
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
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Subject: School accountability: Open Enrollment Act: low-achieving schools

SUMMARY

This bill amends the Open Enrollment Act by replacing the Academic Performance Index with new eligibility criteria for identifying low-achieving schools. Specifically, the bill provides that a low-achieving school is either a school that is identified by the Superintendent of Public Instruction or the State Board of Education for comprehensive support and improvement, as specified, or a school that is receiving mandatory assistance by the California Collaborative for Educational Excellence.

BACKGROUND

Existing law:

- 1) Establishes the Open Enrollment Act as follows:
 - a) Allows the parent of a pupil attending a school identified by the Superintendent of Public Instruction (SPI) as “low-achieving” to submit an application for the pupil to attend another school within the same district or transfer to another school district (school district of enrollment). A list of 1,000 “low-achieving schools” ranked by increasing Academic Performance Index (API) is identified by the SPI each year.
 - b) Provides that a school district of enrollment may adopt specific written standards for acceptance and rejection of transfer applications, including consideration of the capacity of a program, class, grade level, or school building, or adverse fiscal impact.
 - c) Prohibits a school district of enrollment from considering a pupil’s previous academic achievement, physical condition, and proficiency in the English language, family income or any of the individual characteristics set forth in Section 200 of the Education Code, and shall ensure that pupils are enrolled in a school with a higher API than the school in which the pupil was previously enrolled.
 - d) Requires that pupils are selected through a random, unbiased process, except that pupils applying for transfer are assigned specific priorities, with the first priority given to 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 (API). (Education Code § 48350, et seq.)

- 2) Authorizes inter-district transfers known as "school districts of choice" in which the governing board of a school district may declare a district to be a district of choice that is willing to accept a specified number of inter-district transfers. A district of choice is not required to admit pupils but the pupils that it does elect to admit must be selected through a random process that prohibits enrollment based on academic or athletic performance. School districts of choice must give priority for attendance to siblings of children already in attendance in that district. A district of choice may reject the transfer of a pupil if the transfer of that pupil would require the district to create a new program to serve that pupil, but prohibits a district of choice from rejecting the transfer of special needs pupils, individuals with exceptional needs, and English learners. Districts of choice are required to collect specific data about the students who transfer to their district and report that data to surrounding districts and the state. These provisions are currently scheduled to become inoperative on July 1, 2017. (Education Code § 48300, et seq.)
- 3) Establishes the California Collaborative for Educational Excellence (CCEE) for the purpose of advising and assisting school districts, county superintendent of schools, and charter schools in achieving the goals set forth in a local control and accountability plan (LCAP). (Education Code § 52074)
- 4) Requires the county superintendent of schools to provide technical assistance, including any of the following, if the county superintendent does not approve an LCAP or annual update of a school district, or if the governing board of a school district requests technical assistance:
 - a) Identification of the school district's strengths and weaknesses in regard to the state priorities.
 - b) Assignment of an academic expert or team to assist the school district in identifying and implementing effective programs that are designed to improve the outcomes for all student subgroups.
 - c) Request that the Superintendent of Public Instruction (SPI) assign the CCEE to provide advice and assistance to the school district. (EC § 52071)
- 5) Requires the SPI to provide technical assistance, including any of the following, if the SPI does not approve an LCAP or annual update of a county office of education, or if the county board of education requests technical assistance:
 - a) Identification of the county board of education's strengths and weaknesses in regard to the state priorities.

- b) Assignment of an academic expert or team, or the California Collaborative for Educational Excellence (CCEE), to assist in identifying and implementing effective programs that are designed to improve the outcomes for all student subgroups. (EC § 52071.5)
- 6) Authorizes the Superintendent of Public Instruction (SPI) to direct the CCEE to advise and assist a school district, county superintendent of schools, or charter school in any of the following circumstances:
- a) If the governing board of a school district, county board of education, or governing body or a charter school requests the advice and assistance of the CCEE.
 - b) If the county superintendent of schools determines, following the provision of technical assistance, that the advice and assistance of the CCEE is necessary to help the district or charter school accomplish the goals described in the local control and accountability plan (LCAP).
 - c) If the SPI determines that the advice and assistance of the CCEE is necessary to help the school district, county superintendent of schools, or charter school accomplish the goals set forth in the LCAP. (EC § 52074)
- 7) Requires the governing board of each school district and each county board of education to adopt an LCAP, and to update the plan annually. Existing law requires LCAPs to include both of the following:
- a) A description of the annual goals, for all students and each subgroup of students, to be achieved for each of the state priorities and for any additional local priorities identified by the governing board.
 - b) A description of the specific actions the school district will take during each year of the LCAP to achieve the goals, including the enumeration of any specific actions necessary for that year to correct any deficiencies in regard to the state priorities. (EC § 52060 and § 52066)
- 8) Requires the State Board of Education to adopt evaluation rubrics, by October 1, 2016, for all of the following purposes:
- a) To assist a school district, county office of education or charter school in evaluating its strengths, weaknesses, and areas that require improvement.
 - b) To assist a county superintendent of schools in identifying school districts and charter schools in need of technical assistance, and the specific priorities upon which the technical assistance should be focused.
 - c) To assist the SPI in identifying school districts for which intervention is warranted. (EC § 52064.5)
- 9) Requires the evaluation rubrics to reflect a holistic, multidimensional assessment of school districts and individual schoolsite performance and include all of the

