



July 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 another school either within or outside of their district of residence as long as that school has a higher score on the Academic Performance Index 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 law whether or not California is awarded a grant in the second round of RTTT funding.

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.

When will the State Board of Education adopt implementing regulations?

Although the legislation authorized the SBE to adopt emergency regulations, the SBE chose to develop two sets of Title 5 regulations: “emergency” and “regular” regulations. The emergency regulations were adopted by the SBE at its July 15, 2010 meeting and, upon approval by the Office of Administrative Law, will likely be effective in early August 2010. These emergency regulations only address the formula for creation of the list and will expire when the regular regulations take effect.

The second set of regulations is now proceeding through the regular rule-making process. The SBE created a working group of stakeholders, that includes CSBA, to help develop the regulations. A hearing will be held on September 14, 2010. It is likely that the “regular” regulations will become effective around November 2010.

Does the legislation apply to student transfers for the 2010-11 school year?

No. While school districts must still issue letters to parents regarding the school’s status as an “open enrollment” school, the emergency regulations do not require school districts to accept Open Enrollment Act transfer applications for the 2010-11 school year. There has been a lot of confusion regarding the implementation of this legislation. As initially proposed, the SBE’s emergency regulations required districts to consider granting applications for transfers for the 2010-11 school year. CSBA and others testified before the SBE that such a proposal was contrary to the language in the statute and that the school year had already begun for many districts. Thus, the emergency regulations were amended to delete the deadlines for applications for this school year and to make it optional for districts to accept applications this year.

It's important that districts treat all applications consistently. If applications will be accepted this school year, then students should be admitted or denied admittance consistent with the requirements in statute specified below.

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 API—687 elementary schools, 165 middle schools and 148 high schools. The list excludes charter schools, schools that are closed, schools with fewer than 100 valid test scores, and court, community or community day schools. A district may not have more than 10 percent of its schools on the list.

The methodology for developing the list was approved by the SBE at its July 15, 2010 meeting. According to the CDE, based on its initial run of the figures, there are over 500 districts with schools on the list. The schools range from deciles 1 to 6 on the API and include some schools with an API score of 800 or above. There are 290 districts with fewer than 10 schools on the list and 50 single-school districts are represented.

A draft list can be found on the SBE's July 14-15, 2010 agenda, Item 33, Addendum, and is available at www.cde.ca.gov/be/ag/ag/yr10/documents/bluejul10item33.doc. A final list will likely be posted by the CDE in early August 2010.

For districts with schools on the open enrollment list:

What type of notification must be provided to parents?

Education Code 48354 and 5 CCR 4702 specify that the district of residence must notify the parent 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 September 15, 2010. Education Code 48354 specifies that the notice to parents must be consistent with federal law which requires schools in year one of Program Improvement and beyond to notify parents of their option to transfer their child to another school within the district.

Districts should keep in mind that Education Code 48985 specifies that when 15 percent or more of students in a school speak a language other than English, all notices sent to the parents of this student population 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

For all districts: Dealing with transfer applications

What is the transfer application process?

Education Code 48354 states that a parent must 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, although the January 1 deadline may be waived by the district. For example, a parent may submit an application by January 1, 2011 for enrollment in the 2011-12 school year. The application may request enrollment in a specific school or program. Within 60 days of receiving the application, the district of enrollment must notify the parent and the student's district of residence whether the application has been accepted or rejected and, if rejected, the reasons for the rejection.

If the application is accepted, the district of enrollment must ensure that the student is enrolled in a school with a higher API than the school in which the student was previously enrolled. 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.

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

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.

students who reside within the district (including students residing within a school's attendance boundary and those applying for intradistrict open enrollment). Thus, the deadlines for applications must be aligned with the deadline for resident 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. It is anticipated that the SBE's final regulations will address this statutory contradiction.

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.

What's the definition of "adverse financial impact"?

The SBE's proposed regulations initially contained language that defined "adverse financial impact" in a way that severely limited a district's ability to use that standard as a basis for denial. As a result of testimony by CSBA and others, that section was removed from the regulations that were ultimately approved by the SBE at its July 15, 2010 meeting. However, at the same meeting, the SBE created a working group of interested stakeholders to work on refining the regular regulations. Thus, it's possible that the final regulations may further define this term.

Depending on the SBE's final regulations, examples of standards for rejection might include negative impact on classroom or building capacity causing the district to exceed class size reduction limits or exceeding student-teacher ratios pursuant to the district's collective bargaining agreement.

Next steps: What should districts do now?

It is recommended that all districts:

- **Start compiling data.** If the district is concerned about the number of transfer applications that might be received for the 2011-12 school year, 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 and building capacity issues. Since once admitted a student is deemed a resident of the district, capacity of later grades and class size reduction efforts should also be considered.
 - **Use the data to begin considering "specific written standards."** As soon as possible, boards should make themselves familiar with the provisions of this law. In particular, school board members should be aware of the fast-moving deadlines for implementation which do not align with existing interdistrict transfer laws. When the CDE releases the final statewide list of low-achieving schools, districts should be aware if any of their schools are designated.
 - **In the fall, adopt board policy and administrative regulations detailing the district's "specific written standards."** Given the controversy at the July 2010 SBE meeting, it is likely that there may be significant amendments to the proposed Title 5 regulations. Thus, any policy developed by the district now will likely need significant revision to reflect the final regulations. CSBA will provide a sample board policy and administrative regulation as soon as possible and when the SBE's regulations become final, probably sometime in November 2010.
- In addition, districts with schools on the list should:**
- **Provide parent notification.** The district of residence must notify parents of students attending a school on the list of their option to transfer to another school within the district or outside of the district. The notification must be sent by the first day of instruction or, if notification from the CDE of the school's placement on the list is not received until after the first day of instruction, by September 15, 2010. Districts must notify parents this September for purposes of enrollment for 2011-12. For schools that are also in Title I program improvement, the district may want to combine this notice with the notice of the opportunity to transfer under federal law.

- **Provide parent and community education.** In addition to the notice, districts might 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 in the parent notification those specific district schools to which the student may transfer so that the student does not leave the district altogether.

Timelines

July 2010

SBE adopts emergency regulations regarding the formula for calculating the list of open enrollment schools

August 2010

CDE releases list of 1,000 open enrollment schools

By September 15, 2010

Districts with schools on the list must notify parents of students attending the identified school

November 2010

Final regulations for transfer applications for the 2011-12 school year become effective

November-December 2010

Districts adopt policies and procedures for acceptance or denial of transfer applications

Districts finalize transfer application

January 1, 2011 or later date determined by the board

Last day for parents to apply for transfer to school district of enrollment in the 2011-12 school year

Fall 2011

Enrollment of accepted transfer students