

July 13, 2010

Ted Mitchell, President  
State Board of Education  
California Department of Education  
1430 N Street, Room 5111  
Sacramento, CA 95814

RE: State Board of Education Action Items #32, 33 and 34

Dear President Mitchell:

On behalf of the California School Boards Association, I am writing in response to the State Board's proposal to introduce Title 5 Regulations for the Open Enrollment (Education Code 48350-48361) and Parent Empowerment Acts (Education Code 53300-53302).

The Open Enrollment Act *Proposed emergency and regular regulations*

At this time, it is unclear why the State Board of Education is proposing two sets of regulations, when the enabling statute requires only emergency regulations. Further, the California School Boards Association was disheartened to discover that the proposed emergency regulations require eligible school districts to consider transfer applications pursuant to this Act for the current 2010-11 school year.

CSBA believes the proposed emergency regulations exceed the scope of the statute and is beyond the State Board's legal authority. Education Code 48354 specifically states that an application for transfer be submitted by a parent prior to January 1 of the school year "preceding the school year for which the pupil is requesting to transfer." The January 1 deadline may be waived by the school district of enrollment.

For many school districts, the instructional year will have already begun when these emergency regulations become effective. Thus, contrary to statute, all transfer applications submitted will not be received in the preceding school year. Through these regulations, the State Board of Education is in effect waiving the January 1 deadline for all school districts of enrollment. CSBA believes these regulations are contrary to the specific statutory language and exceed the State Board's legal authority.

Beyond the fact that the proposed emergency regulations are contrary to the statute, the proposal is patently unworkable. It is inappropriate to expect school districts to be adequately prepared to implement this Act over the next few weeks, considering the absence of finalized regulations by the State Board during the six month period of time that has passed since the law became effective, and the lack of clear legislative intent to require implementation for the current school year.

The proposed regular regulations fail to address a lingering issue in the statute related to the timing of transfer application status notifications from the school districts of enrollment.



The law requires parents to apply for enrollment before January 1 of the preceding school year they wish to enroll their child. The statute also requires school districts of enrollment to notify parents and the school district of residence in writing within 60 days of receiving a transfer request whether their application has been accepted or denied. Pursuant to Education Code 48354, school districts are also required to provide priority enrollment to students that reside within the district. Only after district residents are enrolled will the school district be able to determine the number of spaces available for transfer students. If the number of transfer applications exceeds the number of available spaces, Education Code 48356 specifies that the district is required to conduct a lottery and assign priority to siblings and students transferring from a school ranked in decile 1 of the API.

However, the 60 day window results in a first-come/first-served process and makes the priorities in the statute meaningless since the district will need to notify an applicant of the application's status, even though residents and applicants may still be applying. Staff placement and distribution, hiring, facilities and resource allotment decisions typically take place for school districts in the spring and summer, although this process can be delayed by a late state budget. If the statute and accompanying regulations do not grant school districts freedom from these deadlines, the educational program for the vast majority of residents students will be compromised.

As an Association, we believe both sets of the proposed Title 5 regulations place an undue burden on school districts and provide little to no opportunity to base transfer application decisions on the written standards outlined in the statute. Given the unreasonably high legal standard of proof for an "adverse fiscal impact," which is contrary to the "arbitrary and capricious" standard specified in the statute, CSBA believes the proposed regulations exceed the law. The proposed regulation results in a reimbursable mandate for school districts by in effect negating a district's ability to deny a transfer application based on "adverse financial impact" and requiring districts to accept transfer applications pursuant to the Open Enrollment Act.

4701. Identification of Open Enrollment Schools. *Proposed emergency and regular regulations*  
School districts across California have anxiously been awaiting this latest list of "low-achieving" schools from the State Board of Education, released Tuesday, July 13, 2010. Why has there been a six month delay in the release of this list to school districts? If the State expects school districts of residence and enrollment to implement the provisions of this law and State Board's regulations immediately and with fidelity, they must give districts a reasonable amount of time to be noticed and to prepare. Based on the list many schools with very high API scores are on the Open Enrollment schools list. Regardless, this list will surprise many communities who find their high-performing, 800+ API scoring school identified as "low achieving." This unnecessary over identification of schools is confusing to students, parents, school staff and the community and inevitably diminishes any positive morale gains made over the last several years.

4702. Application for Transfer Pursuant to the Open Enrollment Act, and  
4703. Approval and Rejection of Applications. *Proposed emergency regulations only*  
This section of the proposed emergency regulations is an unnecessary, far-reaching interpretation of the law. In the absence of final regulations, school districts have been unable to effectively prepare for the implementation of this statute. School districts were notified on July 13, 2010 that they have schools on the Open Enrollment schools list. Nor have districts had access to enough information to prepare written standards for the acceptance or denial of transfer applications compliant with law. Many school districts on year-round or other nontraditional school calendars have already begun the 2010-11 school year. The notification and enrollment deadlines outlined in section 4702-4703 of the emergency regulations will needlessly disrupt the school year for students and will lead to uneven implementation across the state.

