

This is the official scanned version of the *Attorney General's Opinion No. CV 71-232* from the California Department of Education's Voluntary and Involuntary Transfers Web page at <http://www.cde.ca.gov/sp/eo/ce/cetransfers.asp>

An accessible version of the contents of this document is located at <http://www.cde.ca.gov/sp/eo/ce/agopinion71232.asp>

The scanned document starts following this initial page.

Opinion No. CV 71-232—December 10, 1971

**SUBJECT:** CONTINUATION SCHOOL PLACEMENT—A school district not having opportunity classes or schools may legally transfer students under age sixteen to continuation schools for disciplinary reasons.

**Requested by:** COUNTY COUNSEL, SANTA CLARA COUNTY

**Opinion by:** EVELLE J. YOUNGER, Attorney General  
Richard L. Mayers, Deputy

William M. Siegel, County Counsel of the County of Santa Clara, has requested an opinion on the following question:

May a high school district place students under the age of sixteen in a continuation school for disciplinary reasons?

The conclusion is:

If a school district has not established an opportunity school or class, it may legally transfer students with disciplinary problems who are under the age of sixteen, to a continuation school or class pursuant to Education Code section 10607.5.

#### ANALYSIS

The question presented is prompted by concern for the welfare of children who are under the age of sixteen and who are disciplinary problems in our public schools. Education Code sections 6500 et seq. provide for the establishment of opportunity schools or classes for just such pupils. These sections provide for the establishment of opportunity schools "for pupils who are habitually truant from instruction . . . who are irregular in attendance, or who are insubordinate or disorderly during their attendance upon instruction . . ." They are assigned to these classes "with a view to the improvement of the pupil and to his restoration as soon as practicable, to the regular school and regular class in which he would, if not so assigned, be required to attend." Ed. Code § 6501. However, school districts, although urged, are not required to establish such classes. Education Code section 6502 provides only that the governing board of a school district "may" establish such opportunity schools or classes. Many school districts have not yet established such classes or programs.

However, all high school districts are required by law to establish what are known as "continuation schools." These schools were not established for children under the age of sixteen who are disciplinary problems. On the contrary, they were established for students who are over the age of sixteen but who have not yet graduated from high school. It can be readily seen that continuation schools and opportunity programs and classes have different goals and objectives and deal with different portions of the student population. For those school districts that have not as yet established opportunity programs or classes, the problem of how best to provide for the younger student who is a disciplinary problem is a difficult one. In

such situations school districts have made recourse to continuation high schools to provide for the younger students who are disciplinary problems. The question presented is whether this practice is proper.

Education Code section 10607.5 provides that no student shall be suspended from school for more than 20 days unless he has first been transferred to and enrolled in "either one other regular school for adjustment purposes, an opportunity class in his school of residence, an opportunity school or class, or a continuation education school or class." This statute provides that continuation education classes are among the various alternatives available to a school district before suspending a student. There is nothing in the statute that indicates that only those students who are otherwise eligible for a continuation school or class (i.e., over 16 years of age) are to be first transferred to a continuation education school before being suspended for more than 20 days. To read the phrase "who are otherwise eligible" into section 10607 would, in effect, require a school district that had not established an opportunity school or class for students under sixteen years of age with disciplinary problems to then establish such a school or class. Although this may well be a salutary objective, in the absence of far clearer legislative language, we cannot read into the statute language which would, in effect, require all school districts to establish opportunity schools or classes. We, therefore, conclude that if a school district has not established an opportunity school or class, it may legally transfer students with disciplinary problems who are under the age of sixteen to a continuation school or class pursuant to Education Code section 10607.5.