

Open Enrollment

1. The effective date for House Bill 3681 (HB 3681) is January 1, 2012. OSBA policy staff is encouraging districts to review their Board policy JECB - Nonresident Admissions and its associated administrative regulation, JECB-AR, to ensure compliance with this new law. Often referred to as the "Open Enrollment law" this new law requires a district to determine in advance the number of nonresident students they will admit without the consent of the sending district. Student transfers allowed by this law will first appear in our schools in the 2012-2013 school year. Language guiding districts through the necessary steps and key dates outlined in the law can be found in sample language attached to this announcement or in the September/October 2011 edition of OSBA's Policy Update subscription. Key dates related to this law are as follows:

March 1: Districts must have determined, and school boards must approve and announce the number of students that will be admitted under this law.

April 1: The last day for interested students using this pathway to seek consent from the district they would like to attend.

May 1: The last day for admitting districts to notify resident districts in writing of the student(s) that have received consent to transfer.

The traditional methods available to districts through interdistrict transfer and mutual consent are still available, and are not subject to provisions through HB 3681. The Oregon Department of Education has published a "frequently asked questions" resource on their website that covers additional topics such as: transportation requirements, lottery information, enrollment criteria and many others.

<http://www.ode.state.or.us/news/announcements/announcement.aspx?ID=7750&TypeID=4>

In addition, OSBA is providing attached sample language as guidance for school boards in selecting appropriate terminology for use when approving and announcing the number of openings available to students under this specific pathway. For additional information or questions please contact a member of OSBA's policy service staff at 1-800-578-6722.

The following is sample language to consider for use as part of school board approval of recommended numbers and the subsequent notification of acceptance of nonresident students under HB 3681:

"The Board of Directors has established that [#] nonresident students shall receive written consent for admission under ORS 339.133(5)(b) for the 2012-2013 school year."

or

"[Based on enrollment projections, staffing and/or available resources] the Board of Directors has established that no nonresident students shall receive written consent for admission under ORS 339.133(5)(b) for the 2012-2013 school year."

OSAA Position Statement Memo dated December 7, 2011

MEMORANDUM NO. 002-2011-12 -HB 3681 (Inter-district Transfers)

HB 3681 Frequently Asked Questions

HB 3681 was enacted by the 2011 legislature and provides an additional method of school choice for Oregon students. The bill did not remove Oregon's traditional methods of inter-district transfer, tuition and mutual district agreement. Local school districts have control over the decision of whether to accept students using any of the methods of inter-district transfer.

IMPLEMENTATION OF HB 3681

1. When does HB 3681 take effect?

HB 3681 takes effect on January 1, 2012. Transfers using HB 3681 first apply to the 2012-2013 school year. Prior to March 1, 2012, district school boards must determine and announce the number of students they will accept via HB 3681 transfers.

2. What is the timeline of district announcements and notifications?

- March 1 – School districts announce the number of students that will be accepted for the next school year.
- April 1 – Deadline for students to seek consent from districts offering transfers.
- May 1 – Deadline for district to provide written notice to districts of residence that a student has received consent to transfer.

Districts will make known the number of students they will accept by March 1 of each year. Districts will learn how many of their students have been accepted for transfer to other districts by May 1 of each year.

Transfers via HB 3681 must be conducted using the calendar deadlines within the bill.

3. Who determines the number of students a district/school will accept?

The local school board determines the number of students it can accept from outside the district using HB 3681. HB 3681 does not mandate the consideration of specific criteria except that the process must be nondiscriminatory. (See Question 4 and 6.)

4. How do districts determine the number of students they will accept?

Districts might consider current enrollment, future enrollment projections, budget, staffing, district goals, and local district needs. Districts have the option of announcing that they will accept no transfer students via HB 3681.

5. Does the student's district of residence have any say in whether a student can transfer under HB 3681?

Using the provisions of HB 3681, the student's district of residence does not have a say in whether the student can move to a school that has offered a transfer. If districts use the traditional method of inter-district transfer, both the sending and receiving districts agree to the transfer.

6. How does a district decide which students can transfer in?

Districts should establish district procedures about how the number of persons will be determined. If a district receives more requests than the announced number of students that will be granted transfers, the district must conduct an equitable lottery to select the students that will be granted transfers. Districts must not discriminate on the basis of race, religion, sex, sexual orientation, ethnicity, national origin, disability, terms of an individualized education program, income level, proficiency in the English language, or athletic ability.

