

# **Board Policy**

## **Open Enrollment Act Transfers**

BP 5118  
**Students**

\*\*\*Note: As added by SBX5 4 (Ch. 3, Fifth Extraordinary Session, Statutes of 2010), Education Code 48350-48361 create the Open Enrollment Act which allows a student attending a "low-achieving school" to transfer to another school that has a higher Academic Performance Index (API) than the school in which the student was enrolled. Each year, the Superintendent of Public Instruction will identify 1,000 open enrollment schools ranked by increasing API scores. The list will not include court, community, community day, or charter schools and a district may not have more than 10 percent of its schools on the list. \*\*\*

\*\*\*Note: The following optional policy and accompanying administrative regulation are for use by all districts since even districts without a school on the Open Enrollment List may receive applications from students attending a school on the list in a neighboring district. \*\*\*

The Governing Board desires to offer enrollment options in order to provide children with opportunities for academic achievement and that meet their diverse needs. Such options shall also be provided to children who reside within another district's boundaries in accordance with law, Board policy, and administrative regulation.

Whenever a student is attending a district school on the Open Enrollment List as identified by the Superintendent of Public Instruction, he/she may transfer to another school within or outside of the district, as long as the school to which he/she is transferring has a higher Academic Performance Index. (Education Code 48354, 48356)

\*\*\*Note: 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, the following policy and administrative regulation require students who wish to transfer to another district school to use the district's policy and procedures created pursuant to Education Code 35160.5; see BP/AR 5116.1 - Intradistrict Open Enrollment. The following optional sentence should be modified to reflect district practice. \*\*\*

A parent/guardian whose child is attending a district school on the Open Enrollment List and who wishes to have his/her child attend another school within the district shall apply for enrollment using BP/AR 5116.1 - Intradistrict Open Enrollment.

(cf. 5116.1 - Intradistrict Open Enrollment)  
(cf. 5117 - Interdistrict Attendance)

\*\*\*Note: Education Code 48354 and 48356 require districts to establish a period of time for resident student enrollment and for accepting transfer applications. In establishing timelines for transfer applications under the Open Enrollment Act, the district should consider how these timelines will align with timelines for other student enrollment options. Education Code 48354 requires the district to give priority for enrollment to students residing in the district, thus, districts must first admit those students, as well as students applying for intradistrict transfers, before admitting students from an open enrollment school outside of the district. See BP/AR 5111 - Admission, AR 5111.1 - District Residency, and BP/AR 5116.1 - Intradistrict Open Enrollment. In order to accurately predict the number of slots that may be available, the timelines for accepting transfer applications under the Open Enrollment Act should also be consistent with the district's timelines for interdistrict attendance permits and transfers based on parent/guardian employment (Allen Bill transfers). See also AR 5111.12 - Residency Based on Parent/Guardian Employment and BP/AR 5117 - Interdistrict Attendance. Title I schools in Year 1 of Program Improvement (PI) or beyond must also offer students the option to transfer to another district school that is not in PI; see BP/AR/E 0520.2 - Title I Program Improvement Schools. \*\*\*

\*\*\*Note: However, the timelines specified in Education Code 48354 and 48357 for Open Enrollment Act transfers may conflict with the deadlines for these other attendance options. Education Code 48354 specifies that these transfer applications must be submitted by January 1 of the preceding school year. Education Code 48357 requires the district to notify parents/guardians within 60 days whether their application for a transfer from an open enrollment school has been accepted or rejected. Therefore, if a parent/guardian submits a transfer application on October 1, the district would need to provide notification of the application's status by December 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 for transfers at a specific school. \*\*\*

\*\*\*Note: One way for a district to comply with these inconsistent statutory provisions is for the Governing Board to waive the January 1 deadline for receipt of all transfer applications, as authorized by Education Code 48354, and create an application window for submission of transfer applications. Such an application window will result in the 60-day deadline for notification of an application's status to fall after the district's deadline by which residents need to enroll their children, thus residents to receive enrollment priority as required by law. \*\*\*

\*\*\*Note: Districts should specify the transfer application window, if any, in the blank

provided in the below paragraph. 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 the Board acted in an arbitrary and capricious manner, these timelines should be rationally-related to the timelines for other intradistrict and interdistrict transfers. \*\*\*

In order to ensure that priorities for enrollment in district schools are implemented in accordance with law, the Board hereby waives the January 1 deadline in Education Code 48354 for all applications for transfer from nonresident parents/guardians of children attending a school on the Open Enrollment List in another district. Transfer applications shall be submitted between February 1 and March 1 of the preceding school year for which the transfer is requested.

(cf. 5111.1 - District Residency)

(cf. 5111.12 - Residency Based on Parent/Guardian Employment)

\*\*\*Note: Education Code 48355 authorizes the district of residence or the district of enrollment to limit the number of students transferring out of or into the district if the Board determines that the transfer would negatively impact a court-ordered or voluntary desegregation plan or the racial and ethnic balance of the district. However, in Crawford v. Huntington Beach Union High School District, an appellate court held that a district's intradistrict enrollment policy which contained a racial and ethnic balance component pursuant to Education Code 35160.5 was unconstitutional. According to the court, the constitutional provisions added by Proposition 209 prohibit a district from adopting a policy containing different admission criteria on the basis of race. Because of the legal uncertainty surrounding this issue, the following paragraph does not reflect the provisions of Education Code 48355 relative to racial and ethnic balance. Districts should consult legal counsel as necessary. The following optional paragraph is for use by districts with a court-ordered or voluntary desegregation plan. \*\*\*

The Board may deny a transfer out of or into the district upon a determination by the Board that the transfer would negatively impact a court-ordered or voluntary desegregation plan in accordance with Education Code 48355.

