

CSBA Sample Board Policy

Students

BP 5116.1(a)

INTRADISTRICT OPEN ENROLLMENT

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

The Governing Board desires to provide enrollment options that meet the diverse needs and interests of district students and parents/guardians, while also **balancing enrollment in order to maximize** the efficient use of district facilities. The Superintendent or designee shall establish procedures for the selection and transfer of students among district schools in accordance with law, Board policy, and administrative regulation.

(cf. 5117 - Interdistrict Attendance)

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

The parents/guardians of any student who resides within district boundaries may apply to enroll their child in any district school, regardless of the location of their residence within the district. (Education Code 35160.5)

(cf. 5111.1 - District Residency)

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

Enrollment Priorities

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

(cf. 5116 - School Attendance Boundaries)

Note: The following list of intradistrict enrollment priorities should be modified to reflect district practice. Districts must establish priority for circumstances under which the district is required by state or federal law to offer intradistrict enrollment opportunities (items #1-3 below). Anticipated need for these transfers should be considered in determining capacity of district schools for other intradistrict transfers allowed by the district pursuant to items #4-6 below.

The Every Student Succeeds Act (ESSA) (P.L. 114-95) repealed 20 USC 6316 which had required districts to offer intradistrict transfers to all students in Title I schools identified for program improvement in the

Attachment Q
Use CSBA sample "with revisions"

first year or beyond. The district may, but is not required to, offer such transfers beginning in the 2016-17 school year. Districts that choose to offer such transfers may expand the following list accordingly.

BP 5116.1(b)

INTRADISTRICT OPEN ENROLLMENT (continued)

The Superintendent or designee shall grant priority to any district student to attend another district school, including a charter school, outside of his/her attendance area as follows:

Note: Education Code 48350-48361, as added by SBX5 4 (Ch. 3, Fifth Extraordinary Session, Statutes of 2010), created the Open Enrollment Act which allows a student attending an "open enrollment" school, as identified by the Superintendent of Public Instruction, to transfer to another school that has a higher Academic Performance Index (API), either within the district or in another district. For details regarding such transfers, see BP/AR 5118 - Open Enrollment Act Transfers. However, the California Department of Education (CDE) did not produce an Open Enrollment Act list for the 2016-17 school year due to the suspension of the API. The CDE has posted the 2015-16 Open Enrollment Act list on its web site for use in the 2016-17 school year, but cautions that the list is based on the results of 2013 state assessments developed under prior state content standards and that the assessment results of schools on that list may have improved.

It is unclear whether the Open Enrollment Act grants students who are attending an open enrollment school the right to transfer to another school within the district as well as outside of the district. Therefore, CSBA's BP 5118 specifies that students attending an open enrollment school who wish to attend another school within the district use the procedures specified in this Board policy and accompanying administrative regulation, applicable to all students applying for intradistrict open enrollment. However, students transferring from an open enrollment school should receive priority for admission, as specified in item #1 below. Districts that do not use this policy for intradistrict transfers under the Open Enrollment Act should delete item #1.

1. Any student enrolled in a district school that has been identified on the state's Open Enrollment **Act** list (Education Code 48354)

(cf. 5118 - Open Enrollment Act Transfers)

Note: Because federal law requires districts to offer intradistrict transfers to all students in Title I schools identified for program improvement (PI), corrective action, or restructuring (20 USC 6316), to all students who are attending "persistently dangerous" schools, and to any student who is the victim of a violent criminal offense at school (20 USC 7912), the district should establish priority for such students in intradistrict open enrollment, as provided in items #2-4 below. Anticipated need for these transfers should be considered in determining the capacity of district schools for other intradistrict transfers pursuant to Education Code 35160.5 as described below.

See the accompanying administrative regulation for details regarding transfers pursuant to 20 USC 7912 for students in any school that is designated by the state as a "persistently dangerous" school (item #2) or for a student who is the victim of a violent criminal offense on school grounds (item #3). For other transfers required as a result of a school's identification for PI, see BP/AR 0520.2 Title I Program Improvement Schools.

