

# Board Policy

## Students

BP 5116.1 (a)

### Intradistrict Open Enrollment

\*\*\*Note: Education Code 35160.5 mandates that Boards establish a policy of open enrollment within the district for residents of the district. This requirement does not apply to districts with only one school or with schools that do not serve any of the same grade levels.\*\*\*

\*\*\*Note: In addition, the federal No Child Left Behind Act of 2001 (20 USC 6316) requires that students in Title I schools be provided an option to transfer to another district school if their school of origin is identified for program improvement, corrective action or restructuring based on failure to make adequate yearly progress for two or more consecutive school years. See BP/AR 0520.2 - Title I Program Improvement Schools for requirements related to such transfers. \*\*\*

\*\*\*Note: Furthermore, 20 USC 7912, requires districts to provide an Intradistrict transfer option to any student who is the victim of a violent criminal offense on school grounds and to all students in any school (not just a Title I school) that is designated as a "persistently dangerous" school based on criteria approved by the State Board of Education. As of this writing, the SBE intends to use three-year data on gun-free schools violations and violent criminal offenses committed on school property, plus expulsion rates for specified offenses, to identify persistently dangerous schools.\*\*\*

The Governing Board desires to provide enrollment options that meet the diverse needs and interests of district students. The Superintendent or designee shall establish procedures for the selection and transfer of students among district schools in accordance with law, Board policy and administrative regulation.  
(cf. 5117 - Interdistrict Attendance)

\*\*\*Note: Education Code 35160.5 mandates that the district's intradistrict open enrollment policy contain the following provision.\*\*\*

The parents/guardians of any student who resides within district boundaries may apply to enroll their child in any district school, regardless of the location of residence within the district.  
(Education Code 35160.5)  
(cf. 5111.1 - District Residency)  
(cf. 5111.11 - Residency of Students with Caregiver)  
(cf. 5111.12 - Residency Based on Parent/Guardian Employment)  
(cf. 5111.13 - Residency for Homeless Children)

The Board shall annually review this policy. (Education Code 35160.5, 48980)

### Enrollment Priorities

Priority for attendance outside a student's attendance area shall be given as follows:

\*\*\*Note: Because the No Child Left Behind Act (P.L. 107-110) requires districts to offer intradistrict transfers to all students in Title I schools identified for program improvement, corrective action or restructuring (20 USC 6316), and to all students who are attending "persistently dangerous" schools or who are the victims of a violent criminal offense (20 USC 7912), the district should establish priority for such students in intradistrict open enrollment, as provided in items #1-2 below. Anticipated need for these transfers should be considered in determining the capacity of district schools for other intradistrict transfers pursuant to Education Code 35160.5 as described below.\*\*\*

1. If a district school receiving Title I funds are identified for program improvement, corrective action or restructuring, all students enrolled in that school shall be provided an option to transfer to another district school or charter school. (20 USC 6316)  
(cf. 0420.4 - Charter Schools)  
(cf. 0520.2 - Title I Program Improvement Schools)  
(cf. 6171 - Title I Programs)

\*\*\*Note: U.S. Department of Education draft non-regulatory guidance (Unsafe School Choice Option, 2002) calls for districts to begin implementing transfers no later than the 2003-04 school year for students in "persistently dangerous" schools and students who are victims of violent criminal offenses on school grounds.\*\*\*

2. Beginning in the 2003-04 school year, if while on school grounds a student becomes a victim of a violent criminal offense, as defined by the State Board of Education, or attends a school designated by the California Department of Education as persistently dangerous, he/she shall be provided an option to transfer to another district school or charter school.(20 USC 7912)  
(cf. 0450 - Comprehensive Safety Plan)

\*\*\*Note: Pursuant to Education Code 35160.5, the district must use a random, unbiased process (e.g., a lottery) to select students for intradistrict open enrollment when requests for admission exceed the capacity of the school; see accompanying administrative regulation. The California Attorney General (85 Ops.Cal.Atty.Gen. 95 (2002)) has opined that a "first come, first served" selection policy does not constitute a random, unbiased process. As of this writing, it is unclear how processes required by state law can be aligned with requirements of the No Child Left Behind Act. Districts should consult legal counsel as appropriate.\*\*\*