#### Standards for Rejection of Transfer Applications

\*\*\*Note: Education Code 48356 authorizes the district of enrollment to adopt specific written standards for rejection of a transfer application which may include a consideration of the capacity of a program, class, grade level, or school building or any adverse financial impact that may result from the transfer. The law is unclear whether a district may also consider students' discipline history when evaluating transfer applications. Districts that wish to consider disciplinary history should consult legal counsel. \*\*\*

\*\*\*Note: 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. Items #1-2 below are examples only. The district should be careful to modify the following section to delete any standards that are not applicable and modify or add any specific district standards, as appropriate. Legal counsel should also be consulted. \*\*\*

Pursuant to Education Code 48356, the Board has adopted the following standards for acceptance and rejection of transfer applications submitted by a parent/guardian of a student attending a school in another district on the Open Enrollment List. The Superintendent or designee shall apply these standards in accordance with Board policy and administrative regulation and shall ensure that the standards are applied uniformly and consistently.

As applicable, the Superintendent or designee may deny a transfer application under any of the following circumstances:

1. Upon a determination that approval of the transfer application would negatively impact the capacity of a program, class, grade level, or school building, including:
  - a. The class or grade level exceeding the district's limits pursuant to the state Class Size Reduction Program.
  - b. The site or classroom exceeding the physical capacity of the facility pursuant to the district's facilities master plan or other facility planning document
  - c. The class or grade level exceeding capacity pursuant items #a-#c above in subsequent years as the student advances to other grade levels at the school

(cf. 6151 - Class Size)

(cf. 7110 - Facilities Master Plan)

2. Upon a determination that approval of the transfer application would have an adverse financial impact on the district, including:
  - a. The hiring of additional certificated or classified staff
  - b. The operation of additional classrooms or instructional facilities
  - c. Expenses incurred by the district that would not be covered by the apportionment of funds received from the state resulting in a reduction of the resources available to resident students
- 3.

## Appeal Process for Denials of Transfer Applications

\*\*\*Note: 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, it is recommended that the district adopt a process that allows parents/guardians to appeal the Superintendent's or designee's denial to the Board. \*\*\*

\*\*\*Note: The following section is optional and should be modified to reflect district practice. \*\*\*

A parent/guardian may appeal the district's denial of a transfer application to the Board by filing a written request of appeal with the Superintendent or designee within 10 days of the receipt of the written notification of denial. In addition, a parent/guardian who believes he/she has been subject to discrimination may file an appeal using the district's Uniform Complaint Procedures.

(cf. 1312.3 - Uniform Complaint Procedures)

The Board shall schedule an appeal hearing as soon as practicable at a regular or special meeting of the Board. At the hearing, the parent/guardian shall have the right to present oral or written evidence, rebut district evidence, and question any district witnesses. Unless the parent/guardian requests that the hearing be held in open session, the hearing shall be held in closed session in order to protect the privacy of students in accordance with law.

(cf. 9321- Closed Session Purposes and Agendas)

The Board shall make its decision by the next regularly scheduled meeting and shall send its decision to all concerned parties. The Board's decision shall be final.

### Program Evaluation

\*\*\*Note: Education Code 48359 encourages each district to collect data regarding the number of requests granted, denied, or withdrawn; the number of students who transfer out of and into the district; the race, ethnicity, gender, socioeconomic status, and district to and from which students are transferring; and the number of students classified as English language learners or identified as individuals with disabilities transferring out of and into the district. \*\*\*

The Superintendent or designee shall collect data regarding the number of students who transfer out of the district pursuant to the Open Enrollment Act. He/she also shall collect data regarding the number of students who apply to transfer into the district, the number of requests granted, denied, or withdrawn, and the district schools and programs

receiving applications.

When the Superintendent or designee anticipates that a particular school will receive a large number of transfer applications, he/she shall study the enrollment pattern at that school in order to anticipate future resident enrollment at the school and at the district schools into which those students would normally matriculate.

The Superintendent or designee shall regularly report to the Board regarding the implementation of this program.

Legal Reference:

EDUCATION CODE

200 Prohibition of discrimination

35160.5 District policies, rules, and regulations

46600-46611 Interdistrict attendance agreements

48200 Compulsory attendance

48204 Residency requirements for school attendance

48300-48316 Student attendance alternatives, school district of choice program

48350-48361 Open Enrollment Act

48915 Expulsion; particular circumstances

48915.1 Expelled individuals: enrollment in another district

52317 Regional Occupational Center/Program, enrollment of students, interdistrict attendance

FAMILY CODE

6500-6552 Caregivers

UNITED STATES CODE, TITLE 20

6316 Transfers from program improvement schools

CODE OF REGULATIONS, TITLE 5

4700-4703 Open Enrollment Act

CODE OF FEDERAL REGULATIONS, TITLE 34

200.36 Dissemination of information

200.37 Notice of program improvement status, option to transfer

200.39 Program improvement, transfer option

200.42 Corrective action, transfer option

200.43 Restructuring, transfer option

200.44 Public school choice, program improvement schools

ATTORNEY GENERAL OPINIONS

87 Ops.Cal.Atty.Gen. 132 (2004)

84 Ops.Cal.Atty.Gen. 198 (2001)

COURT DECISIONS

Crawford v. Huntington Beach Union High School District, (2002) 98 Cal.App.4th 1275

Management Resources:

WEB SITES

CSBA: <http://www.csba.org>

California Department of Education: <http://www.cde.ca.gov>

11/10

**Adopted: December 13, 2010**

**Gravenstein Union School District  
Sebastopol, CA**