



## CALIFORNIA STATE BOARD OF EDUCATION

### JULY 2010 AGENDA

<b>SUBJECT</b>	
Open Enrollment Act—Approve the Finding of Emergency and Proposed Emergency Regulations for Additions to the <i>California Code of Regulations</i> , Title 5.	<input checked="" type="checkbox"/> Action <input checked="" type="checkbox"/> Information <input type="checkbox"/> Public Hearing

### RECOMMENDATION

The State Board of Education (SBE) is required by statute to adopt emergency regulations to implement the Open Enrollment Act, SBX5 4. The proposed emergency regulations detail the methodology for calculating the 1,000 low achieving schools as required by SBX5 4 and request the SBE take the following actions:

- Approve the Finding of Emergency.
- Adopt the proposed Emergency Regulations.
- Direct the California Department of Education (CDE) to circulate the required notice of proposed emergency action, and then submit the Emergency Regulations to the Office of Administrative Law for approval.

### SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

There has not been previous action by the SBE on the Open Enrollment Act.

### SUMMARY OF KEY ISSUES

The Open Enrollment Act, SBX5 4 (Romero), was signed into law on January 7, 2010, and became effective on April 14, 2010. The Open Enrollment Act provides students enrolled in one of the 1,000 “low-achieving” schools, hereinafter referred to as “Open Enrollment” schools, the option to enroll in a different school with a higher Academic Performance Index than the pupil’s school of residence. To ensure that this option is made immediately available to students in California’s Open Enrollment schools, SBX5 4 requires the SBE to adopt emergency regulations to implement the Open Enrollment Act.

Important requirements established by the Open Enrollment Act include:

## **SUMMARY OF KEY ISSUES (Cont.)**

---

The State Superintendent of Public Instruction must annually create a list of 1,000 Open Enrollment schools based on a methodology that meets the criteria specified in *Education Code* Section 48352(a)(1).

- Pursuant to *Education Code* Section 48354(a), parents have the option to apply, on behalf of their child(ren), for transfer not just to another public school in their district of residence, but to schools in other districts outside their district of residence.
- The specifications set forth in *Education Code* Section 48352(a)(1) include:
  - No more than ten percent of the schools in any local educational agency (LEA) may be on the list of 1,000.
  - Court schools, community schools, community day schools, and charter schools are excluded from the list.
- Pursuant to *Education Code* Section 48356(a), school districts may adopt standards for acceptance or rejection of applications under the Open Enrollment Act, and in particular those standards may include consideration of the capacity of the school or program to accept students under the Open Enrollment Act.
- Pursuant to *Education Code* Section 48356(d)(3), when the number of applications to a school or program exceeds capacity, the district must conduct a lottery to select students for admission.

CDE staff has reviewed the statute and has determined that there is a need for regulations to clarify the manner in which the list of schools should be determined and what schools of the district should be considered when calculating the 10 percent cap required by *Education Code* Section 48352(a)(2)(A).

The following is an overview of the regulations package provided in Attachment 2:

- Procedures allowing a parent to submit an application to a different school if the school that his or her child will attend in the next school year is on the list of 1,000 schools.
- A provision stating that a student shall not be required to reapply for enrollment in a school to which the student has been admitted under the Open Enrollment Act, regardless of whether the student's "school of residence" remains on the list of 1,000 schools.
- Miscellaneous provisions regarding the timing of the application process and the notifications to be made during the application process.

## **SUMMARY OF KEY ISSUES (Cont.)**

---

These emergency regulations and the permanent regulations (Item 33) differ in the timing of the application process and notification requirements specific to the 2010–2011 and 2011–2012 school years.

## **FISCAL ANALYSIS (AS APPROPRIATE)**

---

The Economic and Fiscal Impact Statement will be provided as an Item Addendum.

## **ATTACHMENT(S)**

---

Attachment 1: Finding of Emergency (2 Pages)

Attachment 2: Emergency Regulations (4 Pages)

Attachment 3: Overview of Open Enrollment – List of 1,000 Schools will be provided as an Item Addendum.

Attachment 4: Notice of Proposed Emergency Action (1 Page)

Attachment 5: The Economic and Fiscal Impact Statement will be provided as an Item Addendum.

## **FINDING OF EMERGENCY Open Enrollment Act**

The State Board of Education (SBE) finds that an emergency exists and that the emergency regulations adopted are necessary to avoid serious harm to the public peace, health, safety, or general welfare, especially for public school pupils attending Open Enrollment schools.

### **SPECIFIC FACTS DEMONSTRATING THE EXISTENCE OF AN EMERGENCY AND THE NEED FOR IMMEDIATE ACTION**

Despite years of the best efforts of California's legislators, education leaders, teachers, and administrators, California's achievement gap has been only marginally reduced. Further, many of the students who are not adequately achieving are concentrated in failing schools. Although academic achievement in these schools is slowly improving, achievement has not improved enough to reduce the achievement gap and provide students with the education and life opportunities necessary to a secure future for them, and for California's society. As a result, in 2010 the California State Legislature decided that the students in these schools can no longer wait for their educational opportunities to catch up.

