

## **QUESTIONS AND ANSWERS REGARDING INTERDISTRICT ATTENDANCE**

### **I. Interdistrict Permits**

#### **1. What is the impact of the recent amendments to Education Code section 46600 on interdistrict attendance?**

Assembly Bill 2444<sup>1</sup> amended Section 46600 to state that once a pupil in Kindergarten or any grades 1-12 inclusive is enrolled in a school pursuant to the interdistrict attendance provisions, the pupil shall not have to reapply for an interdistrict transfer and the governing board of the school district of enrollment shall allow the pupil to continue to attend the school in which he or she is enrolled.<sup>2</sup> The recent amendments also created an exception to this general rule stating that an interdistrict attendance agreement between two or more districts may contain standards for reapplication agreed to by the district of residence and the district of attendance which may stipulate terms and conditions under which an interdistrict attendance shall be permitted or denied; the agreement may contain standards for reapplication agreed to by the district of residence and the district of attendance that require students to reapply annually, and may stipulate terms and conditions under which the interdistrict permit may be revoked. However, a school district of residence or a school district of enrollment is prohibited from rescinding existing transfer permits for pupils entering grades 11 or 12 in the subsequent school year.<sup>3</sup>

Therefore, school districts may enter into agreements that require annual renewals of interdistrict permits for K-9 students and allow revocation of interdistrict permits for K-9 students for poor behavior or poor attendance.

#### **2. May school districts revoke the interdistrict permits of students in grades 10, 11 and 12 due to poor attendance or poor behavior?**

No. Education Code section 46600(a)(4) would prohibit a school district from rescinding existing transfer permits for poor attendance or poor behavior. However, districts may suspend or expel tenth, eleventh and twelfth grade students on interdistrict transfer permits under Education Code section 48900 in the same manner as students who reside in the school district.

#### **3. What options are there when a district of residence is not willing to agree to a separate agreement that provides for annual renewals of an interdistrict agreement?**

In such cases, when the district of residence is not willing to enter into a separate agreement to provide for annual renewals of interdistrict agreements, the provisions of Section 46600 would apply. Under the provisions of Education Code section 46600(a)(1), in the absence

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<sup>1</sup> Stats. 2010, ch. 263 (AB 2444).

<sup>2</sup> Education Code section 46600(a)(1).

<sup>3</sup> Since 10th grade students will be entering 11th grade in the subsequent school year, the language would apply to 10th grade students as well.

of an agreement requiring annual renewals, once a pupil is enrolled in a school, the pupil is not required to reapply for an interdistrict transfer.

- 4. If the district of enrollment accepts a student without an agreement with the district of residence for an annual renewal, what would happen if the student moves from the attendance area of the original district of residence?**

In the absence of an agreement between the district of residence and the district of enrollment requiring annual renewals of an interdistrict attendance agreement, once the district of enrollment accepts the student, the provisions of Section 46600(a)(1) apply and the pupil is not required to reapply for an interdistrict transfer. Therefore, the pupil's subsequent move from the original district of residence would have no effect on the original granting of the interdistrict permit. The pupil would not have to apply for a new permit, the original interdistrict attendance agreement would remain in effect and the student would be able to continue to attend the school in the district of enrollment.

- 5. Does a tenth, eleventh or twelfth grade student who moves outside the attendance boundaries of the school district of residence, but granted the original interdistrict permit, still have the right to stay in the school to which they transferred?**

Yes. Section 46600(a)(4) states that a school district of residence or a school district of enrollment shall not rescind existing transfer permits for pupils entering grades eleven or twelve in the subsequent school year. Therefore, once an interdistrict permit has been granted for these students, the students have the right to stay in the school to which they have enrolled.

- 6. If a student received an interdistrict permit two or more years ago, but remained at the district of enrollment without an interdistrict permit for the 2010-2011 school year, is the student required to reapply for an interdistrict permit for the 2011-2012 school year or is the student, under the provisions of Education Code section 46600 able to stay in the district of enrollment?**

If the parent of the student has not been advised that the student must renew their interdistrict permit each year and that the school district of enrollment reserves the right to not renew the interdistrict permit each year, the student may be able to remain at the school of enrollment under Education Code section 46600. We would recommend that school districts in this situation review the documentation and consult with legal counsel before taking any action.