7. **What if a district has more applicants than the number of students it has announced it will accept?**
The district must conduct an equitable lottery to select the students that will be granted transfers if the district has more applicants than the announced number of students that will be accepted.
8. **What does an "equitable lottery process" look like?**
An "equitable lottery process" provides a single random selection process that provides all interested students with equal opportunity to attend the school. One possible method would be for a district to place all names of applicants into an opaque container and have an objective party (perhaps a community member) draw names one by one to fill open transfer positions.
9. **May a district offer transfers just to certain kinds of students?**
No. Districts may not deny consent or give priority based on race, religion, sex, sexual orientation, ethnicity, national origin, disability, terms of an individualized education program, income level, proficiency in the English language, or athletic ability. (See also questions 10, 11, 16, and 36.)
10. **Must districts give priority to or guarantee transfers for siblings?**
Prioritizing siblings for enrollment is a matter for local district decision. If a district chooses to give priority status for enrollment to siblings, the district must ensure that its decisions are based on disability neutral criteria; it cannot discriminate on the basis of race, income, or disability. HB 3681 (5) ". . . in no event may a sibling be given priority to any open spot in the schools of the district over any persons who reside within the district".
11. **May a district give priority to students with current inter-district transfers or to students attending district charter schools?**
Giving priority to these students is a local district decision. Although, the district must ensure that it is not discriminating based on race, religion, sex, sexual orientation, ethnicity, national origin, disability, terms of an individualized education program, income level, proficiency in the English language, or athletic ability.
12. **May a district that has accepted inter-district transfers via HB 3681 for a particular school year change its decision in subsequent years?**
Yes. Each year prior to March 1 a district must announce whether it will accept inter-district transfers via HB 3681. See Question 2.
13. **Must districts announce openings at the district level? Can the district announce openings at the school or grade level?**
No, districts do not have to announce openings at the district level. Yes, districts can announce openings at the school or grade level.
14. **If a district announces openings at the school level, do students already enrolled in the district have priority in filling those openings?**
Yes.
15. **If a district finds after May 1 that it has additional openings for students, may it allow additional transfers via HB 3681?**
No. The calendar set in the bill is clear. The district may allow additional students to enroll using contracted inter-district transfers (where both the sending and receiving districts agree to the transfer) or using tuition.
16. **May a district only accept students from a particular geographic area such as another school district?**
Yes. Districts may choose to limit inter-district transfers via HB 3681 to a particular geographic area.
17. **May a district refuse to accept transfer students?**

Yes. The district may refuse students if it has specified that it will not accept inter-district transfer students or if the district has established that it will accept a certain number of students and more students express interest in enrolling in the district.

18. **Once a student receives a transfer using HB 3681, must they renew the transfer annually as with traditional transfer process?**

No. Once a student has been accepted by a district, the student is considered a resident of the district until the student graduates from high school, is no longer required to be admitted to the schools of the school district under ORS 339.115, or enrolls in a school in a different school district.

19. **What happens if a student accepts a transfer in May, but later decides to stay in his/her resident district?**

Students may choose to remain in their original district of residence.

20. **Under open enrollment does the receiving district pursue truancy related to non-attending students or is there a point where this student reverts back to the responsibility of the district where they reside (such as could happen with student transfers)?**

Once a student is accepted into a district, they are the responsibility of that district. The district may choose to pursue truancy related to non-attending students until they are dropped from the enrollment through the 10-day rule. However, should a student dropped for non-attendance decide to re-enroll, his/her transfer should be upheld (see #11 above). The student, once dropped for non-attendance, may also choose to return to their district of residence.

21. **May districts continue to allow students to enroll with paid tuition?**

Yes. If a district charges tuition to a student, the district cannot claim the student in ADM and receive state formula dollars for that student.

22. **May districts continue to contract inter-district transfers (where both the sending and receiving districts agree)?**

Yes. Districts may continue to allow contracted inter-district transfers throughout the year depending on their district policy.

ADDITIONAL IMPLICATIONS OF HB 3681

23. **May a district offer unlimited transfers into an online program?**

Districts may offer unlimited transfers if the online program has the capacity to provide educational services for the students. However, once enrolled, the student is considered a resident student and the district has responsibility for that student like any other. For example, if the online program turns out not to be appropriate for the student, the district may need to identify other educational services including placement in another school. The district is also responsible for Special Education.

