**California Department of Education**

**M e m o r a n d u m**

**Date:** September 7, 2023

**To:** County and School District Superintendents

 Charter School Administrators

**From:** Nancy Portillo, Deputy Superintendent

 Student Achievement Branch

# **Subject:** Overuse and Improper Use of Voluntary and Involuntary Transfers

This guidance addresses the legal requirements and recommended best practices governing voluntary and involuntary transfers. The guidance itself is non-binding and does not have the effect of law. Legal obligations are set forth in the applicable statutes. These are *Education Code* (*EC*) sections 48432.3 [voluntary transfers to a continuation school], 48432.5 [involuntary transfers to a continuation school], and 48662 [involuntary transfers to a community day school], which are set out in full in the Appendix, along with provisions regarding enrollment in a county community day school per *EC* Section 1981.

## Voluntary Transfers

While the Legislature gave local educational agencies (LEAs) some flexibility in adopting policies and procedures for voluntary placement in a continuation school, there are certain key requirements:

* **Clear criterion:** The LEA must ensure that there is a *clear criterion* for determining which students may voluntarily transfer or be recommended for a transfer to a continuation school.
* **Consistent application:** This criterion must not be applied arbitrarily but rather must be consistently applied on a districtwide basis.
* **Alternative means of correction:** Voluntary placement in a continuation school shall *not* be used as an alternative to expulsion *unless alternative means of correction have been attempted pursuant to EC* Section 48900.5.

*Comment*: While *EC* Section 48900.5 refers to using alternative means of correction prior to issuing *suspensions*, the “alternative means” prerequisite is also made applicable to *expulsions* in this context by *EC* Section 48432.3(b)(1). Therefore, LEAs should ensure that their policies and procedures clearly incorporate and consistently apply this requirement. Moreover, it is strongly recommended that LEAs document the other means of correction attempted.

* **Disproportionality:** The LEA must strive to ensure that no specific group of students, including a group based on race, ethnicity, language status, or special needs, is disproportionately enrolled in continuation schools within the LEA.

*Comment*: According to the California School Boards Association, “… data show that strict discipline policies disproportionately affect African American, Latino, Native American, and students with disabilities more than other student populations. Other negative outcomes of suspension and expulsion practices include: Increased risk of dropping out; two times as likely to repeat a grade; three times as likely to have contact with the juvenile justice system; higher frequency of 'repeat' offenders; lower test scores.” <https://www.csba.org/en/GovernanceAndPolicyResources/ConditionsOfChildren/SafeSupportiveSchlEnvironment/SuspensionAndExpulsion#gsc.tab=0>.

On March 2, 2023, State Superintendent of Public Instruction Tony Thurmond held a webinar addressing disproportionate discipline in schools, to which LEAs were invited to share best practices. A recording of the webinar is available on the CDE Facebook page at <https://www.facebook.com/CAEducation/videos/882967092970754/>.

* **Fully inform students and parents:** A copy of the policies and procedures must be provided to a student whose voluntary transfer to a continuation school is under consideration, and also to the parent or legal guardian of that student.

*Comment*: Under *EC* Section 48985, subject to a 15 percent enrollment threshold, all notices, reports, statements, or records sent by the public school or school district to the parent or guardian of a student whose primary language is other than English must, in addition to being written in English, be written in the primary language, and may be responded to either in English or the primary language. However, in this context, regardless of the 15 percent threshold, as a best practice policies and procedures should be provided in the student’s and parent’s or guardian’s primary language.

* **Voluntariness and return rights:** The LEA must ensure that the transfer is voluntary, *and the student has a right to return to his or her previous school*.

*Comment*: *EC* Section 48432.5(j) provides that, “A pupil who has voluntarily transferred to a continuation *school shall have the right to return to the regular high school at the beginning of the following school year and, with the consent of a designee of the district superintendent of schools, may return at any time.”* As a best practice LEAs should ensure that students and their parents or guardians are informed of this in writing, in their primary language.

* If a parent or legal guardian requests a pre-transfer meeting (*EC* Section 48432.3(b)(5)) and English is not their primary language, as a best practice the school should provide an interpreter for the meeting. While the burden is on the student/parent/guardian to request a meeting, nothing precludes the district from scheduling a meeting on its own initiative. Whether or not requested, the CDE

considers it desirable to hold a meeting before effecting a transfer, if at all possible.

