



Revised December 2010

Fact Sheet

Frequently Asked Questions: Open Enrollment Act for low-achieving schools as added by SBX5 4/Romero

The Open Enrollment Act (Education Code 48350-48361), added by SBX5 4 Romero (Ch. 3, Fifth Extraordinary Session, Statutes of 2010), was signed into law on January 7, 2010 and became effective on April 14, 2010. The legislation requires the California Department of Education to create a list of 1,000 “low-achieving” schools (now referred to as “Open Enrollment” schools). Parents of children attending a school on the list can apply for a transfer for their child to a different school as long as that school has a higher score on the Academic Performance Index (API) than the school in which the student was previously enrolled. Although initially part of the state’s attempt to obtain federal Race to the Top funds, this legislation is now law despite the fact that California lost its bid for the federal grant.

This legislation adds to the existing alternative attendance options, including intradistrict open enrollment (Education Code 35160.5), “Allen bill” transfers based on parent/guardian employment (Education Code 48204), interdistrict attendance permits (Education Code 46600-46611), school district of choice (Education Code 48300-48316), and NCLB transfers from Title I Program Improvement schools (20 USC 6316; 34 CFR 200.44).

Which districts are affected by this legislation?

The legislation applies to all California school districts, including districts without schools on the Open Enrollment list. Districts with schools on the Open Enrollment list may have students leave the district or request a transfer to another school within the district. Districts without schools on the list may receive requests for transfers into the district from students attending a school on the list in another district.

Has the State Board of Education adopted regulations?

Yes, the Office of Administrative Law approved the permanent regulations on December 2, 2010 and those regulations are effective on January 1, 2011. The “emergency regulations” which were adopted by the SBE in July 2010 will expire when the permanent regulations take effect.

What is the purpose of the Open Enrollment Act?

The purpose of the Open Enrollment Act is to improve student achievement and enhance parental choice in education by providing additional options to pupils to enroll in public schools throughout the state without regard to the residence of their parents.

Are there plans to repeal this law?

No, not at this time. Because California failed to receive federal RTTT funds, and with the new governor taking office at the beginning of 2011, there has been talk that the statute may be repealed by the Legislature. As of this writing, such legislation has not been introduced and it is unclear whether it would be successful. Clean-up legislation is also a possibility.

Identification of Open Enrollment schools

How does the CDE determine which schools are on the list of Open Enrollment schools?

Education Code 48352 requires the CDE to annually create an Open Enrollment list of 1,000 schools based on a ratio of elementary, middle and high schools as existed in decile 1 of the 2009 base Academic Performance Index—687 elementary schools, 165 middle schools and 148 high

schools. The list excludes charter schools, schools with fewer than 100 valid test scores, and court, community or community day schools. In addition, schools which are non-resident schools providing special education or alternative opportunity programs through county offices of education or state schools for the deaf are excluded.

A district may not have more than 10 percent of its schools on the list, except if the district is a single school district. However, when the district's number of schools is not evenly divisible by ten, the ten percent number of schools is rounded up to the next whole number of schools. The CDE counts all schools in the district (except closed schools) as the total number of schools to determine the ten percent number.

A new list will be generated by the CDE each year. The 2011-12 list, posted by the CDE on October 8, can be found here: <http://www.cde.ca.gov/sp/eo/op/>. The new list may include schools previously on the list.

Is a waiver available to remove a school from the list?

In October, the CDE released guidance for districts to apply for a waiver from the SBE to remove a school from the Open Enrollment list. Because the formula results in many higher-performing schools being included on the list, the waiver may provide some relief, though whether the SBE will grant the waiver requests is still unknown. The CDE recommends that a district submit a separate waiver request for each affected school. Applications and deadline information can be found here: <http://www.cde.ca.gov/re/lr/wr/hottopics.asp#Openenrollment>.

For districts with schools on the Open Enrollment list

What type of notification must be provided to parents/guardians?

