

## OPEN ENROLLMENT ACT TRANSFERS

The Governing Board desires to offer enrollment options in order to provide children with opportunities for academic achievement 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)

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)*

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 March 1 and May 1 of the preceding school year for which the transfer is requested (e.g., May 1, 2010 deadline for transfer attendance in the 2010-2011 school year).

*(cf. 5111.1 - District Residency)*  
*(cf. 5111.12 - Residency Based on Parent/Guardian Employment)*

May 1, the last day of the district's application period for transfers under the Open Enrollment Act, shall function as the official submission date for all applications to the district for attendance in the following school year, including those transfer requests provided to the district earlier than the last day of the application period. This is to permit the district to determine enrollment for district resident students, provide them priority pursuant to applicable law, and determine capacity of the district's schools and programs.

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

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. On a case-by-case basis,

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the Superintendent or designee will approve or reject the transfer of an Open Enrollment Act applicant pursuant to applicable law, Board policies, and administrative regulations. 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, on a short- or long-term basis, the capacity of a program, class, grade level, or school building, including:
  - a. The class or grade level exceeding class size limits pursuant to the state Class Size Reduction Program or pursuant to the district's individual class size goals as determined by the Board in accordance with district policy.
  - b. The site, classroom, or program exceeding the maximum student-teacher ratio specified in the district's collective bargaining agreement.
  - c. The site or classroom exceeding the physical capacity of the facility pursuant to the district's facilities master plan or other facility planning document.
  - d. 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.
  - e. The unavailability of an appropriate placement or program meeting federal and state standards for a free, appropriate public education (FAPE) for a student eligible for special education pursuant to his or her individualized education program (IEP). A special education student otherwise meeting the district's written standards for acceptance as an Open Enrollment Act transfer will not be enrolled unless the district receives documentation or written verification that the IEP team from the district of residence has agreed that the specific educational placement in the school and/or program in the district as requested by the parent would provide a FAPE to the student. (Title 5, California Code of Regulations, Section 3042.) A representative of the district may, at the discretion of the district, become a member of the IEP team for the student or otherwise review the student's needs for the proposed or requested placement or program to consider whether a change of placement from or to a district school and/or program will provide a FAPE to the student.

*(cf. 6151 - Class Size)*

*(cf. 7110 - Facilities Master Plan)*

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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. Upon a determination that approval of the transfer application would require the displacement from the desired school of any other student who resides in the attendance area of the school or who is currently enrolled in that school.
4. A decision to accept an Open Enrollment Act transfer may be rescinded by the Superintendent or designee upon a determination that the transfer application or any of the supporting documents were or are incomplete, non-factual, or misrepresented information material to applying the district's standards for acceptance or rejection.

**Appeal Process for Denials of Transfer Applications**

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 in accordance with applicable law and Board policies.

*(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.

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### **Program Evaluation**

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.

### **Transportation**

Responsibility for transportation of students transferring under this policy shall be the sole obligation of the parent(s) or guardian(s) of the student. The district shall not provide transportation for students transferring under the Open Enrollment Act.

*Legal Reference: (see next page)*

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*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>

**OPEN ENROLLMENT ACT TRANSFERS**

**Definitions**

*District of enrollment* means the district, other than the district in which the student's parent/guardian resides, in which the parent/guardian intends to enroll his/her child. (Education Code 48352)

*District of residence* means the district in which the parent/guardian of a student resides and in which the student would otherwise be required to enroll pursuant to Education Code 48200. (Education Code 48352)

*(cf. 5111.1 - District Residency)*

*Open enrollment school* means a "low-achieving" school identified by the Superintendent of Public Instruction (SPI) pursuant to Education Code 48352 and 5 CCR 4701. (Education Code 48352; 5 CCR 4701)

*Random, unbiased process* means a random chance selection process (e.g. by lot, drawing cards, throwing dice, flipping coins). It does not mean first-come, first-served (85 Ops.Cal.Atty.Gen. 95 (2002); 78 Ops.Cal.Atty.Gen. 332 (1995))

**Transfer Applications into a District School**

Enrollment priority shall be available to students who reside within this district. No student who resides within a school's attendance area or who is currently enrolled in a school shall be displaced by a student who is transferring pursuant to the Open Enrollment Act, Education Code 48350-48361 or 5 CCR 4700-4703. (Education Code 48354, 48356) In order to provide priority enrollment opportunities for students residing in the district, the Superintendent or designee shall establish a time period for resident student enrollment prior to accepting transfer applications under this policy and regulation. (Education Code 48354)

Applications shall be submitted within the deadlines established by Board policy.

