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Open Enrollment Act *Got Choice...What Now?*



California School Boards Association
Complimentary Webinar
March 15, 2011

Presented by:
Elizabeth Rho-Ng, Esq., DWK
& Marguerite Noteware, CSBA



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What to Expect

Today, we will:

- Review districts' obligations regarding implementing timelines, notifications and board procedures/policies
- Discuss commonly-asked questions related to obligations and rights arising under OEA
- Analyze impact of recent developments



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Let's Review

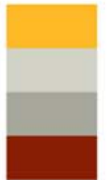
Open Enrollment Act (Ed. Code, §§ 48350-48361)



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Highlights of OEA

Open Enrollment Act (SBx5 4 – “Romero Bill”):

- Enacted January 7, 2010; effective April 14, 2010
- Annual list of 1,000 “low-achieving” schools (“Open Enrollment schools”)
- Parent of eligible child may apply for transfer to school with a higher API outside district of residence
- January 1 application deadline, unless waived
- Parents must receive acceptance or denial notice within 60 days

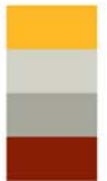
Highlights of OEA

- Requires transfers to be effective starting **2011-12**
 - 2011-12 Open Enrollment List was issued 10/8/10
- Districts could *opt* to accept transfers for **2010-11**, *if statutory January 1 deadline was waived*
 - 2010-11 Open Enrollment List was issued 8/12/10



Highlights of OEA

- Parent may initially request a *particular* transfer school, but are not guaranteed
- Districts of enrollment may adopt “specific written standards for acceptance and rejection”
 - May consider “capacity” and “adverse financial impact”





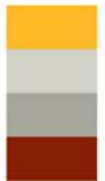
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Highlights of OEA

- District of residence may prohibit or limit outgoing OEA transfer(s) only if transfer(s) would violate desegregation plan or racial/ethnic balance
- No right to appeal to County Board
- District's denial of OEA transfer will be overturned by a judicial court only if "arbitrary or capricious"

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OEA: Just Another “Choice”?

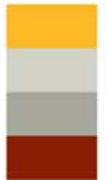
- Adds to existing alternative attendance options:
 - Intra-district attendance/open enrollment
(Ed. Code, § 35160.5)
 - “Allen Bill transfers”
(Ed. Code, § 48204(b))
 - Inter-district attendance permits
(Ed. Code, §§ 46600-46611)
 - NCLB Title I Program Improvement school choice
(20 U.S.C. § 6316, 34 C.F.R. § 200.44)
 - “School district of choice” program
(Ed. Code, §§ 48300-48316)

What/Who Comes First ??

- Consider priority of attendance options
 - Which students are owed “first” choice?
 - What’s the “degree” of choice?
 - Balancing federal law requirements (NCLB) v. state law requirements (Open Enrollment Act)



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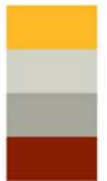
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Doing the “Resident” Shuffle

- Under OEA,
 - Once accepted into district of enrollment, transfer student fulfills residency requirements
 - No initial OEA transfers may displace any *resident* students or those currently enrolled at the school
 - Provides for “priority enrollment opportunities” for pupils residing in the school district
 - School district of enrollment must establish a period of time for resident pupil enrollment prior to accepting OEA applications

(Ed. Code, § 48354(b)(6), 48356(d), (e), (f))

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Doing the “Resident” Shuffle

AB 2444

- **Caveat**: Impact of **AB 2444** (interdistrict transfers)
 - Effective January 1, 2011
 - Entitles transfer students currently enrolled in a district under an interdistrict transfer permit per Ed. Code section 46600 to be allowed to continue attendance without the need for reapplication, *unless the districts agree to alternate reapplication standard*
 - Students are deemed ‘residents’ of district of attendance



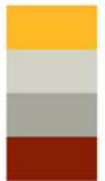


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OEA Notification Requirements for 2011-12 SY

- When to notify parents/guardians?
 - *On the first day of instruction, or, if a district has not been notified before the first day of instruction whether one of its schools is on the list, the notification must be provided no later than 14 calendar days after Open Enrollment List is posted on CDE's website*
(5 C.C.R. § 4702(a) (permanent regulation))
- All notifications for 2011-12 transfers should have gone out by now

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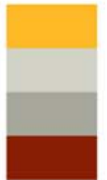
OEA Notification Requirements

- Be careful if combining notices of transfer options under OEA and NCLB Program Improvement.
 - Possibility of confusion or conflation of two frameworks' differences
- Reminder: when 15% or more of pupils in a school speak a non-English language, all notices sent to the parents must be written in the pupil's primary language.
(Ed. Code, § 48985)

