

## **-- What You Need To Know --**

### **Emergency California Education Legislation: Senate Bill x 5 1**

(prepared by Lauren Janov, Palo Alto PTA Council Advocacy Chair (12.1.09))

Below is the Palo Alto PTA Council Executive Board's detailed overview of emergency California Senate Bill x 5 1, which may become law by December 9<sup>th</sup>.

Its controversial "open enrollment" provision could have long-term implications for the Palo Alto School district and school districts across the state.

**PTA members are encouraged to read the summary below and write to their representatives this week** either

- (i) opposing the SBx5 1's "open enrollment" provision, or
- (ii) asking that the "open enrollment" provision be removed from SBx5 1 (and similar emergency bills) and taken up on a non-emergency basis in 2010.

If you cannot get to this this week, send emails/place calls as soon as you can and watch your inbox for Palo Alto PTAC news about other opportunities to opine. **Sample letters and contact information are at the end of the summary.**

### **Summary**

In November, the California State Senate approved a fast-track emergency education bill (SBx5 1<sup>1</sup>) it hopes will help California secure part of the Federal government's \$4.35 billion Race to the Top (RTTT) funds. If selected, California could be awarded as much as \$700 million.

Included in the bill, but not required to qualify for Race to the Top funds, is a controversial open enrollment provision<sup>2</sup> which could open up all school attendance boundaries in the state and allow students in low performing schools to transfer to other schools in the state with space on the assumption that this market-based model will give California students equal education opportunities and improve low performing

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<sup>1</sup> [http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb\\_0001-0050/sbx5\\_1\\_bill\\_20091103\\_amended\\_sen\\_v96.html](http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sbx5_1_bill_20091103_amended_sen_v96.html)

<sup>2</sup> Senate Bill x5 1, Section 48350 et seq. This bill was initially taken up as stand-alone non-emergency legislation by the California Senate Education Committee last winter (Senate Bill 266), but did not make it to the Senate floor.

schools by creating competition for students.<sup>3</sup> (Editorial note: Ironically, there is a risk that SBx5 1's inter-district open enrollment provision may disqualify California from winning Race to the Top funds. Race to the Top requires as one of its four core education reforms that states "turn around" their lowest-achieving schools.<sup>4</sup> A state law that could be read to encourage student flight over efforts to improve low-performing schools could be viewed by the Obama administration as running counter to the Federal legislation's intent.)

The provisions of the bill that are related to and arguably required<sup>5</sup> for Race to the Top funding (i) allow STAR scores to be used to evaluate teachers and determine their pay, promotions and sanctions, (ii) lift the cap on the number of charter schools permitted in the state, and (iii) require the state to identify the lowest 5% performing public schools by early 2010, and, if Federal funds are awarded, make their local school boards take corrective action -- either (1) close them, (2) hire a new principal and staff, or (3) bring in a charter or private operator to take over.

### **Legislative Process**

The state Senate passed SBx5 1 November 3rd.

The California State Assembly is next to consider it. Its Education Committee is conducting hearings now and will vote on the SBx5 1 or its own similar bill on December 9<sup>th</sup> which the full Assembly is expected to vote on immediately afterwards. After that, the Senate and Assembly will work to find common ground with the hope of having a bill to present to the Governor for signing in time to complete the Race to the Top application by its January 19<sup>th</sup> deadline.

With the Governor already issuing an enthusiastic nod to the Senate Bill and media reports of strong Republican support, it or something very much like it could become law in the next few weeks.

### **Open Enrollment Provision**

The open enrollment provision expands Federal No Child Left Behind ("NCLB") legislation's intra-district transfer provisions by (i) allowing transfer students to select specific schools and programs they want to

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<sup>3</sup> The bill's co-author State Senator Huff believes that this change will reverse the state's declining public school enrollment he attributes to student flight to private schools. <http://www.govbuddy.us/directory/press/CA/senator-bob-huff-introduces-school-open-enrollment-bill/12169/>. (Compare that to the California Department of Finance's October 2009 projections, based on birth rates, that shows California public schools will experience moderate enrollment growth by 2018-19 (<http://www.dof.ca.gov/research/demographic/reports/projections/k-12/2009/> and <http://www.acsa.org/MainMenuCategories/Advocacy/K-12-Enrollment.aspx>)). He acknowledges that the intent is to "largely eliminate the school district boundaries that stop students from choosing the best school for their specific needs" <http://www.capitolweekly.net/article.php?xid=xt8p6ysz0o9th2> (commenting in March 2009 about SB 266, an almost identical open enrollment bill that was before the Senate earlier this year).