Education Code 48354 and 5 CCR 4702 specify that the district of residence must notify the parent/guardian of each student attending a school on the Open Enrollment list of the option to transfer on the first day of instruction. If the district has not been notified that one of its schools is on the list by the first day of instruction, the notice must be sent no later than 14 calendar days after the list is posted on the CDE's web site.

The law does not specify the type of information that must be included in the notice or how the notice is to be provided. To assist districts, CSBA has prepared a sample parent/guardian notification E 5118, which can be found on CSBA's web site here: http://www.csba.org/Services/Services/PolicyServices/~/_media/Files/Services/PolicyServices/SamplePolicies/2011_11_BP5118OpenEnrollment2.ashx.

20 USC 6316 requires Title I schools in Year 1 of Program Improvement (PI) or beyond to notify parents/guardians of the opportunity to transfer their child to another public school or charter school within the district. Schools on the Open Enrollment list and in Year 1 of PI or beyond may combine the notice required by both of these programs. However, districts wishing to combine the notices should be careful to ensure that the notice clearly outlines the different legal requirements for the programs. For example, while the district is required to provide transportation to students transferring from a PI school, it is not required to do so for students transferring under the Open Enrollment Act.

In addition, districts should keep in mind that Education Code 48985 specifies that when 15% or more of students in a school speak a language other than English, all notices sent to the parents of these students must be written in that student's primary language and may be answered by the parent in either language.

Can a district deny a student's transfer out of the district?

The district of residence has limited ability to deny transfers out of the district. Education Code 48355 allow transfers to be limited or denied if the governing board has determined that the transfer would negatively impact the district's court-ordered or voluntary desegregation plan or racial and ethnic balance.¹

Education Code 48355 further provides that a school district of residence shall not adopt any other policies that in any way prevent or discourage students from applying for a transfer to a school district of enrollment and requires district communications to parents be factually accurate and not target individual parents or residential neighborhoods on the basis of a child's actual or perceived academic or athletic performance or any other personal characteristic.

1 In *Crawford v. Huntington Beach Union High School District*, a California appellate court held that a district's intradistrict enrollment policy, which contained a racial and ethnic balance component as authorized by Education Code 35160.5, violated the constitutional provisions added by Proposition 209 (Article I, Section 31). Because of the potential for legal challenge, districts should be extremely cautious if denying transfers on this basis and should consult district legal counsel.

Does the Open Enrollment Act apply to intradistrict transfers?

It is unclear whether the Open Enrollment Act grants students who are attending an Open Enrollment school the right to transfer to another school within the district, as well as outside of the district. In order to avoid conflict with the statute authorizing intradistrict open enrollment, districts may consider requiring parents who wish to transfer their child to another school within the district to use the district's regular policy and procedures for intradistrict open enrollment. CSBA's sample BP/AR 5116 – Intradistrict Open Enrollment will be revised in March to grant priority for intradistrict transfers to students transferring from an Open Enrollment school.

For all districts: Managing transfer applications

What is the deadline for transfer applications?

Education Code 48354 states that a parent may submit an application requesting a transfer to another district (the district of enrollment) by January 1 of the preceding year for which the transfer is requested. The law authorizes the district to waive the January 1 deadline for all applications in order to coordinate with the timelines for other interdistrict and intradistrict transfers. Many districts have waived the January deadline in order to create an application window later in the winter or spring when a determination can be made as to the number of slots available at a particular school. However, districts should be cautious and not set the timeline too late in the year, which may have the effect of discouraging parents from applying or otherwise creating a hardship.

What are the enrollment priorities?

The district is required to establish a period of time for resident student enrollment before accepting transfer applications. Enrollment priority must first be given to students who reside within the district (including students residing within a school's attendance boundary and those applying for intradistrict open enrollment).