- 7. Are students who have been determined to have been bullied by other students in the district of residence entitled to be given priority for interdistrict attendance?**

Yes. Effective July 1, 2012, Education Code section 46600(b) gives students who have been determined to be bullied by personnel of either the district of residence or the district of proposed enrollment priority for interdistrict attendance. The statute does not define the level of evidence or proof needed to determine whether bullying has occurred and leaves the determination of bullying to the discretion of the school district.

**8. Do the provisions of Section 46600 (interdistrict permits) and Section 48204 (the Allen Bill) overlap?**

Yes. While Section 48204 (discussed below) focuses solely on parental employment, Section 46600 authorizes two school districts to enter into an interdistrict attendance agreement for a broad range of reasons including parental employment. In essence, districts **may** authorize interdistrict attendance under Section 46600 for such reasons as transportation, health and safety of the student, child care needs, class offerings not available in the district of residence, and for other reasons as the district deems appropriate.

**9. When two school districts enter into an interdistrict attendance agreement, are they required to consider the child care needs of the pupil?**

Districts are no longer required to give consideration to the child care needs of the pupil, but may do so in considering the request. With the repeal of Education Code section 46601.5, it is now permissive rather than mandatory.

**10. May districts grant interdistrict permits for one year?**

Yes. If districts enter into interdistrict agreements pursuant to Section 46600 which contain standards for reapplication which require the applicant (grades K-9) to apply for an interdistrict permit each year.

**11. May districts revoke interdistrict permits for poor behavior or poor attendance?**

Yes. If the interdistrict agreement between the districts stipulates that an interdistrict permit may be revoked for poor behavior or poor attendance for students in grades K-9.

**12. If the parent of a special education student waives their child's right to services in order for the receiving district with impacted programs to accept the interdistrict transfer, does the receiving district or district of enrollment have to accept the transfer if they would otherwise do so?**

The school district should consult with legal counsel before taking any action.

**II. Residency Based on Parental Employment (the "Allen Bill")**

**13. How do students establish residency within a school district?**

Under Education Code section 48200, the school district where the parent resides is the school district of residence. Notwithstanding Section 48200, a pupil complies with the residence requirements for school attendance under Education Code section 48204(a) if he or she is any of the following:

- a. A pupil within the boundaries of that school district in a regularly established licensed children’s institution, or a licensed foster home, or a family home pursuant to the Welfare and Institutions Code.<sup>4</sup>
- b. A pupil who is a foster child who remains in his or her school of origin.
- c. A pupil for whom interdistrict attendance has been approved.
- d. A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control or authority through emancipation.
- e. A pupil who lives in the home of a caregiving adult that is located within the boundaries of the school district.
- f. A pupil who resides in a state hospital located within the boundaries of that school district.
- g. A pupil whose parent or legal guardian resides outside of the boundaries of that school district but is employed and lives with the pupil at the place of his or her employment within the boundaries of the school district for a minimum of three (3) days during the school year.

**14. Does Education Code section 48204 (the “Allen Bill”) authorize school district residency based on a parent’s employment?**

Yes. Education Code section 48204(b) states that a school district may deem a pupil to have complied with the residence requirements for school district attendance in the school district if at least one (1) parent or legal guardian of the pupil is physically employed within the boundaries of that school district for a minimum of ten (10) hours during the school week.

**15. Does Section 48204 as amended apply only to elementary school students?**

No. Section 48204 refers to pupils. Therefore, it would apply to all pupils enrolled in grades K-12.

**16. Are school districts required to admit pupils whose parents are employed within the boundaries of the school district?**

No. Section 48204(b) states that a school district may deem a pupil as having complied with the residency requirements for school attendance in the school district if one or both parents

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<sup>4</sup> An agency placing a pupil in a home or institution shall provide evidence to the school that the placement or commitment is pursuant to law.

or legal guardians of the pupil are employed within the boundaries of the school district. Therefore, it is permissive. However, Section 48204(b)(1) states that even though districts are not required to admit students on the basis of employment, districts may not discriminate on the basis of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration. Therefore, districts should adopt consistent policies and criteria for the admission of students whose parents are employed within the boundaries of the school district.

**17. Are school districts required to communicate in writing to parents the specific reasons for not admitting a student?**

No. Section 48204(b)(4) no longer requires a school district to communicate in writing to the parents the reason for not admitting a student. Section 48204(b)(4) now states that districts are encouraged to communicate in writing to parents. Therefore, it is now permissive, rather than a mandatory requirement.

