

**RESOLUTION 10-01-2016**

**DIGEST**

Education: School District Boundary Fix

Amends Education Code section 35160.5 to provide that schools may consider geographic proximity when admission requests exceed capacity.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Education Code section 35160.5 to read as follows:

§35160.5

1 (a) The governing board of a school district that maintains one or more schools  
2 containing any of grades 7 to 12, inclusive, as a condition for the receipt of inflation adjustments  
3 pursuant to Section 42238.02, as implemented by Section 42238.03, shall establish a school  
4 district policy regarding participation in extracurricular and cocurricular activities by pupils in  
5 grades 7 to 12, inclusive. The criteria, which shall be applied to extracurricular and cocurricular  
6 activities, shall ensure that pupil participation is conditioned upon satisfactory educational  
7 progress in the previous grading period.

8 (1) For purposes of this subdivision, “extracurricular activity” means a program that has  
9 all of the following characteristics:

10 (A) The program is supervised or financed by the school district.

11 (B) Pupils participating in the program represent the school district.

12 (C) Pupils exercise some degree of freedom in either the selection, planning, or control of  
13 the program.

14 (D) The program includes both preparation for performance and performance before an  
15 audience or spectators.

16 (2) For purposes of this subdivision, an “extracurricular activity” is not part of the regular  
17 school curriculum, is not graded, does not offer credit, and does not take place during classroom  
18 time.

19 (3) For purposes of this subdivision, a “cocurricular activity” is defined as a program that  
20 may be associated with the curriculum in a regular classroom.

21 (4) Any teacher graded or required program or activity for a course that satisfies the  
22 entrance requirements for admission to the California State University or the University of  
23 California is not an extracurricular or cocurricular activity as defined by this section.

24 (5) For purposes of this subdivision, “satisfactory educational progress” shall include, but  
25 not necessarily be limited to, both of the following:

26 (A) Maintenance of minimum passing grades, which is defined as at least a 2.0 grade  
27 point average in all enrolled courses on a 4.0 scale.

28 (B) Maintenance of minimum progress toward meeting the high school graduation  
29 requirements prescribed by the governing board.

30 (6) For purposes of this subdivision, “previous grading period” does not include a grading  
31 period in which the pupil was not in attendance for all, or a majority of, the grading period due to  
32 absences excused by the school for reasons such as serious illness or injury, approved travel, or

33 work. In that event, “previous grading period” is deemed to mean the grading period  
34 immediately prior to the grading period or periods excluded pursuant to this paragraph.

35 (7) A program that has, as its primary goal, the improvement of academic or educational  
36 achievements of pupils is not an extracurricular or cocurricular activity as defined by this  
37 section.

38 (8) The governing board of each school district may adopt, as part of its policy  
39 established pursuant to this subdivision, provisions that would allow a pupil who does not  
40 achieve satisfactory educational progress, as defined in paragraph (5), in the previous grading  
41 period to remain eligible to participate in extracurricular and cocurricular activities during a  
42 probationary period. The probationary period shall not exceed one semester in length, but may be  
43 for a shorter period of time, as determined by the governing board of the school district. A pupil  
44 who does not achieve satisfactory educational progress, as defined in paragraph (5), during the  
45 probationary period shall not be allowed to participate in extracurricular and cocurricular  
46 activities in the subsequent grading period.

47 (9) Nothing in this subdivision shall preclude the governing board of a school district  
48 from imposing a more stringent academic standard than that imposed by this subdivision. If the  
49 governing board of a school district imposes a more stringent academic standard, the governing  
50 board shall establish the criteria for participation in extracurricular and cocurricular activities at a  
51 meeting open to the public pursuant to Section 35145.

52 (10) The governing board of each school district annually shall review the school district  
53 policies adopted pursuant to the requirements of this section.

54 (b)(1) On or before July 1, 1994, the governing board of each school district, as a  
55 condition for the receipt of school apportionments from the state school fund, shall adopt rules  
56 and regulations establishing a policy of open enrollment within the district for residents of the  
57 district. This requirement does not apply to a school district that has only one school or a school  
58 district with schools that do not serve any of the same grade levels.

59 (2) The policy shall include all of the following elements:

60 (A) It shall provide that the parent or guardian of each schoolage child who is a resident  
61 in the district may select the schools the child shall attend, irrespective of the particular locations  
62 of his or her residence within the district, except that school districts shall retain the authority to  
63 maintain appropriate racial and ethnic balances among their respective schools at the school  
64 districts’ discretion or as specified in applicable court-ordered or voluntary desegregation plans.