24. **What does HB 3681 mean for students currently attending school on an inter-district transfer?**

A student may choose to continue the current arrangement where the contract is renewed each school year. The student may choose to apply for permanent admission to the district via HB 3681. The district may give priority in a lottery to students with current inter-district transfers.

25. **How do these inter-district transfers affect sports participation?**

Sports participation issues are the responsibility of Oregon School Activities Association (OSAA) and other interscholastic activities organizations. OSAA is preparing to address concerns resulting from HB 3681. Districts cannot accept or decline students for transfers on the basis of sports ability.

26. **How will open enrollment changes intersect with existing Charter School enrollment parameters?**

It doesn't. Charter school law and individual charters dictate enrollment rules for charter schools, including the enrollment of students with disabilities (special education). HB 3681 does not change charter school law or the charters.

Charter school students have never needed an inter-district transfer agreement to enroll in a charter school. The concept of open enrollment already applies to these students—at least within the space and grade limits of the charter school. Charter school students would not be included in the number of students a district chooses to accept under HB 3681.

27. **Which district provides transportation for transferring students?**

Districts are responsible for transportation within their district boundaries. Districts may choose to offer transportation to students that transfer in using HB3681, but it is a district decision. This might not be the case for Special Education students (see question 37 below). Expenses incurred in transporting students are considered approved transportation costs and a portion of the expenses is reimbursable as part of the district's transportation grant from the State School Fund.

28. **If transfers result in racial or socio-economic shifts in districts, will ODE or the legislature monitor or address such shifts?**

The bill prohibits discrimination on the basis of race, religion, sex, sexual orientation, ethnicity, national origin, disability, terms of an individualized education program, income level, proficiency in the English language, or athletic ability. As a matter of civil rights law, districts may not accept or decline students for transfers on the basis of race, religion, sex, sexual orientation, ethnicity, national origin, disability, terms of an individualized education program, income level, proficiency in the English language, or athletic ability. Individuals with concerns may file complaints with Oregon Department of Education under existing Civil Rights rules and statutes.

29. **Will there be funding to help stabilize districts who experience significant enrollment drops to allow for a "glide path" and avoid destabilizing schools?**

There is no funding provided in HB 3681. However the current method of calculating extended ADMw could continue to provide a "glide path" or less dramatic decreases for some districts.

30. **Home school students currently have the option to enroll in courses within their resident district, if the district permits this. Will open enrollment also apply to home school students who wish to enroll in specific courses within another district, if this already permitted within the district?**

Current policy would continue as to home school students taking individual courses within their home district.

31. **Are the Department of Human Services (DHS) and other state of Oregon agencies that make foster placements permitted to enroll students across district boundaries or will foster parents be able to make this decision?**

Current law regarding foster or agency placements is not changed by HB 3681. Foster parents could decide to seek transfers for students in their care, but would follow the same procedures as any other parent/guardian.

32. **Are there any restrictions on marketing or recruiting students to attend a district?**

Generally, no. However, Section 6, Chapter 72, (2010 Laws) (Enrolled HB 3660) requires that "virtual public schools" must state in any marketing or promotional materials that it is a "publicly funded school."

SPECIAL EDUCATION AND HB 3681

33. **If a district has open enrollment but does not have room in a specific school or program, would the (receiving) district simply place this student on a waiting list for that**

program?

This would be a district decision.

Would this be true for a special education student? Or would the receiving district be obliged to find services for this student in another building?

Students are admitted to the districts through the number of persons the district announces on March 1 with no regard to Special Education or other status. If a Special Education student is admitted, the district in consultation with the parent, must provide a Free Appropriate Public Education until the District adopts the existing IEP or implements a new IEP. See also OAR 581-015-2230 Transfer Students.

34. For students eligible for special education, at what point does the receiving district become the resident district and how will this affect the procedural obligations for placement by the district where the student resides?

For students eligible for special education, the receiving district becomes the resident district at the same point in time as for regular education students—typically when the parent makes application and the parental resident district has no procedural obligations except to transfer records.

At this point the student is enrolled in the school they would attend if not disabled (unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if not disabled). See OAR 581-015-2230 Transfer Students.

35. Is the use of the open enrollment process by a parent similar in any way to a unilateral placement?

No. A parent's decision to exercise "choice" is not synonymous with the concept of "placement" under IDEA. The open enrollment process in HB 3681 is intended to facilitate student transfers for all students between Oregon public school districts. Under IDEA, the concept of "unilateral placement" typically appears in conjunction with discussions of parental decisions to enroll a child with a disability in a private school, not in exercising parental choice related to public school options.