\*\*\*Note: An exception in Education Code 35160.5 gives districts the authority to maintain appropriate racial and ethnic balances across district schools. However, 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, 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 35160.5 relative to racial and ethnic balance. Districts should consult legal counsel regarding any policies or regulations dealing with maintenance of racial or ethnic balance.\*\*\*

\*\*\*Note: Education Code 35160.5 mandates that the district's intradistrict open enrollment policy contain all the elements listed in the remainder of this section.\*\*\*

For all other applications for enrollment outside a school's attendance area, the Superintendent or designee shall use a random, unbiased selection process to determine who shall be admitted whenever a school receives admission requests that are in excess of the school's capacity. (Education Code 35160.5)

Enrollment decisions shall not be based on a student's academic or athletic performance, except that existing entrance criteria for specialized schools or programs may be used provided that the criteria are uniformly applied to all applicants. Academic performance may be used to determine eligibility for, or placement in, programs for gifted and talented students. (Education Code 35160.5)

(cf. 6172 - Gifted and Talented Student Program)

No student currently residing within a school's attendance area shall be displaced by another student transferring from outside the attendance area. (Education Code 35160.5)  
(cf. 5116 - School Attendance Boundaries)

## Transportation

\*\*\*Note: The following section is optional and may be revised to reflect district practice. Districts that do not provide transportation assistance should be careful to delete this section.\*\*\*

\*\*\*Note: The No Child Left Behind Act (20 USC 6316) requires that transportation be provided or paid for students transferring out of Title I schools identified for program improvement, corrective action or restructuring. These requirements are addressed in AR 0520.2 - Title I Program Improvement Schools.\*\*\*

\*\*\*Note: The district is not obligated to provide transportation for students who were victims of violent criminal offenses or those who wish to transfer out of "persistently dangerous" schools pursuant to 20 USC 7912. If the district chooses to make transportation available to such students, it may use certain federal funds (e.g., Title IV, Part A, and Title V, Part A) to cover the costs. When districts choose to provide transportation, USDOE guidance (Unsafe School Choice Option, 2002) clarifies that the district is not obligated to continue providing or paying for transportation after the school is no longer designated as "persistently dangerous."\*\*\*

\*\*\*Note: Education Code 35160.5 expresses the Legislature's intent that districts, upon request and demonstration of financial need, provide transportation assistance when students attend schools outside their attendance area to the same extent as transportation is otherwise provided. \*\*\*

Except as required by 20 USC 6316, for transfers out of Title I program improvement schools, the district shall not be obligated to provide transportation for students who attend school outside their attendance area. However, upon request, the Superintendent or designee may authorize transportation contingent upon available space and funds. Priority for any such transportation shall be based on demonstrated financial need.

(cf. 3250 - Transportation Fees)

(cf. 3540 - Transportation)

### Legal Reference:

#### EDUCATION CODE

35160.5 District policies; rules and regulations

35291 Rules

35351 Assignment of students to particular schools

48980 Notice at beginning of term

#### UNITED STATES CODE, TITLE 20

6316 Transfers from program improvement schools

7912 Transfers from persistently dangerous schools

#### 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

200.48 Transportation funding for public school choice

**COURT DECISIONS**

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

**ATTORNEY GENERAL OPINIONS**

85 Ops.Cal.Atty.Gen. 95 (2002)

**Management Resources:**

**U.S. DEPARTMENT OF EDUCATION GUIDANCE**

Public School Choice, December 4, 2002

Unsafe School Choice Option, July 23, 2002

**WEB SITES**

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

CDE: <http://www.cde.ca.gov>

U.S. Department of Education: <http://www.ed.gov>

**Adopted: November 10, 2004**

**GRAVENSTEIN UNION SCHOOL DISTRICT  
Sebastopol, California**