Permanent OEA Regulations

(5 C.C.R. §§ 4700-4703)

- Permanent regulations effective **Jan 1, 2011**
- Removes county offices of ed from OEA List
- No reapplication required in order to continue attending transfer school, even if original school of residence is removed from OEA
- Districts of enrollment may permit OEA students to matriculate to middle or high school without reapplying, even if student's original matriculation would be to non-OEA school





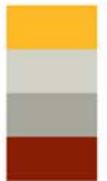
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Permanent OEA Regulations

(5 C.C.R. §§ 4700-4703)

- Parents must enroll OEA student on or before the first day of instruction, or not later than 14 calendar days after receipt of acceptance notice
- If parents fail to enroll student within this timeframe, the district of enrollment is not required to enroll him or her

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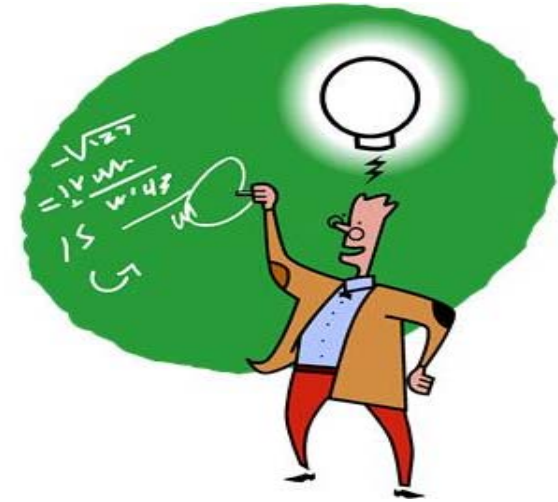
Doing The Regulation Shuffle: County Offices Affected

- Permanent regulations (effective 1/1/11) govern next year's list (**2012-13** OEA List)
 - Will not include county offices of education
- *Emergency* OEA regulations (effective 8/2/10) govern the 2010-11 and 2011-12 OEA Lists
 - Schools identified on the current OEA lists – *including county offices of education* - must comply with OEA requirements

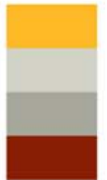
(Letter from CDE Special Education Director, December 15, 2010)

SBE Waivers

- Open Enrollment List – based on a faulty formula?



- On 10/27/10, CDE issued guidance for school districts to seek a waiver from SBE to remove schools from OEA List.
 - Ed. Code § 33050: General Waiver Authority
 - Waivers are effective for 2 years minus 1 day



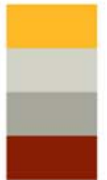
SBE Waivers

- At January 2011 SBE Meeting, **35** districts had OEA waivers granted
 - BUT: schools must honor any OEA transfer requests received to date
- CDE will be issuing an undated new list that *removes* those schools which obtained waivers from either or both 2010-11 and 2011-12 OEA Lists

SBE Waivers

So, what to do now?

- Consider submitting waiver of OEA schools with high base or growth API
- Submit achievement data, including past and current API scores, AYP, subgroup scores, Program Improvement status
- Submit one waiver per school
- Once waiver is received, districts should issue notice to public

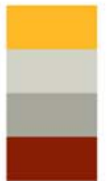
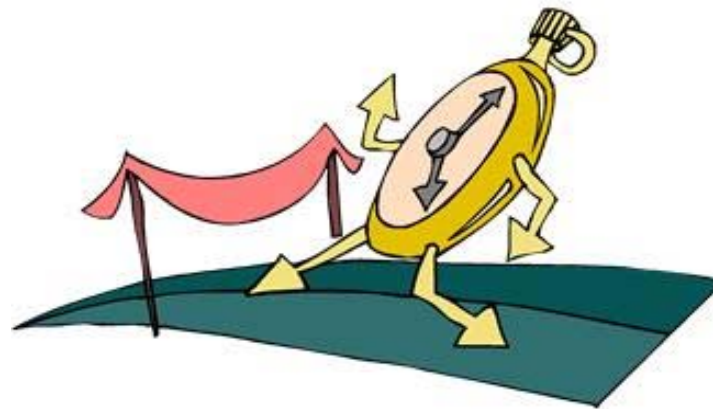


OEA Application Deadline

- Application deadline for transfers into district of enrollment is **January 1** preceding school year of desired admission, *unless district of enrollment waives deadline.*
(Ed. Code, § 48354(b)(2), (b)(5))
- Statutory deadline does **not** apply if applying parent, with whom child lives, is enlisted in military and was relocated within 90 days prior to submitting application.
(Ed. Code, § 48354(b)(3))

January 1 Deadline: To Be Or Not to Be?