If the number of Open Enrollment transfer applications exceeds the slots available, a lottery must be conducted with first priority given to siblings of students who already attend the requested school and second priority to students transferring from a Program Improvement school ranked in decile 1 of the API.

However, the law is contradictory in that districts must notify parents within 60 days whether their transfer application has been accepted or rejected. Thus, if a parent submits a transfer application on September 1, the district would need to provide notification of the application's status by November 1, even though the enrollment period for residents might still be open and the district would not yet know how many slots would be available at a specific school for transfer students. The creation of an application window (as discussed above) so that the 60-day notification deadline falls after the district has determined how many slots are available may help resolve this statutory inconsistency.

May a parent request a transfer to any school or a specific school or program?

Yes, the parent may request a transfer to a specific school or program, but the student must request to be enrolled in a school with a higher API than the school in which the student was previously enrolled. The district may also apply its usual requirements for admission to a magnet school or a gifted and talented program.

May special education students apply for a transfer?

Yes, special education and disabled students under Section 504 have the same opportunity to apply for a transfer as nondisabled students and may not be discriminated against in the admission process. Districts may ask parents to disclose whether their child needs special education services in order to determine whether the district's program can appropriately meet the student's needs as identified in his/her Individualized Education Program (IEP) or Section 504 plan. Districts must proceed cautiously, however, and ensure that any denials are based on specific standards and ensure that denials are not discriminatory in nature and based on the student's disabled status. CSBA strongly recommends that districts consult with legal counsel as these types of decisions arise.

May the district require verification of residency?

Yes, the district of enrollment may require the parent applying for a transfer to verify their residency at the school on the Open Enrollment list.

What criteria can a district use to reject a transfer application?

The law authorizes a district of enrollment to adopt "specific written standards" for acceptance and rejection of applications. The standards may include consideration of the capacity of a program, class, grade level or school building or adverse financial impact. The standards may not include consideration of a student's academic achievement, proficiency in English language, family income or any of the prohibited bases of discrimination.

CSBA's sample BP/AR 5118 – Open Enrollment Act Transfers provides examples of standards such as negative impact on classroom or building capacity causing the district to exceed class size reduction limits, exceed student-teacher ratios pursuant to the district's collective bargaining agreement, or hire additional staff or operate additional facilities.

Because Education Code 48361 specifies that a discretionary decision by the board regarding the district's administration of the program may only be overturned if a court finds that the board acted in an arbitrary and capricious manner, it is recommended that the standards be included in a board-adopted policy and be supported by data specific to the district's capacity and financial situation as well as any specific findings by the Superintendent or designee.

Does the Open Enrollment Act apply to basic aid districts that do not accept interdistrict transfers?

Yes. Education Code 48359.5 states that for a district of enrollment that is a basic aid district, the apportionment of state funds ADA credited shall be 70% of the district revenue limit that would have been apportioned to the district of residence starting in the second consecutive year of enrollment. Basic aid districts must accept students who wish to transfer into the district, subject to the specific written standards for rejection that the district has developed. Basic aid districts should not adopt a blanket policy denying all applications but should develop specific written standards, considering capacity and adverse financial impact as discussed above, to evaluate each application.

Is there an appeal process for parents if a transfer application is rejected?

Education Code 48361 specifies that a discretionary decision by the board regarding the district's administration of the program may be overturned if a court finds that the board acted in an arbitrary and capricious manner. In order to help ensure that any rejection of a transfer application was not arbitrary, districts should consider adopting an appeal process for denial of transfer requests or applying the uniform complaint process.

CSBA's sample BP/AR 5118 provides for an appeal process to the board; however some districts have considered adopting an appeal to the superintendent but it is unclear whether an appeal to the superintendent would satisfy Education Code 48361. The appeal process should include the basic elements of due process, such as a hearing before a neutral party, the opportunity for both sides to present oral or written evidence, and the opportunity to question witnesses.

For all districts: Once a transfer student has been admitted

How long does a transfer last? Must a student reapply each year?