<sup>4</sup> <http://www.ed.gov/legislation/FedRegister/announcements/2009-4/111809c.pdf> Appendix C at page 59866-59867 (published November 18, 2009). The permissible methods ( turnaround, restart, school closure, and transformation model) all require actions to be taken within a school district, not across district lines, via either an investment in the low performing schools, their conversion to a charter school, or school closure with *intra-district* student transfers to higher achieving schools "within reasonable proximity to the closed school." Community-based solutions are mentioned several times in the legislation.

<sup>5</sup> The Bill Analysis says that "it is not clear that legislation is needed at this time to allow the state to apply for the first round of RTTT funding, though it is possible that legislation would strengthen the state's application." Bill Analysis, Senate Committee (November 4, 2009) [http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb\\_0001-0050/sbx5\\_1\\_cfa\\_20091104\\_103407\\_sen\\_comm.html](http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sbx5_1_cfa_20091104_103407_sen_comm.html).

transfer to, and (ii) adding inter-district transfer provisions that appear to require<sup>6</sup> California schools with space to accept up to ~ 1.8 million students from the bottom 30 percent lowest performing districts who want to transfer. A low performing school is a “program improvement” school (one that does not reach the state’s STAR test based growth targets two years in a row)<sup>7</sup> with STAR-based API scores that are in the bottom 30 percent.

Before granting a transfer request, districts can consider:

- (1) “the capacity (undefined)<sup>8</sup> of the program, class, grade or building that would be impacted”, and
- (2) the negative impact (also undefined) it will have on (i) the racial and ethnic balance of the district, or (ii) a court-ordered desegregation plan.<sup>9</sup>

Districts cannot consider a student’s English proficiency, academic or athletic performance, race, sex or physical condition. After the enrollment deadline for students who reside within the school boundaries

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<sup>6</sup> [http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb\\_0251-0300/sb\\_266\\_cfa\\_20090528\\_155050\\_sen\\_comm.html](http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0251-0300/sb_266_cfa_20090528_155050_sen_comm.html). Section 4 of the bill’s Legislative Digest (the original August 27, 2009 version) says the bill “requir[es] school districts to enroll nonresident pupils”.

A later amendment to SBx 5 1 incorporates NCLB Section 6316(b)(1)(E) by reference (which refers to notices). The amended bill does not expressly mention Section 6316(b)(11) that cross references to 6316(b)(1)(E) in NCLB so it is not clear whether Section 6316(b)(11) is incorporated into SBx 5 1. Section 6316(b)(11) provides for interdistrict transfers from districts with only low-performing schools which “shall, to the extent practicable, establish a cooperative agreement with other [districts] in the area for a transfer.” 20 USC Sections 6316 (b)(1)(E)(i) and (b)(11) and 34 CFR Section 200.44(h).

Compare the lack of clarity in SBx5 1’s proposed California Education Code Section 48350 to the clarity in Education Code Section 48301(a)’s voluntary interdistrict transfer District of Choice provisions:

**Education Code Section 48350:** “The governing board of any school district *may* accept interdistrict transfers. A school district that receives an application for attendance under this article *is not required to admit pupils* to its schools. *If, however, the governing board elects to accept transfers . . .*” (emphasis added).

**SBx5 1:**

Section 48354... (b) (1) Consistent with the requirements of Section 1116(b)(1)(E) of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), no later than the first day of the school year, the district of residence shall provide the parents and guardians of all pupils enrolled in a school identified in subdivision (a) of Section 48352 with notice of the option to transfer to another public school served by the school district of residence or another school district...

48355. (a) The school district of ... enrollment to which a pupil has applied to attend may prohibit the transfer of the pupil pursuant to this article or limit the number of pupils who transfer pursuant to this article if the governing board of the district determines that the transfer would negatively impact either of the following:

- (1) A court-ordered desegregation plan of the district.
- (2) The racial and ethnic balance of the district.

(b) A school district of residence shall not adopt any other policies that in any way prevent or discourage pupils from applying for a transfer to a school district of enrollment.

48356. (a) A school district of enrollment may adopt specific, written standards for acceptance and rejection of applications pursuant to this article. The standards may include consideration of the capacity of a program, class, grade level, or school building...

<sup>7</sup> As of 2009, about half of California’s schools were designed in need of “program improvement.”

<sup>8</sup> Federal NCLB laws require district schools to accept intra-district transfers even if space is a concern. 34 CFR Section 200.44(d) (“an LEA may not use lack of capacity to deny students the option to transfer”). The US Department of Education believes that districts have an obligation to make space (take “measures to overcome issues such as overcrowding [and] class size limits”) to accommodate these transfers. <http://www.ed.gov/legislation/FedRegister/finrule/2002-4/120202a.html>

<sup>9</sup> Federal NCLB laws require intra-district transfers for districts subject to voluntary or mandatory desegregation plans/orders, even if they must go to court to change the order. 34 CFR Section 200.44(c).

has passed (which must be no later than March 1), students from program improvement schools in the bottom 10, then 20, then 30 percent must be admitted per the considerations above, presumably before other new transfer students like those under long-established district transfer programs that allow children of teachers who live outside the district boundaries to go to school where their parents work.

