

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 traditional 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. 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 in the upcoming 2010-11 school year. While the Association is amenable to complying with state law, 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 during the six month period of time that has passed since the law was chaptered.

The proposed traditional 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. Then, school districts of enrollment are required to notify parents and the school district of residence in writing within 60 days of receiving a transfer request whether the application has been accepted or denied. This 60 day window is deeply troubling for school districts that, regardless of their school year calendar structure, are unable in March to adequately take into account their own resident students before considering transfer applications. 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 students, residents, 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,” CSBA believes the State Board of Education is proposing a mandate for school districts that must accept transfer applications pursuant to the Open Enrollment Act.

4701. Identification of Open Enrollment Schools. *Proposed emergency and traditional regulations*

School districts across California have anxiously been awaiting this latest list of failing schools from the State Board of Education. 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 accompanying regulations with fidelity, they must give districts a reasonable amount of time to be noticed and to prepare. Based on the list calculation outlined in statute, it is reasonable to expect a high number of schools with very high API scores to be on the Open Enrollment schools list. Regardless, this list will surprise many communities who find their high-performing, 800+ API scoring school on the list. 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. We urge the State Board of Education to consider a calculation that includes a denominator composed of all schools, while continuing to exclude the schools outlined in 4701(2-3) from the final result.

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 do not yet know if they have schools that will be 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 using year round or other nontraditional school calendars have already begun the 2010-11 school year. The notification and enrollment deadlines outlined in section 4702-3 of the emergency regulations will needlessly disrupt the school year for students and will lead to uneven implementation practices across the state.

4703. Approval and Rejection of Applications. *Proposed emergency and traditional 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

statue, school districts were granted the flexibility to incorporate a potential adverse financial impact into their written standards. 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. This burden of documentation to prove an adverse fiscal impact, in addition to the near impossibility for districts to reject a transfer application leads CSBA believes the State Board of Education is proposing a mandate for school districts that must accept transfer applications. This language is contrary to the law and the SBE is expanding its scope of authority.

The Parent Empowerment Act Proposed emergency regulations

Unlike the Open Enrollment Act, the Parent Empowerment Act does not require regulations. As districts have been awaiting the delayed regulatory guidance for Open Enrollment, local school boards are now facing the rapid implementation two sets of emergency regulations. CSBA opposes the finding that this Act requires regulations of an emergency nature.

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 statue and include the language which requires signatures from “at least one-half” of parents or guardians of pupils attending the school.

When considering the statue 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 matriculating elementary and middle schools are in a different school district.

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. If it was the intention of the regulations for the authorizing school district to conduct the “rigorous review process,” it seems inappropriate for the authorizer of the charter, the LEA, to conduct its review process. In addition, the proposed regulations fail to provide guidance as to if or when the charter petition process begins. If the SBE believes the traditional charter petition process does not apply, 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 creating a regulation format that is accessible for parents, CSBA believes that the exact language should not be included in the final regulations. These model descriptors are guidance taken from the Federal Register and are not yet codified in federal statute. 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