Once admitted, the student is deemed a "resident" of the new district and does not need to reapply for enrollment in that school, regardless of whether the student's school of residence remains on the Open Enrollment list. 5 CCR 4702 specifies that the district of enrollment may allow the student to matriculate to a middle or high school in the district without having to reapply, regardless of whether the middle or high school in the student's district of residence is on the Open Enrollment list.

Unified districts, districts with elementary and middle schools, and districts with middle and high schools should be careful to ensure that the terms of approval and notification to parents/guardians clearly specify whether the approval of the transfer application extends to other schools in the district to which the student would matriculate or whether the student must reapply for admittance into other district schools.

Can the transfer be revoked if a student moves and no longer lives in the residence area of the Open Enrollment school? Can the transfer be revoked if the student's resident school is removed from the state's Open Enrollment list in subsequent years?

No. Once admitted, the student becomes a "resident" of the district of enrollment and must be allowed continued attendance until he/she has completed the course of study at the school.

Does the district of enrollment need to provide transportation to the new school?

No, the Open Enrollment Act does not require districts to provide transportation. Districts should make sure that notifications to parents are clear that transportation is the parent's responsibility.

Are high school students who transfer eligible for interscholastic athletics?

The California Interscholastic Federation (CIF) determines eligibility rules for interscholastic athletics and current CIF bylaws limit transfer eligibility in order to prevent recruiting problems. The CIF is in the process of considering bylaws regarding athletic eligibility for students who have transferred pursuant to the Open Enrollment Act, but this bylaw has not yet been finalized.

Can transfer students be suspended or expelled?

The Open Enrollment Act is silent as to disciplinary issues, but since the student is deemed a “resident” of the district of enrollment, then it appears the transfer student must be treated like all other districts students—meaning that the district’s normal suspension and expulsion procedures are applicable. If the student is expelled, then he/she can apply to attend school in the district of residence or another district and those districts may determine whether to admit the student pursuant to Education Code 48915.1.

Next steps: What should districts do now?

It is recommended that all districts:

- Compile data. If the district is concerned about the number of transfer applications that might be received, data should be collected so that the district will be able to accurately project the number of slots that are available and correctly apply the standards for acceptance and rejection. These data might include the number of students expected to matriculate from feeder districts, the average number of slots that may need to be kept open for resident students who enroll after the enrollment deadline, costs per student, staffing ratios, and building capacity issues. Due to the fact that once a student is admitted they are deemed a resident of the district, boards should also consider the capacity of later grades and class size reduction efforts.
- Use the data to develop “specific written standards.” Standards for rejection of transfer applications should be based on district data and evaluation of enrollment and capacity figures and supporting documentation that explains the rationale behind the standards. Standards must be uniformly and consistently applied.
- Adopt board policy and administrative regulations. In November, CSBA released sample BP/AR/E 5118 – Open Enrollment Act Transfers. Districts should carefully review this policy and regulation and modify it to reflect the specific standards developed by the district and approved by the board. Districts should also ensure that other attendance policies are consistent with the Open Enrollment Act deadlines, such as BP/AR 5116 – Intradistrict Open Enrollment, BP/AR 5117 – Interdistrict Attendance.

In addition, districts with schools on the list should:

- Be prepared to provide parent notification. The district of residence must notify parents/guardians of students attending a school on the list of their option to transfer to another school within the district or outside of the district. CSBA has developed a sample letter that may be used for this purpose.
- Provide parent and community education. In addition to the notice, districts may want to provide additional information to parents, the community and the media explaining how the list was compiled, why their school is on the list and the steps the district has taken to improve the school’s API score.
- Determine schools within the district that are eligible to receive transfers. District students attending a school on the list may transfer to another school within the district as long as that school has a higher API score. If there is space available, the district may want to list those specific district schools to which the student may transfer in the parent notification so that the student does not leave the district altogether.