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LEGAL UPDATE

August 11, 2010

To: Superintendents, Member K-12 Districts

**From: Janna L. Lambert., Sr. Associate General Counsel
Loren W. Soukup, Schools Legal Counsel** 

**Subject: Open Enrollment Act (Romero Bill Transfers)
Memo No. 19 -2010**

On July 15, 2010, the State Board of Education adopted emergency regulations to implement the provisions of the Open Enrollment Act, also sometimes referred to as the "Romero Bill."¹ The Romero Bill was signed into law on January 7, 2010, and became effective on April 14, 2010. The emergency regulations are very limited in their scope—dealing primarily with identification of the lowest performing schools and timeframe of notice to parents.² The emergency regulations were approved by the Office of Administrative Law (OAL) on July 30, 2010 and became effective August 2, 2010.

The State Board is still in the process of developing and considering permanent regulations. A hearing before the State Board concerning the proposed regulations is currently scheduled for September 14, 2010.

Notice Requirements & List

Under the Romero Bill and the emergency regulations, the Superintendent of Public Instruction is required to create a list of the state's 1,000 lowest-performing schools ("List") based on Academic Performance Index ("API") scores. Note that the preliminary list will be

¹ Education Code Section 48351 et seq.

² Title 5 of the California Code of Regulations Section 4700 et seq.

recalculated by the California Department of Education (“CDE”) following release of the new API data which is expected by mid-August.

Court, community, community day schools and charter schools are not to be included on the List. (Education Code section 48352)

The Romero Bill permits students attending any of the schools on the List to apply for enrollment in higher performing schools regardless of residence. Thus, students can move from one school to another within the same district or change districts altogether. Students can potentially move from a school on the List to another school on the List—provided that the school of enrollment has a higher performing index.

Generally, parents/guardians of any student attending a school identified on the most recent List must be notified on or before the **first day of instruction** of their option to apply for a transfer to a higher performing school, including one outside of their district of residence. If the district has not been notified of whether its school(s) is/are on the List as of the first day of school, the notification must be **provided no later than September 15**.³ The approved transfer commences with the following school year.

Applications to Transfer & Responses

Applications for Romero Bill transfers must be received by the desired school district (“district of enrollment”) on or before January 1 of the school year prior to the year for which the student is requesting the transfer. This deadline does not apply if it is waived by the district of enrollment or if the parent\guardian is enlisted in the military and was relocated by the military within 90 days prior to submitting the transfer application.

The provisions in the originally proposed emergency regulations concerning processing of Romero Bill transfers for the 2010-11 school year were **not** approved by the State Board. Thus, no district is required to accept transfers under this law for 2010-11. Districts of enrollment, however, could choose to accept students for this year by waiving the January 1 requirement, although we recommend that consideration first be given as to how enrollment for this year would be implemented.

Under the new law, a district of enrollment must respond to each applicant within 60 days of receipt. The response goes to the parent and to the district of residence. Responses must be provided in writing and if approved, must include the name and address of the school site where the student is being admitted.

If the transfer application is denied, the district of enrollment must include in writing the reasons for the denial. Again this response is due within 60 days of receiving the application.

³ Title 5 CCR Section 4702--the emergency regulations approved by OAL.

Enrollment

Students whose transfer applications have been accepted must enroll in their approved school no later than the first day of instruction of the next school year or they potentially forfeit their transfer opportunity. Again, for the 2010-11 school year, no timeline is specified and each district may wish to adopt a timeline for enrollment (such as the first day of the second semester) if applications are to be processed for the 2010-11 school year.

Once a Romero Bill transfer is approved and the student is enrolled, the student is deemed to have complied with Education Code section 48204 (residency) and is not required to renew his/her transfer in order to remain enrolled in subsequent school years.

Denials

Denials of Romero Bill transfer applications are not subject to appeal to county boards of education, but may be challenged in civil court on the grounds that the denial was an arbitrary or capricious exercise of discretion. (Education Code section 48361) For that reason denials need to comply with any district adopted policies and/or procedures.

Districts of enrollment may prohibit the transfer of a student, or limit the number of students transferring in if the governing board determines the transfer would negatively impact either a court-ordered or voluntary desegregation plan, or the racial and ethnic balance of the district.

Board Policies and Standards

Districts will need to adopt policies and standards for acceptance or rejection of Romero Bill transfer applications from parents of students attending schools on the List. Such standards may include “considerations of the capacity of a program, class, grade level, school building, or adverse financial impact.” (Education Code Section 48356(a)) However, the standards may **not** consider the student’s academic achievement, physical condition, English proficiency, family income, race, gender, sexual orientation, or religion. (Ibid.)

If a school district receives more Romero Bill transfer applications than it has capacity to provide for, it must give priority to the following students:

- First priority shall be for siblings of children already attending the school where the transfer is being requested.
- Second priority shall be for students transferring from a Decile 1 school.
- If there are any remaining requests, a lottery must be conducted to select students for admission.

A district may, however, first provide an opportunity for resident students to change schools within the district before accepting applications from out of district.

A student's Romero Bill transfer application cannot be approved if the transfer would require the displacement from the school of any other student who resides within the attendance area of that school or is currently enrolled in that school.

Revenue & Budget

School districts of enrollment will be able to claim the average daily attendance from any students exercising the open enrollment transfer option under the Romero Bill. In the case of Basic Aid districts, commencing with the second year of a Romero Bill transfer student's enrollment, the district of enrollment will be entitled to 70% of the district revenue limit that would have been apportioned to the school district of residence. Districts may also need to anticipate, for budget purposes, the potential loss of revenue due to transfers out.

Miscellaneous

Under the new law, districts are encouraged, but not required, to keep an accounting of the Romero Bill transfer applications, including the number of applications granted, denied, or withdrawn, the number of students transferring into and out of the district, and information concerning the race, ethnicity, gender, socio-economic status, district of residence and number of English Language Learner student applicants. It should be noted that this aspect of the new law is not a mandate while the other portions dealing with the notice, application and transfer procedures are required. Districts should therefore keep track of time and expenses related to the required portions of this new law in the event that it is determined to be eligible for mandated cost reimbursements.

It is recommended that districts immediately consider the development of applicable policies to ensure compliance with the standards for acceptance and rejection of Romero Bill transfers-particularly if applications for this year will be considered. For districts where transfer requests might be within the district as well as between districts, then the district should consider if the same standards will apply. Districts will also need to develop Romero Bill Transfer Request Forms and Application Forms.

This new set of laws raises a number of questions and concerns. We will keep you posted on any new developments, including the State Board action on the permanent regulations. In addition, we will be sending out a separate update on the second part of the Romero Bill dealing with "parent empowerment."

If you have any questions, please contact one of the attorneys in our offices.