

Date of Hearing: June 22, 2016

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 1156 (Huff) – As Amended June 1, 2016

**SENATE VOTE:** 39-0

**SUBJECT:** School accountability: Open Enrollment Act: low-achieving schools

**SUMMARY:** Makes changes to the Open Enrollment Act by replacing the Academic Performance Index with new eligibility criteria for identifying low-achieving schools; and deletes the requirement that the list of low-achieving schools to be 1,000. Specifically, **this bill:**

- 1) Deletes the existing definition of "low-achieving school" and instead establishes the definition of low-achieving school to mean either of the following, effective July 1, 2018, for purposes of the Open Enrollment Act:
  - a) A school that is identified by the Superintendent of Public Instruction (SPI) or 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 Title I 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 (CCEE), as directed by the SPI.
- 2) Provides that a low-achieving school shall not include court, community, community day schools, or charter schools.
- 3) Provides that a school district of enrollment shall ensure that pupils enrolled are enrolled in a school that is not identified as being a low-achieving school 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, 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.
- 4) Requires the Legislative Analyst's Office (LAO) to complete an evaluation of the open enrollment program, as specified, and to make recommendations on any additional or revised eligibility criteria based on the state's new accountability system adopted for purposes of complying with federal law, including the use of local control funding formula unduplicated subgroup criteria. Provides that the LAO may also include recommendations on whether other open enrollment program provisions should be altered, expanded, or deleted. Requires the final evaluation report to be submitted to the Legislature, Governor, and State Board of Education on or before December 1, 2021, and for the SPI to provide the data necessary to complete the report to the LAO by December 1, 2020, or on an otherwise agreed upon date between the SPI and the LAO.

**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 API.  
(Education Code (EC) 48350, et seq.)
- 2) Under the District of Choice (DOC) authorization, established by AB 19 (Quackenbush), Chapter 160, Statutes of 1993, a school board may declare the district to be a DOC willing to accept a specified number of inter-district transfers. A DOC is not required to admit pupils but it is required to select those pupils that it does elect to admit through a random process that does not choose pupils based upon academic or athletic talent. Either the district of residence or DOC may prevent a transfer under this law if the transfer would exacerbate racial segregation. Each DOC is required to keep records of: 1) The number of requests granted, denied, or withdrawn as well as the reasons for the denials; 2) The number of pupils

transferred out of the district; 3) The number of pupils transferred into the district; 4) The race, ethnicity, gender, socioeconomic status and the district of residence for each student in #2 and #3 above; and, 5) The number of pupils in #2 and #3 above who are English Learners or individuals with exceptional needs. The DOC program becomes inoperative on July 1, 2017 and repealed on January 1, 2018. (EC 48300-48316)

- 3) Establishes the 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). (EC 52074)
- 4) Authorizes the 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 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)

**FISCAL EFFECT:** According to the Senate Appropriations Committee, costs, potentially in the tens of thousands, to the Legislative Analyst's Office (LAO) for existing staff to produce an evaluation and recommendations for the program. (General Fund) Minor costs to California Department of Education (CDE) to enter into a memorandum of understanding with the LAO regarding data sharing. (General Fund)

**COMMENTS:** The Open Enrollment Act was created during a time when the State was competing for Federal funding called Race to the Top. Despite making several changes to state law, California was not awarded Race to the Top funding. The statutory changes made at the time have continued despite the State's lack of participation in the Race to the Top program. The Open Enrollment program requires the SPI to create a list of the 1,000 lowest achieving schools based on the Annual Performance Index (API) and requires that parents at those schools be notified that their child attends a school on this list. Students that attend the 1,000 lowest achieving schools are then authorized to transfer to higher achieving schools. The State has replaced the API with a new assessment system and the API is now outdated. The Open Enrollment program has largely been duplicative of federal law which, until the recent reauthorization of the Every Student Succeeds Act (ESSA), allowed students who attend schools in program improvement to transfer to higher achieving schools. Federal law no longer specifies that students in low achieving schools must be allowed to transfer, therefore this program is no longer a requirement of federal law. For these reasons, the committee should consider whether the Open Enrollment program needs updating, or whether the program should be eliminated.

This bill changes the calculation of how the schools are identified to participate in the Open Enrollment program. Specifically, this bill provides that a low-achieving school is a school that is identified in the lowest 5% of Title 1 schools, has high dropout rates, 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 (CCEE).

According to the author, "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 out dated with no new APIs 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 assessment 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. SB 1156 updates the eligibility for additional public school options for students enrolled in persistently low performing schools by maintaining the Open Enrollment Act, and referencing definitions of persistently low performance in the newly enacted federal Every Student Succeeds Act (ESSA) and state Local Control Funding Formula statutes as the criteria for defining low performing schools. The Open Enrollment Act provides students who are otherwise zip-code assigned to the lowest performing schools a choice to attend a higher performing public school even if the neighborhood school is persistently low performing. Accordingly, SB 1156 helps the state protect students' constitutional guarantee to equitable opportunity for a quality public education in California."

***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.

***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 LEAs to evaluate their strengths, weaknesses, and areas that require

improvement, and also to assist the SPI in identifying school districts for which intervention is warranted.

