

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

AB 3216 (Kiley) – As Amended April 12, 2018

**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. 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, 2020, 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 5% 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 or community day schools.
- 3) Specifies that the list of low achieving schools not exceed 1,000 schools; and, specifies that no more than 10% of schools in a local education agency shall be identified on the list of low achieving schools.
- 4) Requires schools identified on the list of low achieving schools to notify parents and guardians of students enrolled at those schools of their option to transfer to another public school served by the school district of residence or another school district.
- 5) 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.
- 6) Requires communications to parents by school districts of enrollment to be factually accurate and not target individual parents or residential neighborhoods on the basis of a child's actual or perceived academic or athletic performance or any other personal characteristic; and requires all communications from the school district of enrollment regarding the transfer opportunities pursuant to this article shall be available in all languages required for the school district of residence.
- 7) Specifies that a school district of enrollment shall not prohibit a transfer of a pupil based upon a determination by the governing board of that school district that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer. A school district of enrollment shall not reject the transfer of a special needs pupil, including an individual with exceptional needs, as defined, or an English learner.
- 8) Requires a school district of enrollment to provide transportation assistance to the school or program to a pupil who was accepted for transfer by a school district of enrollment upon the request of the parent or guardian on behalf of the pupil if that pupil is eligible for free or reduced-price meals. Establishes Legislative intent that the amount of transportation assistance provided to the pupil not exceed the amount of the supplemental grant received for the pupil. Authorizes a school district of enrollment to provide transportation assistance to any pupil admitted.
- 9) On July 1, 2020, authorizes a school district of residence, upon notification of the pupil's acceptance to the school district of enrollment, to prohibit the transfer of a pupil or limit the number of pupils so transferred if the governing board of the school district of residence determines that the transfer would negatively impact any of the following:
- a) The court-ordered desegregation plan of the school district of residence.
  - b) The voluntary desegregation plan of the school district of residence, consistent with the provisions of Proposition 209, an initiative measure adopted by the voters at the November 5, 1996, General Election.
  - c) The racial and ethnic balance of the school district of residence, consistent with the provisions of Proposition 209, an initiative measure adopted by the voters at the November 5, 1996, General Election.
- 10) Requires each school district of enrollment to keep an accounting of all requests made for alternative attendance and records of all disposition of those requests; requires the data to be reported to the school board, the school boards of adjacent school districts, the county board of education and the Superintendent of Public Instruction (SPI); and, requires this data to be reported annually to the Legislature and Governor, as specified.

- 11) Requires the SPI, on or before July 1, 2020, to report to the appropriate fiscal and policy committees of the Legislature, the Governor and the Legislative Analyst's Office a description of the plan for collecting the required data.
- 12) 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, 2023, and for the SPI to provide the data necessary to complete the report to the LAO by December 1, 2022.
- 13) Establishes a sunset date for the program of July 1, 2024 and repeal date of January 1, 2025.

**EXISTING LAW:**

- 1) Establishes the Open Enrollment Act as follows:
  - a) Allows the parent of a pupil attending a school identified by the 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 Education Code Section 200, 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) 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)
- 3) Authorizes the CCEE to accept a request or referral 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:** Unknown

**COMMENTS:** This bill changes the calculation of how the schools are identified to participate in the Open Enrollment program. The bill authorizes parents with children at low-achieving schools to transfer to another school. 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).

**Background:** 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 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 since it was originally part of No Child Left Behind which, until the last 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.

According to the California Department of Education who publishes the list of Open Enrollment schools, the last available list is currently posted on the CDE website and is based on the assessment results from the 2013 California Standards Tests which were developed under the prior state content standards. Due to the transition to the new California Assessment of Student Performance and Progress system, the calculation of the 2014 Growth and Base and 2015 Growth APIs were suspended by the State Board of Education. With the absence of a 2015 API score, the CDE cannot produce a new Open Enrollment Act list.

**State Accountability Plan.** With the passage of the State Accountability Plan (SAP) by the State Board of Education (SBE) at the April 2018 meeting, the committee should consider this bill as it relates to the SAP overall. The SAP identifies interventions at the district level for all schools identified on the list of lowest performing 5% of schools. Because the district is the most appropriate management level to create change, interventions will be focused at the district level to help support changes in an individual school.