- Query: Any reason to waive January 1 deadline??



January 1 Deadline: To Be Or Not to Be?

Under OEA, districts of enrollment must:

- Provide “priority enrollment opportunities” for pupils residing in the school district
- Establish a period of time for *resident* pupil enrollment prior to accepting OEA applications
- Issue written decision on OEA transfer requests to parents and district of residence **within 60 days** from receipt of applications
 - CSBA recommends setting an OEA application window period
- Query: Can a district’s OEA timelines be challenged?

January 1 Deadline: To Be or Not to Be?

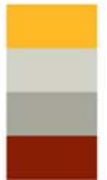
- Query: How to harmonize intra-district open enrollment, Allen Bill, OEA, Title I/PI transfers?
 - Review and coordinate all applicable timelines and deadlines
 - Reasonably and realistically predict next year's numbers based on historical data
 - Remember who is deemed a "resident" within your district!
 - Establish OEA application period to ensure that current transfer students are accounted for before considering new incoming OEA transfer requests

OEA's Priority Pools

- “Priority for approval” of OEA transfer requests:
 - **1st priority:** siblings of children who already attend desired school
 - **2nd priority:** Title I/NCLB program improvement transfers from API decile 1 school
 - If number of applicants to a particular school exceeds spaces available, random lottery in order of above 1st & 2nd priority groups
(Ed. Code, § 48356(d))

OEA Board Policies & Regulations

- Districts should now have updated board policies and administrative regulations in place
- CSBA sample model policies BP 5118 and AR 5118 issued in Nov. 2010
- Query: Should a district have a separate BP/AR on OEA transfer or roll the information into other BPs and ARs?



District Criteria & Standards

- Districts are authorized to adopt “**specific, written standards**” for acceptance and rejection of OEA requests.
 - May include “consideration of the capacity of a program, class, grade level, school building, or adverse financial impact”
 - May not include pupil’s previous academic achievement, physical condition, proficiency in English, family income, or any individual characteristic set forth in Ed. Code section 200 [includes disability, gender, and race]

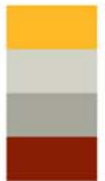
(Ed. Code, § 48356(a))

District Criteria & Standards

- Query: What can districts of enrollment use to guide their decisions based on either:
 - Capacity?
 - Adverse financial impact?



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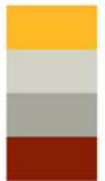


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District's Criteria & Standards: Data-proof Your District

- Data collection and evaluation of district's enrollment and capacity figures are necessary in order to properly apply standards and criteria.
 - Consider: late resident enrollees, students expected to matriculate from/to feeder districts, costs per pupil, class size reduction requirements, building/class/program capacity, staffing ratios, reenrolling intra-district and inter-district transfers

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Special Education Pupils

- A word about pupils with disabilities...
 - Special education/disabled students have the same opportunity to apply for transfer under the OEA as non-disabled students
 - Placement must appropriately meet the pupil's needs under the IEP (or Section 504 plan)
 - Program capacity standards should be applied equally to special education and Section 504 students as to any other students

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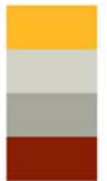
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Special Education Pupils

- Consider adopting policies and procedures that relate to the district of enrollment's involvement in IEP process leading up to change of placement request



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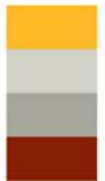
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Transportation

- OEA does not entitle parents to transportation, but consider:
 - Title I/PI transfers' right to transportation
 - Special education students' IEP-based transportation



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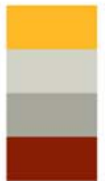
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Matriculation & Promotion

- District policies should address whether OEA transfer students will be permitted to matriculate to feeder schools in district of enrollment
- Query: What about 8th graders in K-8 district whose current schools are listed on next year's OEA List?



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OEA Applications

- OEA does not provide guidance on what an OEA application needs to contain.
- What information would a district of enrollment want on, or accompanying, the OEA application?
- Consider:
 - Verification of attendance at OEA school
 - Verification of residency
 - Special education IEP (or 504 plan) eligibility
 - Eligibility for special program (i.e, gifted program)
 - Disciplinary/expelled status

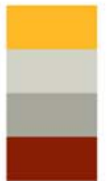
Basic Aid Districts

- For basic aid districts accepting OEA transfers, apportionment of state funds for any average daily attendance credited under OEA shall be **70%** of district revenue limit that would have been apportioned to district of residence.
- Apportionment of these funds shall begin in the **second** consecutive year of enrollment, and continue annually until pupil graduates or is no longer enrolled.