4703. Approval and Rejection of Applications. *Proposed emergency and regular regulations*

The California School Boards Association is strongly opposed to the proposed regulation language in section 4703 regarding district created written standards for acceptance and rejection of transfer applications. In statute, school districts were granted the flexibility to incorporate a potential adverse financial impact into their written standards. Education Code 48361 specifies that the district of enrollment's decision may only be overturned by a finding by a court that the district governing board acted in an arbitrary and capricious manner. The proposed regulation sets an entirely different, and much higher, legal standard for the district's decision relative to adverse financial impact than the standard imposed by the legislature. CSBA believes that the State Board's proposed regulation is in conflict with the terms of the statute and exceeds the Board's legal authority. By imposing a higher standard than specified in statute, the State Board is creating a reimbursable state mandate.

These are extraordinarily challenging circumstances for the public schools in California. There is no compelling reason to force school districts that are in the throes of a financial crisis to admit students outside their attendance areas unless they can demonstrate "clear and convincing evidence" of an adverse financial impact.

The Parent Empowerment Act *Proposed emergency regulations*

Unlike the Open Enrollment Act, the Parent Empowerment Act does not specifically require regulations to be adopted by the State Board. As districts have been awaiting the delayed regulatory guidance for Open Enrollment, local school boards are now facing the rapid implementation of two sets of emergency regulations. CSBA opposes the finding that this Act requires regulations of an emergency nature and believes that these regulations should be subject to the regular rule-making procedure.

4801. Petition Signatures.

Despite an attempt to clarify the requirements of eligible parent signatures, the proposed regulations are still unclear. Education Code 53300 reads, "...where at least one-half of the parents or legal guardians of pupils attending the school, or a combination of at least one-half of the parents or legal guardians of pupils attending the school and the elementary or middle schools that normally matriculate into a middle or high school, as applicable, sign a petition requesting the local education agency to implement one of the four interventions identified pursuant to..." The proposed language found in the Parent Empowerment Act regulations omits the one-half or 50 percent terminology, 4801(a) reads "...A petition may not consist solely of signatures of parents or legal guardians of pupils attending only the elementary or middle schools that normally matriculate into a subject middle or high school." CSBA requests that the regulations be consistent with the statute and include the language which requires signatures from "at least one-half" of parents or guardians of pupils attending the school.

When considering the statutory language, it remains unclear if signatures from parents of the matriculating schools must also represent the remaining 50 percent of students. If there are multiple elementary and middle schools that matriculate into a single high school, will signatures from fifty percent of the pupils' parents of each of the matriculating schools be a requirement of a complete petition? The final regulations must also address situations in which divorced parents equally share education rights. If, as stated in (c). "Only one parent or legal guardian may sign a petition" which parent may sign? Who at the school, district or state will make that decision?

In proposed section (d)(1), it is imperative that school districts be able to verify signatures based on the validation of attendance area resident addresses, particularly in instances when the petition includes signatures from parents of students attending matriculating elementary and middle schools in a different school district.

A high school district that receives a petition from parents of students attending an elementary district will have no way to verify the signatures since the high school district will not have any records for the elementary students.

#### 4802. Content of the Petition.

CSBA is deeply concerned with the proposed language included in (h) of this section and believes the State Board of Education is reaching beyond the intent of the law and its own authority. As stated in the proposed regulation an LEA may include “a specific charter school operator, charter management operator, charter management organization or education management organization that has been selected by a rigorous review process.” The description of the restart model, as written in the Federal Register, allows an LEA to convert a school or close and reopen a school under a charter school operator, a charter management organization, or an education management company. The SBE should not permit specific charter schools and management organizations to be requested in the Parent Empowerment petition process. If parent petitioners have chosen the restart model the board, district staff and parents should work together locally to determine the best type of charter school to meet the needs of the students in their community. The proposed regulations must also clarify the definition of a “rigorous review process” for charter schools.

In addition, the proposed regulations fail to provide guidance as to if or when the charter petition process specified in Education Code 47605 begins. There is nothing in the Parent Empowerment Act exempting these schools from the other requirements in California law applicable to charter schools. If the SBE believes the traditional charter petition process does not apply, it should so specify in the regulations and explain the legal basis for such an opinion. Additional guidance will be necessary for school districts to effectively exercise their charter authorization and oversight responsibilities including, but not limited to, the elements of the petition and MOU.

#### 4803-7. Descriptions of intervention models.

While the Association acknowledges the need to create a regulation format that is accessible for parents, CSBA believes that the exact language detailing the federal models should not be included in the final regulations. These model descriptors are guidance taken from the Federal Register and are not codified in federal statute or regulation. The likelihood that these models will be changed by the federal government is high, and it would be irresponsible to include the current guidance language in the final version of California Code of Regulations, Title 5. CSBA recommends that the proposed regulations include a reference to the guidance section, rather than providing text excerpts.

Thank you for your consideration.

Sincerely,

Holly Jacobson  
Assistant Executive Director  
Policy Analysis and Continuing Education

cc: Members of the State Board of Education  
Theresa Garcia, Executive Director, SBE  
Jack O’Connell, State Superintendent of Public Instruction