According to the SBE agenda, the following dashboard criteria will determine the lowest performing 5 % of Title 1 schools:

- Schools with all red indicators;
- Schools with all red but one indicator of any other color;
- Schools with all red and orange indicators; and
- Schools with five or more indicators where the majority are red.

Based on simulations completed using the fall 2017 Dashboard data, these rules result in the selection of at least 5 percent of Title I schools statewide. Any school identified under these rules will be identified for comprehensive assistance.

California will use the average of three years of graduation rate data to identify schools with a high school graduation rate less than 67 percent. Any school with a graduation rate less than 67 percent averaged over three years will be identified for comprehensive assistance. A school district identified for comprehensive assistance is required to create an improvement plan, which must be approved by the state.

California's definition of a school with a "consistently underperforming" student group is a school in which any student group, on its own, meets the criteria for being identified for comprehensive support in three out of four consecutive years (beginning with the 2018-19 school year). The methodology for identifying such schools is to determine whether any student group at a school has the color-coded performance levels on applicable indicators that match the color-coded performance levels used as criteria for identifying the lowest performing schools receiving Title I, Part A funds for comprehensive support in three out of four consecutive years. These schools will receive targeted support. California will identify schools with one or more "consistently underperforming" student groups. All schools that have one or more "consistently underperforming" student groups will receive additional targeted support.

***This bill is inconsistent with State Accountability Plan (SAP):*** According to the California Department of Education, as presented to the State Board of Education in April 2018, the state accountability plan specifies:

- "Support for schools receiving comprehensive support can be incorporated into the local accountability plan process.
- LEA remains locus of responsibility for supporting school improvement.
- No separate, bureaucratic school improvement plan.
- School improvement strategies would align with overall goals and actions/services for the LEA."

The SAP focuses all state assistance at the *district level* when a school is identified as one of the lowest performing 5% of schools and after there is failure to improve over a 4 year period. Because the district is the most appropriate level to create change, state interventions will be focused at the *district level* to help support changes in an individual school. This bill establishes a state intervention at the *school level* by authorizing parents to disenroll their children from the schools identified as the lowest 5% of schools. Fundamentally, this appears to be inconsistent with the SAP and the state's interest in focusing decisions for change at the *district level*.

Further, because the bill authorizes students to transfer as soon as the school is identified as the lowest 5% of schools, it means that the open enrollment program, which functions as a state

intervention, would be implemented before a district has developed or implemented an improvement plan, and therefore the program would be implemented without regard to the district's improvement plan for the school. The committee should consider whether this is the appropriate time to be transferring students out of a school, before an improvement plan has even been established. This essentially limits community engagement in the process of improving the school. If parents receive a letter outlining the ways that the school is failing, then parents will leave the school instead of help improve the school. This overrides local planning, stake holder input and local school board discretion.

***Unclear Terminology:*** The bill uses terminology such as "mandatory targeted support and improvement plan" and "mandatory assistance from the California Collaborative for Educational Excellence (CCEE)." These terms are not consistent with the terminology used in the SAP.

The bill requires a "school receiving mandatory assistance pursuant to subdivision (f) of Section 52074" to be identified on the list of lowest performing schools. According to Section 52074 (f), schools are not receiving "mandatory assistance." In fact, this subdivision only authorizes the CCEE to accept a request for referral, and doesn't require the CCEE to accept a referral. Further, if the CCEE accepts a request for referral, there is nothing in statute that refers to mandatory assistance, or makes the assistance from the CCEE mandatory on the part of the district.

The bill requires a "school subject to a mandatory targeted support and improvement plan" to be identified on the list of lowest performing schools. While the SAP references "additional targeted support" for schools that are consistently underperforming, it is not clear what level of state intervention is considered "mandatory."

***Code Consistency:*** This bill may also be premature due to the fact all other outdated references to API in the Education Code are still present in the Code. The Legislature is grappling with how the new metrics based on the new accountability system should be incorporated into the Education Code in several places. The Committee should consider whether all the outdated references to API in the Code should be replaced at the same time, with consistent terminology.

***Author's Statement:*** 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. AB 3216 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, AB 3216 helps the state protect students' constitutional guarantee to equitable opportunity for a quality public education in California."

***Racial Segregation in Schools.*** According to an April 2016, Government Accountability Office (GAO) 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%, according to GAO's analysis of data from the Department of Education. These schools were the most racially and economically concentrated: 75 to 100% 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 Assembly 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.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

EdVoice

##### **Opposition**

American Civil Liberties Union  
Public Advocates

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