**18. Are there numerical limits on the number of students that may transfer under Section 48204?**

Yes. A sending district may object to further transfer of students if more than one percent of the average daily attendance of the district or 75 pupils, whichever amount is greater, attempt to transfer when the district has an average daily attendance of 2501 or more. The numerical limit of 75 pupils or 1% of the average daily attendance of the district, whichever is greater, is calculated based on the net transfer of students out of the school district. The net number is calculated as the difference between the number of students exiting the district and the number of students entering the district in a fiscal year. If a school district has more than a net number of 75 students or 1% of its average daily attendance of students transferring out of the district, then the district may deny the request to attend other school districts.

**19. Once a pupil is granted a transfer under Section 48204 based on parental employment, must the student reapply each year?**

No. Once the district grants residency based on Section 48204, the student does not have to reapply in the next school year to attend a school within that district, and the district is required to allow the pupil to attend the school through the 12<sup>th</sup> grade if the parent or guardian so chooses and if one or both of the pupil's parents or guardians continues to be employed by an employer situated within the attendance boundaries of the district. If the parent's employment within the attendance boundaries of the school district ceases, the pupil's right to continue to attend a school in that district through the 12<sup>th</sup> grade ceases.

**20. If a school district grants student residency in the district pursuant to parent employment or an interdistrict permit, does the student have a right to attend a particular school in that district?**

No. The pupil has the right to attend a school within that district, but not a particular school.

**21. Should the district’s policy regarding interdistrict attendance and attendance by parental employment be the same for regular education and special education students?**

Yes. District should adopt the same policies and practices for regular education and special education students even though Education Code section 48204(b)(3) states that a school district may prohibit the transfer of a pupil if the district determines that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of a transfer. The United States Department of Education, Office for Civil Rights, has concluded in a number of cases involving California school districts that federal law, Section 504 of the Rehabilitation Act, prohibits school districts from discriminating against disabled students. OCR concluded that districts must treat disabled students and non-disabled students in the same manner and the same criteria (e.g., space available, programs available and not impacted, etc.) should be utilized. Therefore, if a special education student needs a particular education program and that program is filled to capacity, the school district may deny the student admission in the same manner as when a school district’s regular education program is filled to capacity and a regular education student is denied admission

**III. School Districts of Choice**

**22. Are school districts required to adopt resolutions to become school districts of choice?**

No. It is permissive as to whether a school district wishes to adopt a resolution to become a school district of choice.

**23. What is a school district of choice?**

Education Code section 48300 defines school district of choice as a school district for which a resolution is in effect as set forth in Education Code section 48301. Under Education Code section 48301, the governing board of a school district may adopt a resolution electing to accept interdistrict transfer students and determine the number of transfers it is willing to accept. If the school district adopts such a resolution, the pupils must be admitted through a random, unbiased process that prohibits an evaluation of whether or not the students should be enrolled based upon their academic or athletic performance. Any student accepted for transfer under the resolution shall be deemed to have fulfilled the residence requirements of Education Code section 48204, which means that the student will not have to renew their request for an interdistrict transfer each year.

**24. Are there limits on the number of transfers if a school district adopts a resolution to become a school district of choice?**

Section 48301(a) states that if the number of transfer applications exceeds the number of transfers the governing board of the school district elects to accept under its resolution, approval for transfer shall be determined by a random drawing held in public at a regularly scheduled meeting of the governing board of the school district.

Under Section 48301(b), either the student's school district of residence or the school district of choice may prohibit the transfer of the student under the school district's resolution, or limit the number of students so transferred if the governing board of the district determines that the transfer would negatively impact any of the following:

- a. The court-ordered desegregation plan of the district;
- b. The voluntary desegregation plan of the district;
- c. The racial and ethnic balance of the district.

Under Section 48301(c), the school district of residence may not adopt policies that in any way block or discourage students from applying for transfer to another district. Section 48301(d) states that communications to parents by districts electing to enroll students under the choice options provided shall be factually accurate and not target individual parents or guardians or residential neighborhoods on the basis of the child's actual or perceived academic or athletic performance or any other personal characteristic.

