Ravi



Ravi is a 4th grader attending school on an interdistrict transfer. Though not identified with a disability, teachers have noticed mild behavior issues like occasional inattention, calling out, and brief frustration outbursts. Ravi's teacher has expressed concern to the principal regarding his behavior, and requested additional paraeducator support for Ravi to better control his behavior. Recently, Ravi raised his voice and briefly refused to follow instructions during a group activity. The district is now considering revoking his transfer based on his violations of the code of conduct by defying his teacher's directions. Worried about the revocation, Ravi's parents have requested a formal special education assessment.

How should the district respond to the parents' request for an assessment, and what factors should influence the decision regarding the interdistrict transfer agreement?

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Appeals to the County Office of Education

Education Code section 46601:

- A parent may appeal a school district's decision to **deny** a request for interdistrict transfer, within 30 calendar days of the date of the school district's **final denial**, to the county board of education.
- Notably, **revocations** are not subject to appeal.

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Timeline for Handling an Appeal

- Notification to appellant and district(s) involved: Within **10 days** of receipt of appeal.
- Hearing and determination: Within **30 days** of receipt of appeal.
 - Board/Superintendent may extend up to five (5) schooldays for good cause.
 - Appellant/district may seek approval of postponement for good cause up to five (5) calendar days before hearing (or later if emergency).
 - Decision within three (3) schooldays of hearing.
- Appeals coordinator may attempt to facilitate a resolution between the parties prior to hearing.

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Appeal Outcomes

Uphold school district's denial of IDT permit.

Overturn school district's denial of IDT permit.

Remand to the school district, if new evidence or grounds for the request are presented at the appeal hearing.

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Ed. Code § 46601(b)(1)

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Post-Appeal Process

- If appeal granted, pupil must be admitted without delay.
- Board may order attendance in a district, but not a specific school.
- Board must determine applicable period of attendance.



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Key Takeaways

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Takeaways

- Attendance is a legal requirement.
- Absenteeism may trigger District's child find obligation.
- IDEA and Section 504 protections may apply in discipline decisions.
- Interdistrict transfers may be revoked, but for students with disabilities, revocation likely triggers discipline protections.


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Questions?

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