state priorities. Existing law requires, as part of the evaluation rubrics, the State Board of Education to adopt standards for school district and individual schoolsite performance and expectations for improvement in regard to each of the state priorities. (EC § 52064.5)

ANALYSIS

This bill:

- 1) Removes the existing definition of “low-achieving school” under the Open Enrollment Act, effective July 1, 2017, which means any school on the list created by the Superintendent of Public Instruction (SPI) ranked by the Academic Performance Index (API), as specified.
- 2) Establishes the definition of low-achieving school to mean either of the following for purposes of the Open Enrollment Act:
 - a) A school that is identified by the SPI and the State Board of Education for comprehensive support and improvement pursuant to the accountability system requirements of the federal Elementary and Secondary Education Act of 1965, as amended by the federal Every Student Succeeds Act (Public Law 114-95), including all of the following:
 - i) A school identified as being in the lowest performing five percent of all schools.
 - ii) A high school that fails to graduate one-third or more of its pupils.
 - iii) A school subject to a mandatory targeted support and improvement plan.
 - b) A school receiving mandatory assistance from the California Collaborative for Educational Excellence, as directed by the SPI.
- 3) Removes the existing prohibition in which charter schools, and court, community, or community day schools shall not be included on the list of schools eligible for the Open Enrollment Act.
- 4) Provides that a school district of enrollment shall ensure that pupils enrolled pursuant to standards adopted pursuant to this section are enrolled in a school that is not identified as being low-achieving 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, or any of the other characteristics set forth, except that pupils applying for a transfer 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 unduplicated pupils, as specified, transferring from a low-achieving school.
- 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 the group priority order to select pupils at random until all of the available spaces are filled.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author's office, "the Academic Performance Index (API), along with a specified, sometimes confusing legislatively mandated calculation has been the previous method for identifying the 1,000 low-achieving schools whose enrollment assignment would trigger a student's eligibility for Open Enrollment. The last published list of 1,000 is outdated with no new API's being produced in the last two years. And, some schools objected to the current formula, which resulted in some of the lowest-performing schools in California not being on the list at all. With the state adoption of a new system called the California Assessment of Student Performance and Progress (CAASPP), and the temporary and possibly permanent hiatus on the publication of a new API, there is an interest in using updated definitions and information more accurately reflecting the concept of persistently low school performance. The API is no longer being updated and the last published list is based on the old STAR Program instead of the CAASPP scores."
- 2) ***Federal Every Student Succeeds Act.*** The Every Student Succeeds Act (ESSA), which reauthorizes and updates the Elementary and Secondary Education Act, was signed into law on December 10, 2015. The 2016-17 school year is a transition year for local educational agencies (LEAs), as most of the provisions of ESSA will take effect in the 2017-18 school year, including the new accountability provisions. One notable change under ESSA is the elimination of the requirement for LEAs to provide low-income students attending Title I schools in Program Improvement year 2 and beyond with supplemental educational services and public school choice and spend a portion of their Title I funds for these purposes. In eliminating these provisions, the ESSA will allow LEAs the flexibility to choose what services and activities will be provided to students using Title I funds. Another key difference under ESSA is that states will have the ability to create their own accountability system based on multiple measures and not just on test scores. States will be required to identify their lowest-performing schools—those falling in the bottom five percent. However, there will be a reduced federal role in determining interventions, leaving it up to states to decide.
- 3) ***State's evolving accountability system.*** The exact details of the state's new accountability system have not been finalized, yet major themes have been determined, including ensuring that the new system emphasizes a culture of continuous support and on-going learning. And with the enactment of ESSA, the state will have the opportunity to streamline state and local requirements into a single, coherent accountability and continuous improvement system. A critical component of the accountability system will be the evaluation rubrics, which the State Board of Education is required to adopt by October 1, 2016. The rubrics

are intended to serve several purposes, including assistance for local educational agencies (LEAs) to evaluate their strengths, weaknesses, and areas that require improvement, and also to assist the Superintendent of Public Instruction (SPI) in identifying school districts for which intervention is warranted.