**25. May a school district of residence prohibit the transfer of a pupil who is a child of an active military duty parent, if the school district to which the parent of the pupil applies proves the application for transfer?**

No. A school district of residence shall not prohibit the transfer of a pupil who is a child of an active military duty parent to a school in any school district, if the school district to which the parent of the pupil applies approves the application for transfer.<sup>5</sup> Active military duty is defined as full-time military duty status in the active uniform service of the United States, including members of the National Guard and the State Reserve on active duty orders pursuant to federal law.<sup>6</sup> Parent is defined as the natural or adoptive parent or guardian of a dependent child.<sup>7</sup>

**26. May a school district of choice prohibit the transfer of special education students and English language learners if the governing board of the school district determines that the additional cost of educating a student would exceed the amount of additional state aid received as a result of the transfer?**

Section 48303 states that school districts of choice may not prohibit a transfer of the student based upon a determination by the governing board of that school district that the additional cost of educating the student would exceed the amount of additional state aid received as a result of the transfer. A school district may reject the transfer of a student if the transfer of that student would require the district to create a new program to serve that student, except that a school district of choice shall not reject the transfer of a special needs student, including an individual with exceptional needs and an English learner.<sup>8</sup> Section 48303(b) states:

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<sup>5</sup> Education Code section 48301(f).

<sup>6</sup> Education Code section 48300(a); 10 U.S.C. §§ 1209, 1211.

<sup>7</sup> Education Code section 48300(b).

<sup>8</sup> Education Code section 48303(a).

“This section is intended to ensure that special education, bilingual, English learner, or other special needs pupils are not discriminated against by the school district of choice because of the costs associated with educating those pupils. Pupils with special needs may take full advantage of the choice options available under this section.”<sup>9</sup>

An application of any student for transfer may not be approved if the transfer would require the displacement, from a school or program conducted within any attendance area of the school district of choice, of any other student who resides within that attendance area or is currently enrolled in that school.<sup>10</sup>

School districts of choice may employ existing entrance criteria for specialized schools or programs if the criteria are uniformly applied to all applicants.<sup>11</sup> A school district of choice shall give priority for attendance to siblings of children already in attendance in the district.<sup>12</sup> A school district of choice may give priority for attendance to children of military personnel.<sup>13</sup>

**27. May a school district of residence limit the number of pupils transferring out each year?**

A school district of residence with an average daily attendance greater than 50,000 may limit the number of pupils transferring out each year to one percent of its current year estimated average daily attendance.<sup>14</sup> A school district of residence with an average daily attendance of less than 50,000 may limit the number of students transferring out to three percent of its current year an estimated average daily attendance and may limit the maximum number of students transferring out for the duration of the program authorized by the school of choice article to ten percent of the average daily attendance for that period.<sup>15</sup>

A school district of residence that has a negative status on the most recent budget certification completed by the county superintendent of schools in any fiscal year, may limit the number of students who transfer out of the district in a fiscal year.<sup>16</sup> Notwithstanding any prior or existing certification of a school district of residence, only if the county superintendent of schools determines that the district would not meet the standards in criteria for fiscal stability specified in Education Code section 42131 for the subsequent fiscal year exclusively due to the impact of additional pupil transfers pursuant to the school of choice article in that year, the district may limit the number of additional pupils who transfer in the upcoming school year pursuant to this article, up to the number that the county superintendent identifies beyond which number of additional transfers would result in a qualified or negative certification in that year exclusively as a result of additional transfers.<sup>17</sup>

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<sup>9</sup> Education Code section 48303(b).

<sup>10</sup> Education Code section 48304.

<sup>11</sup> Education Code section 48305.

<sup>12</sup> Education Code section 48306(a).

<sup>13</sup> Education Code section 48306(b).

<sup>14</sup> Education Code section 48307(a).

<sup>15</sup> Education Code section 48307(b).

<sup>16</sup> Education Code section 48307(c).

<sup>17</sup> Education Code section 48307(b).



If a school district of residence limits the number of students who transfer out of the district, students who have already been enrolled or notified of eligibility for enrollment, including through the random, public selection process prior to the action of the district to limit transfers, shall be permitted to attend the school district of choice.<sup>18</sup> Notwithstanding any other provision of the schools of choice article, a pupil attending a school district of choice or a student who received a notice of eligibility to enroll in a school district of choice, including a student selected by means of a random selection process conducted on or before June 30, 2009, shall be permitted to attend the school district of choice.<sup>19</sup>

**28. What are the timelines for transfers in school districts of choice?**

An application requesting a transfer pursuant to these schools of choice provisions shall be submitted by the parent or guardian of a student to the school district of choice that has elected to accept transfer students prior to January 1 of the school year preceding the school year for which the student is requesting to be transferred. This application deadline may be waived upon agreement of the school district of residence of the student and the school district of choice.<sup>20</sup> The application deadline does not apply to an application requesting a transfer if the parent or guardian of the pupil, with whom the pupil resides, is enlisted in the military and is relocated by the military within 90 days prior to submitting the application.<sup>21</sup> The application may be submitted on the form provided by the State Department of Education and may request enrollment of the student in a specific school or program of the school district.<sup>22</sup>

