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LEGAL UPDATE

October 28, 2009

To: Superintendents, Member School Districts (K-12)

From: Loren Soukup, Schools Legal Counsel 

Subject: District of Choice Law
Memo No. 29-2009

On October 11, 2009, the Governor signed into law SB 680, which provides for the extension of the "District of Choice" program until 2017. This program had expired on July 1, 2009. Since SB 680 is "non-urgent" legislation, the "District of Choice" program will remain inoperative until January 1, 2010, when the new law goes into effect. However, please be aware that the new law does permit students previously approved for "school district of choice" transfers, prior to June 30, 2009, to remain at that "school district of choice" (Education Code section 48307(f)).

The re-authorized "District of Choice" program set forth in Education Code sections 48300 *et seq.*, allows the governing board of a school district to accept student transfers by adopting a resolution to become a school district of choice. Once a "District of Choice", the school district is subject to certain requirements, including but not limited to, determining the number of students it is willing to accept under the program each year and ensuring that students are selected through a "random and unbiased" process. This essentially means by a random drawing.

In addition to extending the "District of Choice" program, SB 680 made some significant changes from the previous law. The following are some of the key components of the new law:

- A school district of choice cannot deny a transfer request on the basis that the costs to provide services exceeds the revenue received, but it may reject a request if doing so would require the creation of a new program. However, no transfer may be denied for

any special needs student, including an individual with exceptional needs, or an English Learner student even if the cost to educate the student exceeds the revenue received or the creation of a new program is required (Education Code section 48303).

- A school district can declare “District of Choice” status by governing board resolution, which permits the district to accept a specified number of student transfers without a separate interdistrict agreement, so long as such transfers do not exacerbate racial segregation (Education Code section 48301).
- If the number of transfer applications is more than the stated number approved by the governing board, a random drawing is to be conducted at a regularly scheduled board meeting (Education Code section 48301).
- Communications to parents or guardians by a school district of choice shall be factually accurate and shall not target students based upon academic ability, athletic performance, or other personal characteristics (Education Code section 48301).
- The annual audit conducted by an independent auditor will be required to include compliance review of the “District of Choice” program as it relates to the selection process and appropriate communications. The school district of choice is required to notify the auditor regarding this compliance review prior to the commencement of the annual audit (Education Code section 48301).
- A district of residence can limit the number of transfers out of the district if a negative budget certification exists, or such transfers would affect its ability to meet the standards and criteria for fiscal stability. However, this limitation does not apply to those students already attending or approved to attend a school district of choice prior to the limitation (Education Code section 48307).
- A school district of choice must give priority to students with siblings already attending the district and may give priority to children of military personnel (Education Code section 48306).
- By May 15th of each year, the following information must be reported by the school district of choice to the governing board and shared with geographically adjacent districts, county office of education, the State Superintendent and the Department of Finance:
 - Number of requests granted, denied or withdrawn, including reasons for denial.
 - Number of students transferred into and out of the district.
 - Race, ethnicity, gender, socioeconomic status, and district of residence for the students transferring into and out of the district.
 - Number of students transferring into and out of the district classified as English learners and identified as individuals with exceptional needs (Education Code section 48313).

- The Legislative Analyst's Office is required to report by November 1, 2014, and annually thereafter, to the Governor and Legislature, as to the Academic Performance Index, graduation rates, enrollment, and fiscal health information for both the "District of Choice" and the district of residence, including whether the transfer limit for either agency was exceeded (Education Code section 48313).

School districts are encouraged to review their current board policies to ensure compliance with the new "District of Choice" program requirements. Please contact any of our attorneys if you have questions regarding this issue.