(Ed. Code, § 48359.5)

Basic Aid Districts

- “Adverse financial impact” – how defined?
- Have handy documentation of fiscal constraints based on enrollment
- Beware of any blanket policy refusing to consider any OEA applications



District Criteria & Standards: What About Bad Apples?

Query: Can a district of enrollment deny, or even *revoke*, OEA applicants based on disciplinary problems?

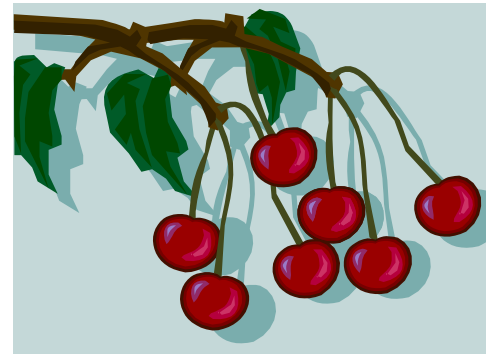
- Discipline is not expressly listed as a prohibited consideration factor
- OEA transfer students are subject to same rules of district of enrollment as all other resident students (Ed. Code, § 48356(c))
- Consider Ed. Code §§ 48915.1 and 48915.2 for students expelled from an OEA List school seeking admission

District Criteria & Standards

No Cherry-picking of Applicants

- Transfer pupils must be selected through *random, unbiased* process that does not consider whether pupil should be enrolled based on individual academic or athletic performance, or any of the other specified characteristics.

(Ed. Code, § 48356(d))



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“Play Ball!”

OEA & CIF Eligibility

- In November 2010, the CIF Federated Council proposed **CIF Bylaw 207.B(3)** which would permit pupils to transfer from a school identified on Open Enrollment List to another public high school with a higher API score
- *CIF Bylaw 207.B(3) was passed unanimously on February 4, 2011*



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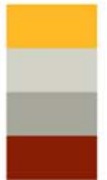
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“Play Ball!” OEA & CIF Eligibility

CIF Bylaw 207.B(3):

Transfer eligibility: Low Achieving Schools

The school to which the student transfers must be to the geographically closest public or charter school to the residence of the student and to the parent(s)/guardian(s)/caregiver(s) with whom the student was living when the student established residential eligibility at the underperforming low achieving school.



CIF Bylaws: Unlimited OEA Transfers?

Under new **Bylaw 207.B(3)**, students:

- may transfer from OEA school, without limitation, at any grade, may transfer upon receipt of a valid 207 form;
- may transfer to an OEA school, as long as it has higher API than the student's current school;
- may seek a ***hardship waiver*** to be eligible at another school that is not the closest geographically to current school

District Criteria & Standards “Is That Your Final Answer”?

- No decision by district’s governing board shall be overturned unless it acted in **“arbitrary and capricious manner”**
 - Query: What about establishing district-level “appeal” or complaint process?

(Ed. Code, § 48361)



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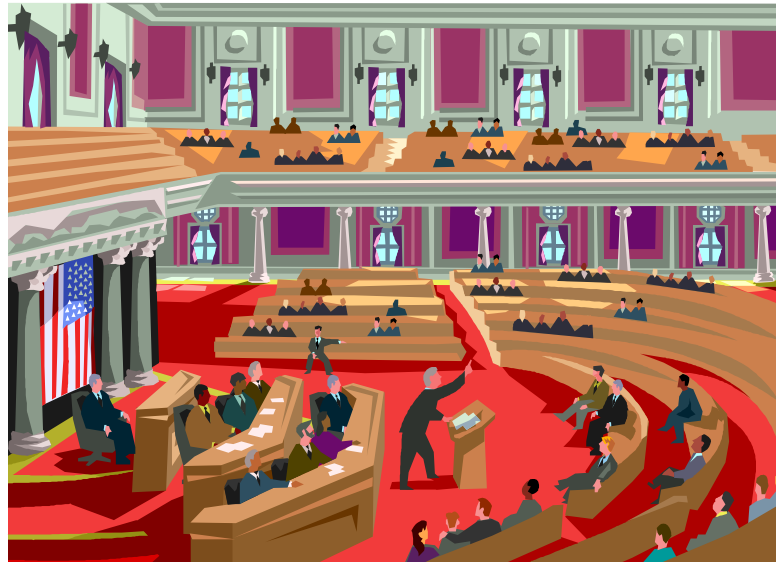


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What's Next?