Not later than 90 days after the receipt by a school district of an application for transfer, the school district may notify the parent or guardian in writing whether the application has been provisionally accepted or rejected or the placement of the student on a waiting list. Final acceptance or rejection shall be made by May 15 preceding the school year for which the student is requesting to be transferred.<sup>23</sup>

**29. If a school district decides to be a school district of choice, what are the accounting requirements?**

Each school district electing to accept transfer students as a school district of choice shall keep an accounting of all requests made for alternative attendance and records of all dispositions of those requests that shall include, but are not limited to, all of the following:

- a. The number of requests granted, denied, or withdrawn. In the case of denied requests, the records shall indicate the reasons for the denials.
- b. The number of students transferred out of the district.

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<sup>18</sup> Education Code section 48307(e).

<sup>19</sup> Education Code section 48307(f).

<sup>20</sup> Education Code section 48308(a)(1).

<sup>21</sup> Education Code section 48308(a)(2).

<sup>22</sup> Education Code section 48308(b).

<sup>23</sup> Education Code section 48308(c)(1).

- c. The number of students transferred into the district.
- d. The race, ethnicity, gender, self-reported socioeconomic status and the school district of residence of each of the students that have transferred in and out.
- e. The number of students who have transferred in and who have transferred out who are classified as English learners or special education students.<sup>24</sup>

The information contained shall be reported to the governing board of the school district at a regularly scheduled meeting of the governing board. No later than May 15 of each year, the school district shall report the information regarding the district's status as a school district of choice in the upcoming school year to each school district that is geographically adjacent to the district electing to accept transfer pupils, the county office of education in which the district is located, the Superintendent of Public Instruction, and the Department of Finance. The Department of Finance shall make the information reported to it available upon request to the Legislative Analyst.<sup>25</sup> The Legislative Analyst shall annually report the above information to the Governor and to the appropriate fiscal and policy committee of the Legislature.<sup>26</sup>

The Legislative Analyst shall conduct a comprehensive evaluation of the interdistrict transfer program and make recommendations regarding the extension of the program by November 1, 2014.<sup>27</sup> The school district of choice provisions become inoperative on July 1, 2016 and as of January 1, 2017 are repealed unless a later enacted statute, which becomes effective on or before January 1, 2017 deletes or extends the dates on which it becomes inoperative and is repealed.<sup>28</sup>

#### **IV. Open Enrollment Act**

##### **30. What is the Open Enrollment Act?**

On January 7, 2010, Governor Schwarzenegger signed SB4 5x (Romero) (the Open Enrollment Act).<sup>29</sup> This legislation takes effect 90 days from the end of the Legislature's fifth special session or April 12, 2010. This legislation will apply, in most cases, to "low achieving schools" identified by the State Superintendent of Public Instruction and schools where parents have filed a petition to restructure a school that fails to make adequate yearly progress under the No Child Left Behind Act (NCLB) and has an Academic Performance Index (API) score of less than 800.

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<sup>24</sup> Education Code section 48313(a). The provisions relating to race, ethnicity, gender, self-reported socioeconomic status, school district of residence, English learners and special education students take effect January 1, 2010.

<sup>25</sup> Education Code section 48313(b).

<sup>26</sup> Education Code section 48313(c).

<sup>27</sup> Education Code section 48316.

<sup>28</sup> Education Code section 48315.

<sup>29</sup> Stats. 2010, ch. 3.

### **31. What is the purpose of the Open Enrollment Act?**

The legislation adds Article 10, commencing with Education Code section 48350, and is entitled the Open Enrollment Act. Section 48351 states that the purpose of the legislation is to improve pupil achievement, in accordance with the regulations and guidelines for the federal Race to the Top Fund authorized under the federal American Recovery and Reinvestment Act of 2009<sup>30</sup> and to enhance parental choice in education by providing additional options to pupils enrolled in low achieving public schools throughout the State without regard to the residence of their parents.

### **32. How are “low achieving schools” and “school district of enrollment” defined in the Open Enrollment Act?**

Section 48352 defines a “low achieving school” as any school identified by the State Superintendent of Public Instruction under the following criteria:

- a. Excluding court, community, or community day schools, the Superintendent of Public Instruction shall annually create a list of 1,000 schools ranked by increasing API with the same ratio of elementary, middle and high schools as existed in decile 1 in the 2008-2009 school year.
- b. In constructing the list of 1,000 schools each year, the Superintendent shall ensure that no local educational agency shall have more than ten percent of the schools on the list, and court, community, or community day schools and charter schools shall not be included on the list.