With the Open Enrollment Act (SBX5 4, Chapter 3, 5<sup>th</sup> Extraordinary Session, 2010), the California State Legislature has taken the step of giving students from 1,000 low-achieving schools the right to leave the school in which they reside and enroll in higher achieving schools. In order to ensure that the Open Enrollment Act may be implemented immediately by those schools participating in the 2010-2011 school year; section 48353 of the California Education Code requires the SBE to adopt emergency regulations. It is, therefore, necessary that emergency regulations be adopted.

### **AUTHORITY AND REFERENCE**

Authority: Section 48353, Education Code.

Reference: Sections 48350, 48351, 48352, 48353, 48354, 48355, 48356, 48357, 48358, 48359, 48360 and 48361, Education Code.

### **INFORMATIVE DIGEST**

The Open Enrollment Act, SBX5 4 (Romero), was signed into law on January 7, 2010, and became effective on April 14, 2010. The Open Enrollment Act provides students enrolled in one of the 1,000 "low-achieving" schools, hereinafter referred to as "Open Enrollment" schools, the option to enroll in a different school with a higher Academic Performance Index than the pupil's school of residence. The purpose of the regulations is to:

- Identify a methodology for selecting the 1,000 Open Enrollment schools.
- Allow a parent to submit an application to a different school if the school that his or her child will attend in the subsequent school year is on the list of 1,000 Open Enrollment schools.
- Clarify that a student is not required to reapply for enrollment in a school to which the he or she has been admitted under the Open Enrollment Act, regardless of whether the student's prior school of residence remains on the list of 1,000 Open Enrollment schools.
- Miscellaneous provisions regarding the timing of the application process and the notifications to be made during the application process.

### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

The SBE did not consider any technical, theoretical, empirical study, reports, or other documents in the drafting these regulations.

### **MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The proposed regulations do not impose a mandate on local agencies or school districts.

### **COST ESTIMATE**

The emergency regulations would not place any additional costs or savings on local agencies or school districts.

1 **Title 5. EDUCATION**

2 **Division 1. California Department of Education**

3 **Chapter 5.2. Improvement of Elementary and Secondary Education**

4 **Open Enrollment Act**

5 **Subchapter 1. Open Enrollment Act**

6 **Article 1. General Provisions**

7  
8 **§ 4700. Purpose.**

9 These regulations set forth requirements for the administration of the Open  
10 Enrollment Act.

11 NOTE: Authority cited: Section 48353, Education Code. Reference: Sections 48350  
12 through 48361, inclusive, Education Code.

13  
14 **§ 4701. Identification of Open Enrollment Schools.**

15 (a) The State Superintendent of Public Instruction (SSPI) shall annually construct a  
16 list of 1,000 schools for the Open Enrollment Act that maintains the same ratio of  
17 elementary, middle, and high schools as existed in decile 1 of the 2009 Base Academic  
18 Performance Index (API) file and retains only "10 percent" of an LEA's schools pursuant  
19 to the following methodology:

20 (1) the list of 1,000 schools shall include 687 elementary schools, 165 middle  
21 schools, and 148 high schools;

22 (2) the list of 1,000 schools shall exclude the following:

23 (A) schools that are court, community, or community day schools;

24 (B) schools that are charter schools;

25 (C) schools that are closed; and

26 (D) schools that have fewer than 100 valid test scores.

27 (3) a local educational agency (LEA) shall have on the list no more than 10 percent  
28 of its total number of schools that are not closed. However, when that total number of  
29 schools is not evenly divisible by 10, the 10 percent number of the LEA's schools shall  
30 be rounded up to the next whole number; and

1 (4) to produce the final list of 1,000 schools, the SSPI shall apply the following  
2 process:

3 (A) create a pool of schools:

4 1. for the purpose of constructing the Open Enrollment Schools List for transfer  
5 during the 2010-2011 school year, this pool shall be created by selecting all schools  
6 from the 2009 Base API file.

7 2. for the purpose of constructing the Open Enrollment Schools List for transfer  
8 during the 2011-2012 school year and every year thereafter, this pool shall be created  
9 by selecting all schools from the most current year's growth API file;

10 (B) create an initial pool of eligible schools by excluding from the pool set forth in  
11 subdivision (a)(4)(A)(1.) or (2.) as appropriate, all schools identified in subdivision (a)(2);

12 (C) from the pool of eligible schools set forth in subdivision (a)(4)(B), select the list of  
13 1,000 schools with the lowest API scores while maintaining the number of the  
14 elementary schools, middle schools, and high schools respectively, as set forth in  
15 subdivision (a)(1);

16 (D) from the list of 1,000 schools identified in subdivision (a)(4)(C), retain only the  
17 schools with the lowest API scores from each LEA irrespective of whether it is an  
18 elementary school, middle school, or high school until the LEA reaches the 10 percent  
19 cap pursuant to subdivision (a)(3);