## Involuntary Transfers

LEAs must adopt rules and regulations for involuntary transfers to a continuation school (*EC* Section 48342.5) and policies and procedures for transfers to a community day school (*EC* Section 48662).

* **Notice and opportunity for meeting before transfer:** The rules and regulations governing transfers to a continuation school must require the student and the student’s parent or guardian (or other party having legal responsibility for the student’s education or welfare) to be given a notice informing them of the opportunity to request a meeting with the designee of the district superintendent of schools *before* the transfer. With respect to voluntary transfers, under *EC* Section 48985 and/or as a best practice these notices should be in the primary language of the student and the student’s parent or guardian.
* **Student and parent rights at meeting:** At the meeting, the student and the student’s parent or guardian must be informed of the specific facts and reasons for the proposed transfer and have the opportunity to inspect all documents relied upon, question any evidence and witnesses presented, and present evidence on the student’s behalf. The student may designate one or more representatives and witnesses to be present with the student at the meeting. Again, all documents should be provided in the primary language of the student and the student’s parent or guardian, and an interpreter should be present at the meeting.
* **Current school staff not involved in final transfer decision:** The persons involved in the final decision to make an involuntary transfer of a student to a continuation school must not be a member of the staff of the school in which the student is enrolled at the time that the decision is made.
* **Basis for transfer:** A decision to transfer the student involuntarily must be based on a finding that the student committed an act enumerated in *EC* Section 48900 or has been habitually truant or irregular in attendance from instruction upon which the student is lawfully required to attend.
* **Alternative means of correction:** Involuntary transfer to a continuation school shall be imposed *only* *when other means fail to bring about student improvement* (unless the principal determines that the student’s presence causes a danger to persons or property or threatens to disrupt the instructional process). “Other means to bring about pupil improvement” refers to other means of correction set forth in *EC* Section 48900.5(a). Again, the CDE strongly recommends that the LEA document the other means of correction used.
* **Written transfer decision:** The decision to transfer must be in writing, must state the facts and reasons for the decision, and must be sent to the student and the student’s parent or guardian. Again, all documents should be in the primary language.
* **Time limitation:** An involuntary transfer to a continuation school shall not extend beyond the end of the semester following the semester during which the acts leading directly to the involuntary transfer occurred, unless the LEA adopts a procedure for annual review of the involuntary transfer at the request of the student and the student’s parent or guardian. LEAs should ensure that the student and student’s parent or guardian are given written notice of this time limitation on the transfer or procedure to request annual review thereof. County offices of education should review voluntary and involuntary transfers [to](https://www.cde.ca.gov/re/di/fq/distschlboundaries.asp) ensure compliance with all applicable legal requirements.

**APPENDIX**

### Education Code Section 48432.3

(a) If the governing board of a school district chooses to voluntarily enroll high school pupils in a continuation school, the governing board of the school district shall establish and adopt policies and procedures governing the identification, placement, and intake procedures for these pupils. These policies and procedures shall ensure that there is a clear criterion for determining which pupils may voluntarily transfer or be recommended for a transfer to a continuation school and that this criterion is not applied arbitrarily, but is consistently applied on a districtwide basis. Approval for the voluntary transfer of a pupil to a continuation school shall be based on a finding that the voluntary placement will promote the educational interests of the pupil.

(b) The policies and procedures adopted under this section shall also ensure all of the following:

(1) That voluntary placement in a continuation school shall not be used as an alternative to expulsion unless alternative means of correction have been attempted pursuant to Section 48900.5.

(2) Shall strive to ensure that no specific group of pupils, including a group based on race, ethnicity, language status, or special needs, is disproportionately enrolled in continuation schools within the school district.

(3) If the governing board of a school district chooses to permit pupils to voluntarily transfer to a continuation school, a copy of the policies and procedures adopted under this section shall be provided to a pupil whose voluntary transfer to a continuation school is under consideration, and to the parent or legal guardian of that pupil.

(4) That the transfer is voluntary and the pupil has a right to return to his or her previous school.

(5) Upon a parent or legal guardian's request and before a pupil is transferred, the parent or legal guardian may meet with a counselor, principal, or administrator from both the transferor school and the continuation school to determine if transferring is the best option for the pupil.

(6) To the extent possible, voluntary transfer to a continuation school occurs within the first four weeks of each semester.

### Education Code Section 48432.5

(a) The governing board of each high school or unified school district that assigns pupils to continuation schools shall adopt rules and regulations governing procedures for the involuntary transfer of pupils to continuation schools.