School districts that already accept a large number of transfer students from low performing school districts (like the 600+ Ravenswood School District students enrolled in PAUSD under the Voluntary Transfer Program) are subject to its provisions.

Race to the Top funds, which may or may not be awarded to California, are one-time funds. In contrast, the “open enrollment” provision is an ongoing program. Even if California wins the Race to the Top grant, there may not be enough Race to the Top funds to cover the ongoing compliance costs associated with implementing this bill, further taxing local school districts’ and the state’s budgets.<sup>10</sup>

## **Local Impact**

### **Capacity**

It is not clear under the bill who will define what a school’s maximum “capacity” is, potentially shifting long-held authority for such decisions from local school boards to the state<sup>11</sup> or courtroom judges. For example, districts which maintain small class sizes may be required by law to add students to “locally” capped classrooms to accommodate open enrollment transfer requests. Under the bill, it also is not clear what the capacity of programs that are filled on an as-needed basis (like those for special needs children) would be.

Because the bill allows transfer applicants to designate which school or program they want to attend, school districts may have to suspend their demographic balance policies or academic pre-requisites for students seeking a transfer. For example, space available in the upper grades of PAUSD’s Spanish Immersion or Mandarin Immersion programs may be required to be filled by non-Spanish or non-Mandarin speaking transfer students who request those spots if they do not fall under the bill’s “magnet school” exception.

There appears to be no provision in the bill that requires students to return to their local schools once they improve.<sup>12</sup> Once a student has transferred in, the bill appears to treat that student as if he or she were a “resident” of the new school district and so may be required to let him remain enrolled in subsequent years even if his local school is no longer low-performing. The bill may also require unified school districts like PAUSD to keep transferee elementary students through 12<sup>th</sup> grade even if their local secondary schools are not on the low-performing list.<sup>13</sup>

The bill is silent as to whether students from low-performing schools who transfer into a high-performing ones must change schools if his or her family later moves to a different high-performing school district.

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<sup>10</sup> See e.g., [http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb\\_0251-0300/sb\\_266\\_cfa\\_20090528\\_155050\\_sen\\_comm.html](http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0251-0300/sb_266_cfa_20090528_155050_sen_comm.html). At least half of the RTTT funds awarded must go to schools and districts with large low-income student populations. The state will determine what of the remainder will be kept at the state level or disbursed. If California were to be awarded the full \$700 million, it would receive about \$112/student; districts that do not have large low-income populations would see no more than a one time RTTT payment of \$56/student assuming that the state disburses all the funds it receives.

<sup>11</sup> See footnote 8.

<sup>12</sup> School choice under the Federal NCLB laws require schools that accept transfer students to allow them to remain enrolled until they complete the school’s highest grade, even if their local school district is no longer in program improvement status. 20 USC Section 6316 (b)(1)(13).

<sup>13</sup> SBx5 1, Sections 48356 (c) and (f).

## **Timing**

Timing is a concern for both the transferor and transferee schools.

Recipient school districts must establish early resident enrollment deadlines so that transfer requests can be approved or denied by March 1<sup>st</sup>.<sup>14</sup>

Since transferees can apply for specific schools and programs, if transfer students fill all of a neighborhood schools' open slots in March, neighborhood children who move in later in the year will have to attend schools outside their neighborhood. (PAUSD processes new resident enrollments up until school starts in August.)

Transferee school districts which fill their open spots with March transfers also will end up with enrollment that exceeds their capacity to accommodate new children who move into their district after March.<sup>15</sup>

Student transfers take effect the second school year after the year the school has been designated low-performing (typically identified in August based on the preceding school year's performance), even if the school is not low-performing when the school year of transfer begins.

## **Fiscal Impact**

The bill could have a dramatic fiscal impact on both low and high-performing school districts.

Under the bill, 70 percent of the base state funding a district receives to educate a child (about \$4,000) transfers with the child to the new district presumably with the state keeping the remaining 30 percent. Cash-strapped low-performing districts will lose state revenues that could help them improve. Many fear that they also will lose the students and families who are active and invested (who help their district with fund raising, volunteering or otherwise) in a good education for all.

Most districts that take in transfer students will receive state funds that are at least 30% less per student than what they have to spend on their current enrollment. While new students might bring welcome revenue to districts with declining enrollment, many schools with declining enrollments also are "low performing" and so may not have many transfer requests. A district whose enrollment is stable or increasing (about half of the districts in the state) could be forced to increase class sizes or cut services and programs due to the decline in per student revenues.

The bill is silent as to who will pay the extra cost of administering the transfer program, the legal fees incurred to clarify its scope, and the costs associated with meaningful access like bus transportation, potentially further burdening already strained school district budgets across the state.