20 (E) from the schools remaining in the eligible pool after the list of 1,000 schools as  
21 set forth in subdivision (a)(4)(C) were removed, retain only the schools that are part of  
22 LEAs that have not yet reached their 10 percent cap pursuant to subdivision (a)(3);

23 (F) create the next pool of eligible schools by combining the schools retained in  
24 subdivision (a)(4)(D) with the schools retained in subdivision (a)(4)(E); and

25 (G) repeat the procedures outlined in subdivisions (a)(4)(C) through (a)(4)(F) until  
26 such time as the number of schools as set forth in subdivision (a)(4)(D) is 1,000 schools  
27 with no LEA exceeding the 10 percent cap.

28 (5) The final list of 1,000 Open Enrollment schools is achieved when the list contains  
29 1,000 schools that meet the requirements for both the decile 1 ratio and the LEA "10  
30 percent" cap.

1 NOTE: Authority cited: Section 48353, Education Code. Reference: Sections 48352 and  
2 52052, Education Code.

3

4 **§ 4702. Application for Transfer Pursuant to the Open Enrollment Act.**

5 (a) The district of residence shall notify the parent(s) or guardian(s) of each pupil  
6 enrolled in a school included on the most recent Open Enrollment list of the option to  
7 transfer. This notice shall be provided on the first day of instruction; if the district has not  
8 been notified of whether its school(s) is on the list, the notification shall be provided no  
9 later than September 15.

10 (b) A pupil who transfers to a school pursuant to the Open Enrollment Act and is  
11 currently enrolled in that school shall not be required to reapply for enrollment in that  
12 school, regardless of whether the pupil's school of residence remains on the list of  
13 1,000 Open Enrollment schools.

14 NOTE: Authority cited: Section 48353, Education Code. Reference: Sections 48354 and  
15 48355, Education Code.

16

17 **§ 4703. Approval and Rejection of Applications.**

18 (a) For the purposes of transfer for the 2010-2011 school year, on or before  
19 September 30, 2010, the school district of enrollment shall notify the applicant parent(s)  
20 or guardian(s) and the school district of residence in writing whether the application has  
21 been approved or rejected.

22 (b) If an application is approved, the school district of enrollment shall state in the  
23 notification the particular school site and that school's address to which the pupil has  
24 been admitted.

25 (c) For the purposes of the 2010-2011 school year, if a pupil chooses to enroll in a  
26 school to which he or she has been admitted pursuant to this chapter, he or she shall  
27 enroll in the school no later than November 1, 2010. If the pupil fails to do so, the district  
28 is not required to enroll the pupil.

29 (d) For the purposes of a new transfer for the 2011-2012 school year and every  
30 school year thereafter, if a pupil chooses to enroll in a school to which he or she has

1 been admitted pursuant to this chapter, he or she shall enroll in the school on or before  
2 the first day of instruction. If the pupil fails to do so, the district is not required to enroll  
3 the pupil.

4 (e) For the purposes of standards for acceptance and rejection of applications  
5 pursuant to Education Code section 48356(a) related to “adverse financial impact,”  
6 apportionment of state funds for any average daily attendance credited or to be  
7 credited, pursuant to Education Code section 48359.5 or otherwise, shall be presumed,  
8 in the absence of clear and convincing evidence to the contrary, to eliminate any  
9 adverse financial impact on the district of enrollment.

10 NOTE: Authority cited: Section 48353, Education Code. Reference: Sections 48354 and  
11 48357, Education Code; and Section 88003, Government Code.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30



CALIFORNIA DEPARTMENT OF EDUCATION  
**JACK O'CONNELL**, State Superintendent of Public Instruction  
916-319-0800

1430 N Street Sacramento, CA 95814-5901

CALIFORNIA STATE BOARD OF EDUCATION  
**THEODORE R. MITCHELL**, President  
916-319-0827

July 14, 2010

**NOTICE OF PROPOSED EMERGENCY ACTION**  
Open Enrollment

Pursuant to the requirements of Government Code section 11346.4(a)(1), the State Board of Education (SBE) is providing notice of proposed emergency action with regards to the above-entitled emergency regulation.

If you have any comments regarding the proposed emergency regulation, the SBE will accept written comments between **July 15, 2010 and July 20, 2010**, inclusive. All written comments received by California Department of Education staff during the public comment period are subject to disclosure under the Public Records Act.

All written comments must be submitted to the Regulations Coordinator via facsimile at 916-319-0155; e-mail at [regcomments@cde.ca.gov](mailto:regcomments@cde.ca.gov), or mailed and received at the following address by close of business at **5 p.m. on July 20, 2010**, and addressed to:

Debra Thacker, Regulations Coordinator  
California Department of Education  
Administrative Support and Regulations Adoption Unit  
1430 N Street, Suite 5319  
Sacramento, CA 95814