“School district of enrollment” is defined as the school district other than the school district in which the parent of the pupil resides, but which the parent of the pupil intends to enroll the pupil.<sup>31</sup> “School district of residence” is defined as the school district in which the parent of the pupil resides.<sup>32</sup>

Section 48353 states that the State Board of Education shall adopt emergency regulations to implement this legislation.

### **33. What are the timelines under the Open Enrollment Act?**

Section 48354(a) states that the parent of a pupil enrolled in a low-achieving school may submit an application for the pupil to attend a school in a school district of enrollment. Section 48354(b)(1) states that consistent with the requirements of the No Child Left Behind Act,<sup>33</sup> on or before the first day of the school year, or, if later, on the date the notice of program improvement, corrective action or restructuring status is required to be provided under federal

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<sup>30</sup> Public Law 111-5.

<sup>31</sup> Education Code section 48352(c).

<sup>32</sup> Education Code section 48352(d).

<sup>33</sup> 20 U.S.C. Section 6301 et seq.

law, the district of residence shall provide the parents and guardians of all pupils enrolled in a school determined to be on the list of 1,000 schools created by the Superintendent of Public Instruction, with notice of the option to transfer to another public school served by the school district of residence or another school district.<sup>34</sup>

An application requesting a transfer shall be submitted by the parent of the pupil to the school district of enrollment prior to January 1 of the school year preceding the school year for which the pupil is requesting to transfer. The school district of enrollment may waive the deadline. The application deadline does not apply if the parent is enlisted in the military and was relocated by the military within 90 days prior to submitting the application.<sup>35</sup>

**34. May a parent request a transfer to a specific school or program?**

Yes. The application may request enrollment of the pupil in a specific school or program within the school district of enrollment. A pupil may enroll in a school in the school district of enrollment in the school year immediately following the approval of his or her application. In order to provide priority enrollment opportunities for pupils residing in a school district, a school district of enrollment shall establish a period of time for resident pupil enrollment prior to accepting transfer applications pursuant to this legislation.<sup>36</sup>

**35. Are there limits on transfers under the Open Enrollment Act?**

Education Code section 48355 states that the school district of residence or the school district of enrollment to which a pupil has applied to attend may prohibit the transfer of the pupil or limit the number of pupils who transfer if the governing board of the district determines that the transfer will negatively impact a court-ordered or voluntary desegregation plan of the district or the ratio in ethnic balance of the district, provided that any policy adopted is consistent with federal and state law. A school district shall not adopt any other policies that in any way prevent or discourage pupils from applying for transfer to a school district of enrollment. Communications to parents or guardians by districts regarding the open enrollment options provided by this legislation shall be factually accurate and not target individual parents or guardians or residential neighborhoods on the basis of a child's actual or perceived academic or athletic performance or any other personal characteristic.

**36. May a school district adopt specific written standards for applications for transfers?**

Yes. Education Code section 48356 states that a school district of enrollment may adopt specific written standards for acceptance and rejection of applications pursuant to this legislation. The standards may include consideration of the capacity of a program, class, grade level, school building or adverse financial impact. The standards shall not include consideration of a pupil's

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<sup>34</sup> Education Code section 48354(a) and (b)(1).

<sup>35</sup> Education Code section 48354(b).

<sup>36</sup> Education Code section 48354(b).

previous academic achievement, physical condition, proficiency in the English language, family income or any individual characteristics set forth in Education Code section 200.<sup>37</sup>

Section 48356(b) states that in considering an application pursuant to this article, a nonresident school district may apply its usual requirements for admission to a magnet school or a program designed to serve gifted and talented pupils. Section 48356(c) states that subject to the rules and standards that apply to pupils who reside in the school district of enrollment, a resident pupil who is enrolled in one of the district's schools pursuant to this article, shall not be required to submit an application in order to remain enrolled.

Section 48356(d) states that a school district of enrollment shall ensure that pupils enrolled pursuant to standards adopted pursuant to this Section, are enrolled in a school with a higher academic performance index than the school in which the pupil was previously enrolled, and are selected through a random, unbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based on his or her individual academic or athletic performance. Pupils applying for a transfer pursuant to this article shall be assigned priority for approval as follows:

- a. First priority for the siblings of children who already attend the desired school.
- b. Second priority for pupils transferring from a program improvement school ranked in decile 1 on the Academic Performance Index.
- c. If the number of pupils who request a particular school exceeds the number of spaces available at that school, a lottery shall be conducted in group priority order to select pupils at random until all the available spaces are filled.