However, the application deadline shall not apply to an application requesting a transfer if the parent/guardian with whom the student resides is enlisted in the military and was relocated by the military within 90 days prior to submitting the application. (Education Code 48354)

*(cf. 6173.2 - Education of Children of Military Families)*

The parent/guardian's application may request enrollment of his/her child in a specific school or program. Requests for admission to a magnet school or program designed to serve gifted and talented students shall be subject to the usual admission requirements established by the district for district students. Except for such specialized admission requirements, the

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Superintendent or designee shall not consider the student's previous academic achievement, athletic performance, physical condition, English language proficiency, family income, or any of the prohibited bases for discrimination listed in Education Code 200. (Education Code 48354, 48356)

*(cf. 0410 - Nondiscrimination in District Programs and Activities)*  
*(cf. 6172 - Gifted and Talented Student Program)*

Students applying for Open Enrollment Act transfers under this policy and regulation shall be assigned priority for approval as follows: (Education Code 48356)

1. First priority for the siblings of students who already attend the desired school
2. Second priority for students transferring from a program improvement school ranked in decile 1 on the Academic Performance Index (API)

If the number of students who request a particular school exceeds the number of spaces available at that school, the Superintendent or designee shall conduct a lottery, in the group priority order identified in items #1 and #2 above, to select students through a random, unbiased process until all of the available spaces are filled. (Education Code 48356)

Within 60 days of the official submission date for the application, the Superintendent or designee shall provide written notification to the parent/guardian and the student's district of residence as to whether the application has been accepted or rejected. To ensure full applicability and consideration of the district's standards and criteria for acceptance and/or rejection of Open Enrollment Act transfer applications pursuant to applicable law, the Superintendent or designee will not apply the acceptance or rejection standards to a transfer application until after May 1, the official close of the Open Enrollment Act application period in the district and the official submission date for all applications. If the application has been rejected, the notice shall state the reasons for the rejection. If the application has been approved, the notification shall specify the particular school site and the school's address to which the student has been admitted. (Education Code 48357; 5 CCR 4702)

**Terms of Approval**

The Superintendent or designee shall ensure that the school to which the student is transferring has a higher API than the school in which the student was previously enrolled. (Education Code 48356)

The parent/guardian shall enroll his/her child on or before the first day of instruction or within 14 calendar days of receipt of the district's notice of approval of the application, whichever is later. If the parent/guardian fails to enroll his/her child within this timeframe, the district may decline to enroll the student. (5 CCR 4703)

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Upon enrollment, the district shall grant the student any credits towards graduation that he/she received from his/her district of residence. The student shall be eligible for graduation from district schools upon completion of state and district graduation requirements. (Education Code 48358)

*(cf. 6143 - Courses of Study)*  
*(cf. 6146.5 - Elementary/Middle School Graduation Requirements)*

A student admitted to a district school through the Open Enrollment Act process pursuant to this Board policy and regulation shall be deemed to have fulfilled district residency requirements pursuant to Education Code 48204 and shall not be required to reapply for enrollment in that school, regardless of whether his/her school of residence remains on the Open Enrollment List. (Education Code 48356; 5 CCR 4702)

Once admitted, a transfer student who wishes to matriculate into a district middle school or transfer to another district school shall reapply for admission to the new school pursuant to the requirements of this Board policy and administrative regulation. The student's reapplication shall again be subject to the district's standards for acceptance or rejection of Open Enrollment Act transfer requests.

Parents/guardians of students transferring under the Open Enrollment Act are responsible for transporting their children to and from school.

**Transfers out of District Schools on the Open Enrollment List**

Upon identification by the California Department of Education (CDE) that a district school is on the Open Enrollment List, the Superintendent or designee shall notify the parents/guardians of each student enrolled in the school of the option to transfer. This notice shall be provided by the first day of instruction. However, if the CDE has not notified the district whether a school is on the list by the first day of instruction, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the CDE's web site. (Education Code 48354; 5 CCR 4702)

*(cf. 0520.2 - Title I Program Improvement Schools)*  
*(cf. 5145.6 - Parental Notifications)*