2. Any student enrolled in a district school receiving Title I funds that has been identified for program improvement (PI), corrective action, or restructuring. (20 USC 6316)

Attachment Q

Use CSBA sample "with revisions"

~~(cf. 0420.4 – Charter Schools)~~

~~(cf. 0520.2 – Title I Program Improvement Schools)~~

~~(cf. 6171 – Title I Programs)~~

BP 5116.1(c)

INTRADISTRICT OPEN ENROLLMENT (continued)

- 32.** Any student enrolled in a district school designated by the California Department of Education as "persistently dangerous" (20 USC 7912; 5 CCR 11992)

(cf. 0450 - Comprehensive Safety Plan)

- 43.** Any student who is a victim of a violent crime while on school grounds (20 USC 7912)

Note: Education Code 35160.5 permits, but does not require, the district's policy to include any or all of the following priorities. Items #~~5-7~~ **4-6** below are **optional** and should be deleted or modified to reflect enrollment priorities in the district.

Education Code 35160.5 makes no provision related to the duration of ~~the any~~ transfer **granted pursuant to items #4-6**. See the accompanying administrative regulation.

- 54.** Upon a finding that special circumstances exist that might be harmful or dangerous to the student in the current attendance area. Special circumstances include, but are not limited to, threats of bodily harm or threats to the emotional stability of the student. Any such student may transfer to a district school that is at capacity and otherwise closed to transfers. To grant priority under these circumstances, the Superintendent or designee must have received either: (Education Code 35160.5)

- a. A written statement from a representative of an appropriate state or local agency, **such as including, but not necessarily limited to,** a law enforcement official, social worker, or a properly licensed or registered professional such as a psychiatrist, psychologist, or marriage and family therapist
- b. A court order, including a temporary restraining order and injunction

- 65.** Any sibling of a student already in attendance in that school.

- 76.** Any student whose parent/guardian ~~is assigned to that school as his/her primary place of employment.~~ **employed full-time by the district.**

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Application and Selection Process

Note: Education Code 48354 requires the district to give priority for enrollment to students residing in the district before admitting students seeking to transfer from an open enrollment school outside of the district. In order to accurately determine the number of slots available for interdistrict transfers, the district should set an application window for parents/guardians to apply for intradistrict open enrollment that precedes the district's

Attachment Q

Use CSBA sample “with revisions”

application window under the Open Enrollment Act. For language regarding the application window under the Open Enrollment Act, see BP/AR 5118 - Open Enrollment Act Transfers.

The district should specify the intradistrict open enrollment application window, if any, in the blank provided in the following paragraph.

BP 5116.1(d)

INTRADISTRICT OPEN ENROLLMENT (continued)

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

~~In order to ensure that priorities for enrollment in district schools are implemented in accordance with law, applications for intradistrict open enrollment shall be submitted between _____ (insert application window dates) _____ of the school year preceding the school year for which the transfer is requested.~~

Comment [mg1]: Language from PSD Policy to reflect current practice.

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

Education Code 35160.5 requires districts to calculate capacity in a nonarbitrary manner using student enrollment and available space. The law does not provide a specific formula for the calculation, but the district may want to include unique factors specific to the school to calculate available space, such as class size reduction requirements, **and** space needs for specialized programs, **and anticipated transfers of students from PI schools within the district.** The district may modify the following paragraph to include the specific formula **for calculating school capacity** for schools within the district.

The Superintendent or designee shall calculate each school's capacity in a nonarbitrary manner using student enrollment and available space. (Education Code 35160.5)

Note: Pursuant to Education Code 35160.5, the district must use a random, unbiased process (e.g., a lottery) to select students for intradistrict open enrollment when requests for admission exceed the capacity of the school. The California Attorney General (85 Ops.Cal.Atty.Gen. 95 (2002)) has opined that a "first come, first served" selection policy does not constitute a random, unbiased process.

An exception in Education Code 35160.5 gives districts the authority to maintain appropriate racial and ethnic balances across district schools. However, in Crawford v. Huntington Beach Union High School District, a California appellate court held that a district's intradistrict enrollment policy which contained a racial and ethnic balance component as authorized by Education Code 35160.5 was unconstitutional. According to the court, the constitutional provisions added by Proposition 209 prohibit a district from adopting a policy containing different admission criteria on the basis of race. Because of the legal uncertainty surrounding this issue, the following paragraph does not reflect the provisions of Education Code 35160.5 relative to racial and ethnic balance. The district should consult legal counsel regarding any policy or regulation dealing with maintenance of racial or ethnic balance.