Pending Legislation



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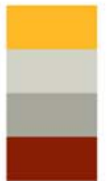
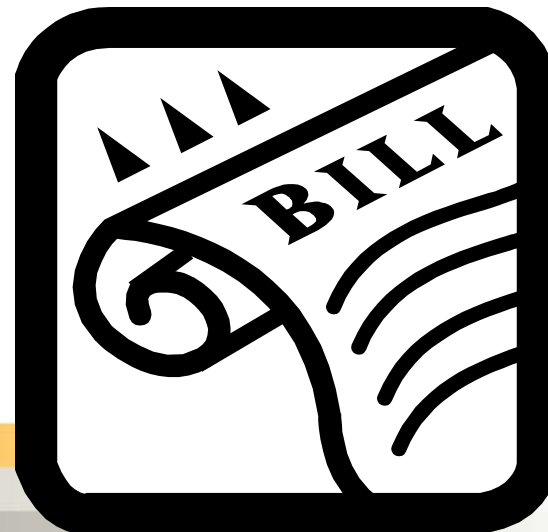
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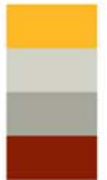
Assembly Bill 47

- Introduced on December 6, 2010, by Assembly Member Huffman
- Set for hearing by Assembly Education Committee on March 16, 2011
- “Clean up” legislation we’ve all been waiting for??



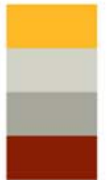
Assembly Bill 47

- As proposed, the bill would:
 - Specify the OEA List may include up to 1,000 schools;
 - Eliminate 10% cap on number of schools any one district may have on the list;
 - Limit OEA List schools to those in decile 1 of most current year's growth API;
 - Prohibit COE operating special ed programs and state-operated schools from being included on OEA List



Assembly Bill 1238

- Introduced on February 18, 2011, by Assembly Member Fletcher
- Makes “technical, nonsubstantive changes” to Section 48354
- Adds “*or guardian*” to accompany references in the statute to “*parent*”
- May be heard in Committee on March 22, 2011



Senate Bill 172

- Introduced on February 3, 2011, by Senate Member Huff
- Makes “technical, nonsubstantive changes” to Section 48352
- Referred to Committee on Rules on February 17, 2011



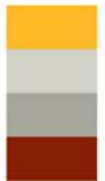
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Guidance on Implementing OEA



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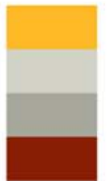
CDE Guidance on OEA

- CDE has issued FAQs on OEA for parents and districts.

<http://www.cde.ca.gov/sp/eo/op/faq.asp>



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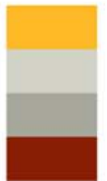


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Guidance on OEA: SBE Waivers

- “General Waiver” Forms and instructions available on CDE’s “Hot Topics” section of Waivers page:

<http://www.cde.ca.gov/re/lr/wr/hottopics.asp#Openrollment>





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CSBA Guidance on OEA "Parental Choice" Web Page

- **CSBA's OEA Model BP and AR 5118**

<http://www.csba.org/EducationIssues/EducationIssues/ParentalChoice.aspx>

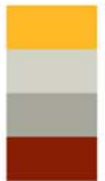
http://www.csba.org/EducationIssues/EducationIssues/~media/Files/EducationIssues/ParentalChoice/2010_12_5118OpenEnrollmentUpdate.d.ashx

- **CSBA's Revised OEA Fact Sheet (December 2010)**

<http://www.csba.org/EducationIssues/EducationIssues/ParentalChoice.aspx>

http://www.csba.org/EducationIssues/EducationIssues/~media/Files/EducationIssues/ParentalChoice/2010_Dec_OpenEnrollmentFactSheet.ashx

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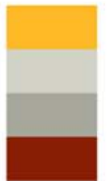
CSBA Guidance on OEA "Parental Choice" Web Page

- **CSBA Chart on Transfer Laws Comparison**

<http://www.csba.org/EducationIssues/EducationIssues/ParentalChoice.aspx>

http://www.csba.org/EducationIssues/EducationIssues/~/_media/Files/Services/PolicyServices/PolicyBriefs/2011_03_TranserLawFactSheet.ashx

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DWK's Information on OEA

- **DWK's Client Bulletins**

- <http://www.dwkesq.com/index.cfm/media-center/publication-details/?dynapsisfuse=showdetails&pkid=612&type=7&tableid=2>
- <http://www.dwkesq.com/index.cfm/media-center/publication-details/?dynapsisfuse=showdetails&pkid=571&type=7&tableid=2>

- **DWK's Webinar on Open Enrollment Act (August 2010)**

- <http://www.dwkesq.com/index.cfm/media-center/publication-details/?dynapsisfuse=showdetails&pkid=576&type=14&tableid=2>

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Thank You!

For additional assistance or services, please contact:

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