Section 48356(e) states that the initial application of a pupil for transfer to a school within a district of enrollment shall not be approved if the transfer would require the displacement from the desired school of any pupil who resides within the attendance area of that school or is currently enrolled in that school. Section 48356(f) states that a pupil approved for a transfer to a school district of enrollment pursuant to this article shall be deemed to have fulfilled the requirements of Section 48204 (residency requirements for school attendance in a school district).

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<sup>37</sup> Education Code section 200 states: "It is the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor."

**37. May the school district of enrollment incorporate their Open Enrollment Act transfers within the timelines for their other interdistrict transfers which may be a few weeks prior to the start of school?**

Yes. The Open Enrollment Act sets a timeline of January 1 of the prior year. However, the school district of enrollment may waive the deadline to coordinate the timelines with the timelines for other interdistrict transfers. There is no restriction on setting the timeline near the start of school. However, if a court finds that the timeline is impractical or a hardship to parents, a court might invalidate a late timeline.<sup>38</sup>

**38. If additional late enrollment of students who reside in the district pushes the school total beyond capacity, may the district decline the transfer at the last minute?**

We would recommend that districts avoid this dilemma by estimating the number of late transfers based on past history and define “capacity” by including the number of estimated late transfers into the school. Once a transfer is granted, the courts may not allow school districts to revoke the approval. Another alternative would be to establish a waiting list and allow students to transfer during the year if there is capacity in the school.

**39. Are there any transportation requirements under the Open Enrollment Act?**

No. The Open Enrollment Act does not require school districts to transport students. The parents are responsible for transporting their children to school.

**40. If special education programs are beyond capacity, do school districts have to accept transfer students?**

No. The school district may refuse to accept students when their special education programs are beyond capacity. Districts should develop standards for determining when their special education programs are beyond capacity so that districts can support any refusals to accept transfer students.

**41. Can parents choose specific schools under the Open Enrollment Act?**

Parents may request specific schools or programs, but the school district may offer other schools or programs. The Open Enrollment Act is unclear as to whether school districts may refuse to place students in the programs requested for any reason.

**42. May school districts of enrollment place students who request transfers in a program improvement (PI) school?**

The Open Enrollment Act does not specifically prohibit placing a transfer student in a program improvement school but the intent of the legislation appears to allow students to transfer into non-program improvement schools. Therefore, we would recommend allowing students to

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<sup>38</sup> Education Code section 48354(b).

transfer into non-PI schools if there is space available before offering non-PI schools unless the parent requests the PI school.

**43. Is a transfer under the Open Enrollment Act for one year?**

No. Section 48356 (c) states that a resident pupil who is enrolled in one of the district's schools pursuant to this law shall not be required to submit an application in order to remain enrolled. The district of enrollment **may** allow the pupil to matriculate to a middle or high school without having to reapply.<sup>39</sup>

**44. What if the school in the school district of residence is not on the underperforming list the next year, does that affect the transfer?**

No. Section 4702(b) of Title 5 of the California Code of Regulations states that a pupil who transfers to a school pursuant to the Open Enrollment Act shall not be required to reapply for enrollment in that school, regardless of whether the pupil's school of residence remains on the list of 1,000 Open Enrollment schools.

**45. Can the district move the student to a different school in the district if the school becomes overcrowded the next year?**

The District would need to treat the student the same as any resident student. Education Code section 48356(e) states that the **initial** application for a pupil to transfer to a school shall not be approved if the transfer would require the displacement from the desired school of any other pupil who resides within the attendance area of that school or is currently enrolled in that school. However, as stated above, once the Open Enrollment Act transfer is approved by the school of enrollment, the student does not have to reapply to that school.

**46. Do school districts have to accept students from other counties?**

Yes. The Open Enrollment Act applies to the entire state and does not limit interdistrict transfers to the same county.

**47. If a parent disagrees with the school district of enrollment's denial of their request, can the parents appeal to the county board of education or file a uniform complaint under the uniform complaint procedures?**

The Open Enrollment Act does not authorize an appeal to the county board of education. If the parent feels that they have been discriminated against, the parent may file a uniform complaint under the Uniform Complaint Procedures.