***Calculating the list of low achieving schools:*** Existing law requires the SPI to create a list of 1,000 low achieving schools and limits the number of schools identified in any one district to 10%. This bill eliminates the requirement that the list be no more than 1,000 schools and the bill eliminates the requirement that no more than 10% of a school district's schools be identified as low achieving. The committee should consider whether to continue to limit the number of schools identified as low achieving to 1,000. According to the author, the new definition of low achieving school identifies approximately 355 schools. While the number of schools identified today may not reach the 1,000 limit, this limit could be important in the future. The committee should also consider whether to limit the number of schools identified in a single school district to 10%.

***Similarity to the District of Choice program:*** There are safeguards in the District of Choice (DOC) program that are not included in the Open Enrollment program, though these programs are similar. The committee should consider whether it is appropriate to continue a school choice program without including the same safeguards as the DOC program, which include:

- 1) Requiring that communications to parents do not target individual families or neighborhoods.
- 2) Requiring an annual audit of the random selection process and communications to parents.
- 3) Requiring a sunset date for the program after the evaluation.
- 4) Specifying explicitly that a district of enrollment may not reject the transfer of a special needs pupil, including an individual with exceptional needs as defined in EC Section 56026, and an English learner.
- 5) Requiring each district of enrollment to keep records of: 1) The number of requests granted, denied, or withdrawn as well as the reasons for the denials; 2) The number of pupils transferred out of the district; 3) The number of pupils transferred into the district; and, 4) The race, ethnicity, gender, self-reported socioeconomic status, free and reduced priced meal eligibility, and the school district of residence of each of the pupils described above.
- 6) Requiring the information listed above to be reported to the governing board of the district of enrollment and to each school district that is geographically adjacent to the district of enrollment, the county office of education in which the district is located, and the SPI in CALPADS or other system.
- 7) Requiring the information listed above to be annually reported to the Legislature and the Governor by the SPI.
- 8) Authorizing either a district of residence or district of enrollment to limit the number of students transferring if it would negatively impact a voluntary desegregation plan.

***Charter Schools:*** The committee should consider whether to add charter schools to the list of schools required to participate in the open enrollment program. Existing law requires the list of low achieving schools be based on the API Decile 1 rankings from the 2008-09 school year. Of the 945 schools ranked in Decile One based on the API in 2008-09, there were 103 charter schools. This means that 103 of California's lowest achieving charter schools will be excluded from the open enrollment program and an equal number of higher achieving traditional public schools will be required to participate in this program. Since charter school pupils who leave a charter school only have enrollment rights in their district of residence, this exclusion will limit the opportunity for charter school students to move to a higher-performing school if they choose to leave their low performing (charter) school. There is no clear rationale for limiting the

opportunity for charter school pupils to leave a low-performing school, and treating charter pupils differently than non-charter pupils in this respect.

***Racial Segregation in Schools.*** According to an April 2016, Government Accountability Office report entitled, *Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination*, "The percentage of K-12 public schools in the United States with students who are poor and are mostly Black or Hispanic is growing and these schools share a number of challenging characteristics. From school years 2000-01 to 2013-14 (the most recent data available), the percentage of all K-12 public schools that had high percentages of poor and Black or Hispanic students grew from 9 to 16 percent, according to GAO's analysis of data from the Department of Education (Education). These schools were the most racially and economically concentrated: 75 to 100 percent of the students were Black or Hispanic and eligible for free or reduced-price lunch—a commonly used indicator of poverty. GAO's analysis of Education data also found that compared with other schools, these schools offered disproportionately fewer math, science, and college preparatory courses and had disproportionately higher rates of students who were held back in 9th grade, suspended, or expelled."

The committee should consider whether the Open Enrollment program will exacerbate racial segregation in California schools as limited evidence shows is happening with the similar District of Choice program. The committee should consider whether the program should be amended to provide some of the same safeguards that currently exist in the District of Choice program or whether the program should be eliminated.

***Committee Amendments:*** Make the following substantive amendments to the Open Enrollment program:

1. Reinstate the requirement in existing law that the list of low achieving schools not exceed 1,000 and reinstate the requirement that a local education agency shall not have more than 10 percent of its schools on the list.
2. Require districts of enrollment to ensure that communications to parents do not target individual families or neighborhoods and that any communication regarding transferring into their district be translated into the necessary languages for parents in the district of residence pursuant to Section 48985.
3. Include charter schools on the list of schools required to participate in the open enrollment program.

Require the Open Enrollment program contain all the same safeguards provided in the DOC program:

4. Require each district of enrollment to keep records of: 1) The number of requests granted, denied, or withdrawn as well as the reasons for the denials; 2) The number of pupils transferred out of the district; 3) The number of pupils transferred into the district; and, 4) The race, ethnicity, gender, self-reported socioeconomic status, free and reduced priced meal eligibility, and the school district of residence of each of the pupils described above.
5. Require the information listed above to be reported to the governing board of the district of enrollment and to each school district that is geographically adjacent to the district of enrollment, the county office of education in which the district is located, and the SPI through CALPADS or other system.
6. Require the information listed above to be annually reported to the Legislature and the Governor.
7. Require this program be included in the district's annual audit.

8. Include a July 1, 2022 sunset date for the program, to coincide with the evaluation of the program.
9. Specify explicitly that a district of enrollment may not reject the transfer of a special needs pupil, including an individual with exceptional needs as defined in EC Section 56026, and an English learner.
10. Authorize a district of residence to limit the number of students transferring if it would negatively impact a voluntary desegregation plan.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

EdVoice

**Opposition**

None on file

**Analysis Prepared by:** Chelsea Kelley / ED. / (916) 319-2087