- 4) **Committee amendments.** In light of the recent changes in federal law as well as the state's evolving accountability system, staff recommends several amendments to this measure, some of which are either technical or conforming to federal law, while others are more substantive and provide the state additional flexibility in determining its own eligibility criteria upon adoption of the accountability system.
- a) With the evolving nature of the state's accountability system, it is premature to amend the eligibility criteria for the Open Enrollment Act? It may be prudent to wait until after the state's adoption of a new accountability system and more specifically, how that system will identify schools in need of support or intervention. It is possible that a more appropriate method of identifying low-achieving schools (for purposes of the Open Enrollment Act) could result. However, the bill proposes eligibility criteria that are derived from new federal Every Student Succeeds Act (ESSA) requirements, which appear to be reasonable because it is expected that the state will adopt a more streamlined and coherent accountability system, rather than having two separate state and federal accountability structures. To ensure an opportunity for the state to utilize its own criteria to develop the list of eligible schools that may result from its adoption of a new accountability system, **staff recommends** that the bill be amended to require the SPI to make recommendations on any additional or revised eligibility criteria for the Open Enrollment Act based on the new accountability system no later than one year after adoption, including the use of Local Control Funding Formula unduplicated subgroup criteria.
- b) In February 2009, the American Recovery and Reinvestment Act was passed, which among other things, established \$4 billion for one-time state incentive grants known as Race to the Top (RTTP). One of the eligibility requirements for RTTP is identifying persistently lowest-achieving schools in the state and requiring them to implement one of four intervention models, which include closing a school, converting a school to a charter school, and replacing a principal and other staff. When the Legislature passed and the Governor signed SBX5 4 (Romero, Chapter 3, Statutes of 2010), which established the Open Enrollment Act program, part of the rationale was that it would enable the state's Race for the Top (RTTP) application to be more competitive.

As indicated under comment No. 2, the new federal ESSA eliminates the requirement for local educational agencies to provide low-income students attending Title I schools in Program Improvement year 2 and beyond with the public school choice option. To the extent that part of the rationale for establishing the Open Enrollment Act was in response to federal law at the time and now that ESSA has changed some of those provisions, the

Committee may wish to revisit the state's public school choice options. Therefore, **staff recommends** that the bill be amended to require the Superintendent of Public Instruction to complete the evaluation of the Open Enrollment Act specified in Education Code Section 48360 and provide that it may also include recommendations on whether to continue the program in light of recent changes to federal law.

- c) The accountability provisions of the Every Student Succeeds Act (ESSA) will not take effect until the 2017-18 school year. While the State Department of Education (SDE) anticipates it will begin identifying the lowest five percent of schools during that school year, it is unclear when the SDE will have completed the list. The bill's provisions would become operative, July 1, 2017, and specifies that enrollment applications would be due by January 1st, so to the extent that the list has not been completed by this date, the bill's effective date may not be practical to implement. For this reason, **staff recommends** that the bill's operative date be amended to July 1, 2018.
 - d) **Staff also recommends** that the bill be amended to clarify that the list of the bottom five percent of schools be applied to only Title I schools, not all schools, to be consistent with ESSA. **Staff further recommends** that the bill be amended to prohibit charter schools, and court, community, or community day schools from being included on the list of eligible schools, to be consistent with existing Open Enrollment Act provisions.
- 5) **Suspension of the API.** The Academic Performance Index has been suspended for several years now and in its absence, the SDE has not compiled a new list of eligible schools for the Open Enrollment Act. It is unclear at the local level if school districts are continuing to use this "outdated" list.
 - 6) **Program evaluation.** The Open Enrollment Act has been operative for approximately six years. An evaluation of the program by the Superintendent of Public Instruction was due to the Legislature, Governor, and SBE by October 1, 2014, and was to include the changes in academic achievement of pupils that transfer, fiscal and programmatic effects on school districts, and demographic and socioeconomic characteristics of pupils that transfer. However, the evaluation was predicated upon federal funds being appropriated for that purpose and that never materialized.
 - 7) **Related legislation.**

SB 1432 (Huff) repeals the sunset date of the District of Choice program thereby extending the operation of the program indefinitely. This bill was heard by and passed this Committee on April 6, 2016, by a vote of 9-0.
 - 8) **Previous legislation.**

SB 451 (Huff, 2013), proposed to expand the Open Enrollment Act to authorize the parent of a pupil, regardless of whether the pupil attends a "low-achieving school", to submit an application for the pupil to attend another school within the

same district or to a school outside their district of residence. SB 451 was heard by this Committee on April 10, 2013 and failed passage, by a vote of 2-4.

SBX5 4 (Huff, 2010), Chapter 3, Statutes of 2010, established the Open Enrollment Act to allow any pupil in a low-achieving school, as defined, to transfer to another school in the district or any school outside of their district of residence.

SB 680 (Romero), Chapter 198, Statutes of 2009, extended the sunset date of the District of Choice program to July 1, 2016.

SUPPORT

EdVoice

OPPOSITION

None received.

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