It is not known how opening boundaries will affect local bond and parcel tax measures, important sources of school revenues, either. Ballot measures which ask a community's voters to increase their local taxes to support their local schools may have more difficulty passing if voters think of their schools as state rather than local systems.

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<sup>14</sup> SBx5 1, Sections 48354 and 48357.

<sup>15</sup> The bill only mentions that "initial" transfer applications (presumably those due January 1 before the school year of transfer) can be denied if they would displace pupils who (i) reside in the school's boundaries or (ii) are "currently" enrolled in the school.

Since transfers can be requested for any grade, districts accepting transfer students will have the additional cost of implementing or augmenting remedial education programs in all grades for low-performing transfer students from low-performing districts.

All 2,557 of East Palo Alto non-charter public school students and about half of Redwood City students attend schools that are both in the lowest 30 percent performing schools and designed for “program improvement.”<sup>16</sup>

### **Positions**

Despite SBx5 1’s fast pace, several groups have been able to take positions on the open enrollment proposal. For example:

California School Board Association: Opposes the open enrollment provision because it (i) is an unreimbursed state mandate, and (ii) doesn’t require a fully transparent selection process. Instead, it urges that this part of the bill be deferred to next year when there is more time to flesh out the details.<sup>17</sup>

California PTA: Supports the bill if amended, expressing concerns about its open enrollment provision (i.e., it does not ensure students in low-performing districts meaningful access to information and transportation).<sup>18</sup>

The PAUSD School Board has not publicly discussed or taken a position on this.

### **Advocacy Opportunity**

Because of the emergency tag put on this legislation, there has not been the usual opportunity for citizens to educate themselves, reflect and comment.

But there is still time for PTA members to place calls and send letters to Ira Ruskin (our Assembly rep), Joe Simitian (our Senate rep), members of the Assembly and Senate’s Education Committees and the Governor (with an emphasis on the Assembly this week) asking them to either:

- a. Oppose the open enrollment provision, or
- b. Ask that it be taken up next year as a non-emergency bill.

Their email addresses and phone numbers are listed below.

You can write your own message or send something like this:

**If you want to have the open enrollment issue considered in a non-emergency session next year:**

Re: “Open Enrollment” Provision in SBx5 1/Related RTTT Legislation

Dear \_\_\_\_\_,

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<sup>16</sup> <http://www.cde.ca.gov/TA/ac/ay/tidatafiles.asp> and <http://api.cde.ca.gov/reports/page2.asp?subject=API&level=County&submit1=submit>

<sup>17</sup> [http://pausd.org/community/board/downloads/brd\\_packet/pkt\\_111709.pdf](http://pausd.org/community/board/downloads/brd_packet/pkt_111709.pdf) at pages 228 and 229.

<sup>18</sup> [http://www.capta.org/assets/managed/whatsnew-pdf/Letter\\_Supportifamended\\_SBX5\\_1.pdf](http://www.capta.org/assets/managed/whatsnew-pdf/Letter_Supportifamended_SBX5_1.pdf)

I am writing to express opposition to an “open enrollment” provision being included in emergency legislation that will help California qualify for Race to the Top funds.

Open enrollment transfers are not required to obtain RTTT funding and so should be taken up only after their ramifications can be studied carefully, the legislation can be more tightly drafted, and California residents are given meaningful opportunity to opine

Thank you.

[Insert Your Name]

**If you oppose open enrollment:**

Re: “Open Enrollment” Provision in SBx5 1/Related RTTT Legislation

Dear \_\_\_\_\_,

I am writing to express opposition to a mandatory “open enrollment” school system and request that those provisions be deleted from California’s Race to the Top proposed legislation.

My concerns are many, such as it will:

- Increase under-enrollment in some and overcrowding in other schools across the state,
- Have a negative fiscal effect on the budgets of both low and high-performing schools, and
- Grant special priorities to transfer students not afforded to students who live in the local attendance area.

Because Senate Bill x5 1 leaves many questions unanswered, it will cause significant uncertainty and disruption to schools and may cause them to terminate their existing and long-standing voluntary transfer programs (like programs for children of teachers and for children in need from neighboring communities).

Thank you.

[Insert Your Name]

**You’ll have to act fast. This proposed legislation could become law by Wednesday, December 9th.**

**Contacts:**

California Assembly Member Ira Ruskin:

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(916) 651-4024  
<http://legplcms01.lc.ca.gov/PublicL/CMS/ContactPopup.aspx?district=SD24>

[Senator Robert Huff \(Vice-Chair\)](#)  
(916) 651-4029  
[http://cssrc.us/web/29/contact\\_me.aspx](http://cssrc.us/web/29/contact_me.aspx)

If you wish, you can copy:

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