Except for priorities listed above, the Superintendent or designee shall use a random, unbiased selection process to determine who shall be admitted whenever the school receives admission requests that are in excess of the school's capacity. (Education Code 35160.5)

Attachment Q

Use CSBA sample “with revisions”

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

(cf. 6172 - Gifted and Talented Student Program)

BP 5116.1(e)

INTRADISTRICT OPEN ENROLLMENT (continued)

Transportation

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

Pursuant to the CDE's Every Student Succeeds Act 2016-17 School Year Transition Plan (April 2016) and its Public School Choice FAQs, districts must continue to set aside Title I, Part A funds for transportation costs for students who transferred out of program improvement schools prior to the 2016-17 school year and for students who the district chooses to allow to transfer in the 2016-17 school year. In accordance with the CDE's transition plan and the U.S. Department of Education's Transitioning to the Every Student Succeeds Act (ESSA): Frequently Asked Questions (May 2016), any student who transferred under this option prior to the 2016-17 school year must be allowed to remain in the school of enrollment until he/she completes the highest grade offered in the school; see the accompanying administrative regulation.

The district is not obligated to provide transportation for students who are transferring pursuant to the Open Enrollment Act. However, 20 USC 6316 requires that a district either provide transportation or reimburse the costs of transporting students who have transferred out of Title I schools identified for PI, corrective action, or restructuring to a different school. The district is not obligated to provide, or pay for the provision of, transportation for the student after the end of the school year that the school of origin is no longer identified. These requirements are addressed in AR 0520.2 – Title I Program Improvement Schools. The district also is not obligated to provide transportation for students who are victims of violent criminal offenses or those who wish to transfer out of “persistently dangerous” schools pursuant to 20 USC 7912. If a district chooses to make transportation available to such students, it may use certain federal funds (e.g., Title IV, Part A, and Title V, Part A) to cover the costs. When a district chooses to provide transportation, U.S. Department of Education Guidance (Unsafe School Choice Option) clarifies that the district is not obligated to continue providing or paying for transportation after the school is no longer designated as “persistently dangerous.”

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Except as required by 20 USC 6316 for transfers out of Title I PI schools, **for students who transferred out of a Title I program improvement school**, the district shall not be obligated to provide transportation for students who attend school outside their attendance area.

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(cf. 3250 - Transportation Fees)

(cf. 3540 - Transportation)

Legal Reference: (see next page)

BP 5116.1(f)

INTRADISTRICT OPEN ENROLLMENT (continued)

Legal Reference:

EDUCATION CODE

200 Prohibition against discrimination

35160.5 District policies; rules and regulations

35291 Rules

35351 Assignment of students to particular schools

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

48980 Notice at beginning of term

CODE OF REGULATIONS, TITLE 5

11992-11994 Definition of persistently dangerous schools

UNITED STATES CODE, TITLE 20

6316 Transfers from program improvement schools

6311 State plans

7912 Transfers from persistently dangerous schools

CODE OF FEDERAL REGULATIONS, TITLE 34

200.36 Dissemination of information

200.37 Notice of program improvement status, option to transfer

200.39 Program improvement, transfer option

200.42 Corrective action, transfer option

200.43 Restructuring, transfer option

200.44 Public school choice, program improvement schools

200.48 Transportation funding for public school choice

COURT DECISIONS

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

ATTORNEY GENERAL OPINIONS

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

Management Resources:

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Public School Choice FAQs

Attachment Q

Use CSBA sample “with revisions”

Every Student Succeeds Act 2016-17 School Year Transition Plan, April 2016

U.S. DEPARTMENT OF EDUCATION NONREGULATORY GUIDANCE PUBLICATIONS

Transitioning to the Every Student Succeeds Act (ESSA): Frequently Asked Questions, rev. May 4, 2016

Public School Choice, January 2009

Unsafe School Choice Option, May 2004

WEB SITES

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

California Department of Education, Unsafe School Choice Option:

<http://www.cde.ca.gov/ls/ss/se/usco.asp>

U.S. Department of Education, No Child Left Behind: <http://www.nclb.gov>

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

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Policy Reference UPDATE Service

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