65 (B) It shall include a selection policy for a school that receives requests for admission in  
66 excess of the capacity of the school that ensures that selection of pupils to enroll in the school is  
67 made through a random, unbiased process that prohibits an evaluation of whether a pupil should  
68 be enrolled based upon his or her academic or athletic performance. The governing board of a  
69 school district shall calculate the capacity of the schools in the district for purposes of this  
70 subdivision in a nonarbitrary manner using pupil enrollment and available space. However,  
71 school districts may employ existing entrance criteria for specialized schools or programs if the  
72 criteria are uniformly applied to all applicants. This subdivision shall not be construed to prohibit  
73 school districts from using academic performance to determine eligibility for, or placement in,  
74 programs for gifted and talented pupils established pursuant to former Chapter 8 (commencing  
75 with Section 52200) of Part 28 of Division 4, as that chapter read on January 1, 2014.

76 (C) It shall provide that no pupil who currently resides in the attendance area of a school  
77 shall be displaced by pupils transferring from outside the attendance area.

79 (3) Notwithstanding the requirement of subparagraph (B) of paragraph (2) that the policy  
80 include a selection policy for a school that receives requests for admission in excess of the  
81 capacity of the school that ensures that the selection is made through a random, unbiased  
82 process, the policy may include ~~either~~ any of the following elements:

83 (A) (i) It may provide that special circumstances exist that might be harmful or dangerous  
84 to a particular pupil in the current attendance area of the pupil, including, but not necessarily  
85 limited to, threats of bodily harm or threats to the emotional stability of the pupil, that serve as a  
86 basis for granting a priority of attendance outside the current attendance area of the pupil. A  
87 finding of harmful or dangerous special circumstances shall be based upon either of the  
88 following:

89 (I) A written statement from a representative of the appropriate state or local agency,  
90 including, but not necessarily limited to, a law enforcement official or a social worker, or  
91 properly licensed or registered professionals, including, but not necessarily limited to,  
92 psychiatrists, psychologists, or marriage and family therapists.

93 (II) A court order, including a temporary restraining order and injunction, issued by a  
94 judge.

95 (ii) A finding of harmful or dangerous special circumstances pursuant to this  
96 subparagraph may be used by a school district to approve transfers within the district to schools  
97 that have been deemed by the school district to be at capacity and otherwise closed to transfers  
98 that are not based on harmful or dangerous special circumstances.

99 (B) It may provide that schools receiving requests for admission shall give priority for  
100 attendance to siblings of pupils already in attendance in that school and to pupils whose parent or  
101 legal guardian is assigned to that school as his or her primary place of employment.

102 (C) It may provide that schools receiving requests for admission shall give priority based  
103 on geographic proximity to the school from the pupil's primary residence and/or reduce priority  
104 based on geographic proximity to another public school in the district from the pupil's primary  
105 residence.

106 (4) To the extent required and financed by federal law and at the request of the pupil's  
107 parent or guardian, each school district shall provide transportation assistance to the pupil.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Diego County Bar Association

### **STATEMENT OF REASONS**

The Problem: Under existing law, when the number of students within a boundary requesting admittance to a public K-12 school exceeds the capacity, the district is required to conduct a lottery to determine who gets admitted. Schools may employ a few exceptions that allow a few students to bypass the lottery (if the applicant has a sibling currently enrolled in the school, a parent working at the school, or harmful or dangerous circumstances exist for the student at another school). Other than that, the school must do a lottery for everyone within the boundary, which enables someone on the outskirts of the boundary the same chance as someone who lives across the street from the school.

The Solution: This resolution allows, but does not require, schools to consider geographic proximity when requests for admission exceed capacity. Schools would be allowed to give priority based on proximity from the student's primary residence, and reduce priority based on proximity to another public school in the district from the student's primary residence. For districts that adopt this, this will ensure that someone living across the street will never be displaced while someone on the outskirts gets admitted.

**IMPACT STATEMENT**

This proposed resolution does not affect any other law, statute or rule.

**CURRENT OR PRIOR RELATED LEGISLATION**

Not known.

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**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Education Code section 35160.5 to provide that schools may consider geographic proximity when admission requests exceed capacity. This resolution should be approved in principle because student geographic proximity to a school within the district is a reasonable factor for student selection in cases where requests for admission exceed the capacity of the school.

Education Code section 35160.5, subdivision (b), sets forth elements governing school district boards may consider in selecting students, in a random, unbiased process, where requests for admission exceed capacity. Currently the listed criteria entail either granting preference to pupils based on health, safety or wellbeing concerns due to special circumstances, or according priority to siblings of existing students or to pupils whose parent or guardian are employed in the school. This resolution would offer a thoughtful third alternative basis for consideration—geographic proximity to the school.