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<sup>39</sup> 5 CCR Section 4702(c).

**48. Do school districts have to keep any documentation under the Open Enrollment Act?**

Section 48359 encourages, but does not require, school districts to keep an accounting of all requests made for alternative attendance. We would recommend the districts document the number of requests granted, denied, or withdrawn, and the reasons for denial. Districts should also keep records of the number of pupils who transfer out of the district and into the district. Districts should also document the race, ethnicity, gender and other characteristics of each of the students, including English learners and special education students, and the school district of residence of each of the pupils who have transferred in or out of the district.

**49. What notices must be sent to parents?**

Section 48357 states that within 60 days of receiving an application pursuant to Section 48354, a school district of enrollment shall notify the applicant parent and the school district of residence in writing whether the application has been accepted or rejected. If an application is rejected, the school district of enrollment shall state in the notification the reasons for the rejection.

**50. Must the school district of enrollment accept credits toward graduation that were awarded to the pupil by another school district?**

Yes. Section 48358 states that a school district of enrollment that enrolls a pupil pursuant to this article shall accept credits toward graduation that were awarded to the pupil by another school district and shall graduate the pupil if the pupil meets the graduation requirements of the school district of enrollment.

**51. What are the accounting requirements?**

Section 48359 states that each school district is encouraged to keep an accounting of all requests made for alternative attendance pursuant to this article, and records of all dispositions of those requests may include, but are not limited to, all of the following:

- a. The number of requests granted, denied or withdrawn. In the case of denied requests, the records may indicate the reasons for the denials.
- b. The number of pupils who transfer out of the district.
- c. The number of pupils who transferred into the district.
- d. The race, ethnicity, gender, self-reported socioeconomic status, and the school district of residence of each of the pupils who have transferred in or out of the district.



- e. The number of pupils who have transferred in or out of the district who are classified as English learners or identified as individuals with exceptional needs (special education).

The information may be reported to the governing board of the school district at a regularly scheduled meeting of the board.

**52. Does the Open Enrollment Act apply to basic aid districts?**

Yes. Section 48359.5 states that for a school district of enrollment that is a basic aid district, the apportionment of state funds for any average daily attendance credited shall be 70% of the district revenue limit that would have been apportioned to the school district of residence. Apportionment of these funds shall begin in the second consecutive year of enrollment, and continue annually until the pupil graduates from, or is no longer enrolled in, the school district of enrollment. A basic aid district is defined as a school district that does not receive an apportionment of state funds pursuant to Education Code section 42238(h) for any fiscal year.

**53. Does a basic aid district have to accept transfers even if they have a policy of not accepting interdistrict transfers?**

Yes. Under Education Code section 48359.5, a basic aid district would have to accept students who wish to transfer into the district.

Education Code section 48356(a) states that a school district with enrollment may adopt specific written standards for acceptance and rejection of applications. The standards may include consideration of the capacity of the program, class, grade level, school building, or adverse financial impact. However, the standards shall not include consideration of a pupil's previous academic achievement, physical condition, proficiency in the English language, family income, or any of the other individual characteristics set forth in Section 200 of the Education Code (e.g., race, ethnicity, sex, religion.). If the number of pupils who request a particular school exceeds the number of spaces available at that school, a lottery must be conducted in group priority order, with first priority for siblings of children who already attend the desired school, and second priority for pupils transferring from a program improvement school ranked in decile 1 on the Academic Performance Index, and third priority to select pupils at random until all of the available spaces are filled.

**54. Is the Superintendent of Public Instruction required to do an independent evaluation of the Open Enrollment program?**

Education Code section 48360 states that the Superintendent of Public Instruction shall contract for an independent evaluation of the open enrollment program using federal funds. The evaluation shall, at a minimum, consider all of the following:

- a. The levels of, and changes in, academic achievement of pupils in school districts of residence and school districts of enrollment for pupils who do and do not elect to enroll in a school district of enrollment.

- b. Fiscal and programmatic effects on school districts of residence and school districts of enrollment.
- c. Numbers and demographic and socioeconomic characteristics of pupils who do and do not elect to enroll in a school district of enrollment.

The Superintendent of Public Instruction shall provide a final evaluation report to the Legislature, Governor and the State Board of Education on or before October 1, 2014.

**55. Will the State Board of Education be adopting regulations to clarify the requirements of the Open Enrollment Act?**

The State Board of Education has adopted regulations pursuant to the Open Enrollment Act, 5 CCR 4700 et seq.