(b) The rules and regulations shall provide that written notice be given to the pupil and the pupil's parent or guardian or, if the pupil is a foster child, the foster child's educational rights holder, attorney, and county social worker, or, if the pupil is a Indian child, as defined in Section 224.1 of the Welfare and Institutions Code, the Indian child's tribal social worker and, if applicable, county social worker informing them of the opportunity to request a meeting with the designee of the district superintendent of schools before the transfer.

(c) At the meeting, the pupil, the pupil's parent or guardian, or, if applicable, the foster child's educational rights holder, attorney, and county social worker, or, if applicable, the Indian child's tribal social worker or, if applicable, county social worker shall be informed of the specific facts and reasons for the proposed transfer and shall have the opportunity to inspect all documents relied upon, question any evidence and witnesses presented, and present evidence on the pupil's behalf. The pupil may designate one or more representatives and witnesses to be present with the pupil at the meeting.

(d) A decision to transfer the pupil involuntarily shall be based on a finding that the pupil committed an act enumerated in Section 48900, or has been habitually truant or irregular in attendance from instruction upon which the pupil is lawfully required to attend.

(e) The decision to transfer shall be in writing, stating the facts and reasons for the decision, and sent to the pupil and the pupil's parent or guardian or, if applicable, the foster child's educational rights holder, attorney, and county social worker, or, if applicable, the Indian child's tribal social worker and, if applicable, county social worker. It shall indicate whether the decision is subject to periodic review and the periodic review procedure.

(f) The persons involved in the final decision to make an involuntary transfer of a pupil to a continuation school shall not be a member of the staff of the school in which the pupil is enrolled at the time that the decision is made.

(g) A pupil, with the concurrence of a designee of the district superintendent of schools, may transfer voluntarily to a continuation school in order to receive special attention such as individualized instruction.

(h) Involuntary transfer to a continuation school shall be imposed only when other means fail to bring about pupil improvement; provided that a pupil may be involuntarily transferred the first time the pupil commits an act enumerated in Section 48900 if the principal determines that the pupil's presence causes a danger to persons or property or threatens to disrupt the instructional process.

(i) An involuntary transfer to a continuation school shall not extend beyond the end of the semester following the semester during which the acts leading directly to the involuntary transfer occurred unless the governing board of the school district adopts a procedure for yearly review of the involuntary transfer conducted pursuant to this section at the request of the pupil, the pupil's parent or guardian, or, if applicable, the foster child's educational rights holder, attorney, or county social worker, or, if applicable, the Indian child's tribal social worker or, if applicable, county social worker.

(j) A pupil who has voluntarily transferred to a continuation school shall have the right to return to the regular high school at the beginning of the following school year and, with the consent of a designee of the district superintendent of schools, may return at any time.

### Education Code Section 48662

(a) The governing board of a school district that establishes a community day school shall adopt policies that provide procedures for the involuntary transfer of pupils to a community day school.

(b) A pupil may be assigned to a community day school only if he or she meets one or more of the following conditions:

(1) The pupil is expelled for any reason.

(2) The pupil is probation referred pursuant to Sections 300 and 602 of the Welfare and Institutions Code.

(3) The pupil is referred to a community day school by a school attendance review board or other district level referral process.

(4) First priority for assignment to a community day school shall be given to a pupil expelled pursuant to subdivision (d) of Section 48915, second priority shall be given to pupils expelled for any other reasons, and third priority shall be given for placement to all other pupils pursuant to this section, unless there is an agreement that the county superintendent of schools shall serve any of these pupils.

### Education Code Section 1981

The county board of education may enroll pupils in a county community school who are any of the following:

(a) Expelled from a school district for any reason other than those specified in subdivision (a) or (c) of Section 48915.

(d) Pupils whose school districts of attendance, or, for pupils who do not have school districts of attendance, school districts of residence, have, at the request of the pupil's parent, guardian, or responsible adult, approved the pupil's enrollment in a county community school, subject to the following:

(1) A pupil shall not be enrolled in a county community school pursuant to this subdivision *unless the school district determines that the placement will promote the educational interests of the pupil and the county community school has space available to enroll the pupil.*

(2) A parent, guardian, or responsible adult of a pupil enrolled in a county community school pursuant to this subdivision *may rescind the request for the placemen*t, and the pupil shall be immediately reenrolled in the school that the pupil attended at the time of the referral, or, with the consent of the parent, guardian, or responsible adult, another appropriate school.