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Education Law Update

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INTERDISTRICT TRANSFER LAW UPDATE

☞ California parents whose children are enrolled in the one of the 1000 "lowest" achieving schools have recently been given the authority to transfer their children to better schools within their own school district or any other school district provided that seats are available. This authority was granted during 2010 through legislation known as the Open Enrollment Act.

Open Enrollment Act
California Education Code §§ 48350 - 48361
Title V California Code of Regulations §§ 4700 - 4703

A new variety of inter-district transfer programs was recently enacted by the state legislature. Known as the Open Enrollment Act, in many ways, the program is philosophically similar to the District of Choice program. Most importantly, the ability of the sending district (also called the District of Residence) to deny a transfer application is almost non-existent. Equally important, the criteria upon which the receiving district (also called the District of Enrollment) may deny a transfer application is extremely narrow.

The List of One Thousand. The Act requires that the State Board of Education annually identify California's 1000 lowest achieving schools. The criteria is based largely on the school's Academic Performance Index (API). However, the criteria is also subject to some quirky exclusions, for instance the 10% rule, which have caused some surprising anomalies.

The 10% rule provides that the number of low achieving schools in any one district may not exceed 10% of the total schools in that district. As a consequence, dozens of schools state wide, which are ranked in Decile 1, are not listed. About 57 of them are in the Los Angeles Unified School District. As a further consequence, at least one Kern County California Distinguished School with an API score of 791 and 11 other schools state wide with an API score of 800 or

more, are on the list. It is obvious that the formula for determining which schools should be on the list, needs refinement.

The list for the 2010-2011 school year was released in August 2010. Forty-two schools or programs in Kern County are presently on the list. A new list for the 2011-2012 school year will likely be released before November 2010.

Parent Power. Effective immediately, listed schools must give parents notice of their transfer rights. Parents who reside in the attendance area of a listed school may transfer their children to another school in their district with a higher API or into another school district all together. By their transfer application, parents may seek enrollment in a specific program or school. Note, however, the receiving school district may impose its usual admission requirements on transfers for magnet schools or for programs that serve gifted/talented students.

The Act does not preclude the listed schools from providing other information in the notification, in addition to advising parents of their transfer rights. For instance, the notice could include information about supplemental educational services available at the listed school or explain how ranks compare to other schools nearby. However, the Act expressly precludes listed schools from engaging in practices designed to prevent or discourage parents from transferring their children.

Further, all potential receiving school districts must develop and adopt written standards for accepting and rejecting Open Enrollment Act transfer applications. When doing so, however, it is important to keep in mind that the legislature's express purpose underlying the Act is to enhance parent choice in education by providing enrollment options without regard to residency.

"Cherry Picking" is Not Allowed. The Act limits the criteria which may be used by the receiving school districts in developing their acceptance/rejection standards for transfer applications. Any criteria based on the personal characteristics of a student or his/her family is expressly prohibited. The prohibited criteria includes academic performance, athletic performance, English proficiency, family income and, of course, disability, gender, nationality, race, ethnicity, religion, sexual orientation, and the like.

The primary criteria which a receiving school district may utilize only includes consideration of program/classroom capacity and adverse financial impact. Receiving school districts must develop their acceptance/rejection criteria only around consideration of: (1) the capacity of the pertinent program, school building, class, grade level, and the like; and (2) an adverse financial impact to the district, if any. Other acceptable criteria listed by the Act includes negative impact on a desegregation plan or on the racial/ethnic balance of the district.

Educating a disabled student almost invariably entails an adverse financial input on the school district. However, since disability is not a lawful basis for denying a transfer application, counsel should be consulted in each such case.

Mandated Priority Groups. Before accepting inter- district transfer applications to a desired school, students at schools within the district must be given an opportunity to apply for an intradistrict transfer. After consideration of the intradistrict transfers, if space is still available, first priority must be given to siblings or students already attending the desired school. If space is still available, second priority goes to students transferring from Decile 1 schools. If only limited space is available to the students in a priority group, a lottery must be conducted to determine which students in that priority group are accepted and which are rejected.

Solicitation of Applicants. The Act does not preclude any potential receiving school districts from, themselves, soliciting potential Open Enrollment Act transfer applicants. However, the Act expressly addresses the conduct of school districts when doing so. Expressly precluded is targeting only "desired" residential neighborhoods. The Act also provides that individual families may not be targeted based upon "desired" characteristics such as the academic or athletic performance of their children or any other personal characteristic. Finally, the Act requires that all communications by school districts shall be factually accurate.

In other words, if solicitations are made, they should be uniformly distributed throughout the attendance area of the listed low achieving school and individual families known to have superior students should not be singled out for solicitation. Regarding high school athletes, CIF rules continue to apply as well.

Once In Always In. Once enrolled in another school pursuant to the Act, the transferring student has the right to remain at the new school from year- to-year without any further application requirement, even if his/her former school is subsequently removed from the list.

Transportation. The Act does not require a listed school to transport its former students. However, it is important to remember that Title 1 schools in Program Improvement may be required by federal law to expend a percentage of their Title 1 reservation for transporting their "choice" students to other schools and other school districts.

A potential receiving school district, however, is not precluded from transporting Open Enrollment Act transferees to its schools although it is not required. As a matter of professional courtesy, of course, bus routes ought to be developed in consultation with the District of Residence.

Deadlines:

1. On or before the first day of school each year, every listed school must notify its parents of their right to transfer. This deadline may not be waived. Notices for the 2010/2011 school year should have already been given.

2. Transfer applications must be submitted by parents to the desired school or school district no later than January 1st of the current school year, in order to be considered for the next school year. This deadline may be waived, but only by the receiving school district.

School districts anticipating receiving transfer applications for the 2011/2012 school year should endeavor to have their policies, regulations and related forms ready prior to January 1, 2011. If not, then they should consider waiving the January 1, 2011 deadline.

3. Within 60 calendar days of receipt of an Open Enrollment Act transfer application, the receiving school district must accept or reject it and notify the applicant family, as well as their District of Residence. Rejections must include an explanation for the rejection.

County Boards of Education do not have jurisdiction to consider appeals of rejected Open Enrollment Act transfer applications. A parent who wishes to contest a rejection is required to file a writ action in superior court. Also, the applicant family can re-apply under the usual interdistrict attendance agreement program which gives county boards of education the authority to rule on appeals.

Other Requirements. At Sections 48359 and 48360 of the Education Code, the Act includes information keeping and reporting requirements. Section 48359.5 contains a special apportionment rule applicable only to Basic Aide districts. Also, the receiving school district/school district of enrollment is required to ensure that students whose Open Enrollment Act applications are accepted, are enrolled in a school with a higher API than the school they formerly attended. Further, Section 48358 requires school districts of enrollment to accept the transfer credits from the former school and to graduate the student if he/she otherwise meets the graduation requirements of the school district of enrollment.

Board Policies. CSBA will be posting revised sample board policies on this issue once final regulations are in place, probably in November. For districts which do not intend to accept transfers for the 2010-11 school year, it is recommended that a board resolution be considered to make clear that this is the board's policy in all cases. Please contact our office for a sample resolution.

If you have any questions regarding these issues, please contact this office.

– *Alan B. Harris*

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