36. If siblings are prioritized for enrollment, and if one of the siblings has special needs/disabilities recognized under IDEA and the district does not have an appropriate placement in that school building, will the district need to develop one in the building?


Prioritizing siblings for enrollment is a matter for local district policy. If a district chooses to give priority status for enrollment to siblings, the district must ensure that its decisions are based on disability neutral criteria; it cannot discriminate on the basis of race, religion, sex, sexual orientation, ethnicity, national origin, disability, terms of an individualized education program, income level, proficiency in the English language, or athletic ability ". . . in no event may a sibling be given priority to any open spot in the schools of the district over any persons who reside within the district."


37. For special education students, will the receiving district be responsible for transportation (as they would normally) or is this a parental responsibility under open enrollment?

The bill does not change current special education law. The initial decision to transfer to a different district is the parents', subject to district policies and not an IEP decision. Once inside the attending district, a student's IEP may require that a district provide additional transportation as a related service. Otherwise, the bill provides that districts are responsible for transportation within the district boundaries. (See also Question 27.)

- end -

Contact(s) for this Announcement

- **Cindy Hunt**  (503) 947-5651
Office of the Superintendent - Government and Legal Affairs Manager

- **Andrea Morgan**  (503) 947-5772
Teaching & Learning Team - Ed. Specialist, Social Sciences Curriculum and Advanced Placement
Incentive Prog

Related Topic(s):

- **Executive Numbered Memoranda**

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Oregon School Boards Association Selected Sample Policy

Code: JECB
Adopted:

Admission of Nonresident Students

The district may enroll nonresident students as follows:

1. By written consent of the affected school boards. The student becomes a “resident pupil” of the attending district thereby allowing the attending district to receive State School Fund moneys;
2. By written consent from the school board for the district in which the school is located as provided by Board policy. The student becomes a “resident pupil” of the attending district thereby allowing the attending district to receive State School Fund moneys;
3. By unilaterally admitting with tuition a nonresident student whereby neither district is eligible for State School Fund moneys;
4. If a juvenile court determines it is in the student’s best interest, a student placed in a substitute care program outside the district will continue to be considered a resident student and allowed to attend the school the student attended prior to placement. The public agency placing the student in a substitute care program will be responsible for the transportation of the student, if public agency funds are available.

The Board shall deny regular school admission to nonresident students who are under expulsion from another district for a weapons policy violation. The Board [will] [will not] [may, based on district criteria,] deny [regular school] [alternative education program] admission to nonresident students who are under expulsion from another district for reasons other than a weapons policy violation.

Consent by Affected Boards

The Board reserves the right to accept/reject nonresident students based upon the availability of space, resources, personnel, appropriate programs and a positive review of education records.

The Board may consider situations such as:

1. Students with unusual academic needs or abilities that can be met more readily by school services available in a nonresident district;
2. Students living in remote areas whose school transportation can be met more conveniently and efficiently by the nonresident district;
3. Students with unusual disciplinary or emotional problems who would have a greater ability to succeed in the environment of the nonresident district;

4. Students whose parents move from the district during a school year; and
5. Students whose parents are employed within the nonresident district.

Consent of Board for the District in which the School is Located

Annually, by March 1, the Board shall establish the number of students to whom consent will be given for the upcoming school year. The Board may choose to limit consent based on school, grade or the combination of both. The Board may decide not to give consent to any person under this process.

The Board may not deny consent or give priority based on race, religion, sex, sexual orientation, ethnicity, national origin, disability, terms of individual education program, income level, proficiency in the English language or athletic ability.

Applications for consent shall be submitted no later than April 1, prior to the year of requested consent.

If the number of students seeking consent exceeds the number of students the Board has determined will be given consent, consent will be based on an equitable lottery selection process.

The district is not required to provide transportation outside the boundaries of the district. The student will be allowed to use existing bus routes and transportation services of the district. Transportation will be provided if required by federal law.

By May 1, the district shall provide written notification of attendance to the district of the student's legal residence.

END OF POLICY

Legal Reference(s):

ORS 109.056
ORS 327.006
ORS 329.485
ORS 335.090
ORS 339.115 - 339.133

ORS 339.141
ORS 339.250
ORS 343.221
ORS 433.267

HB 3681 (2011)

Letter Opinions, Office of the OR Attorney General (March 15, April 18, June 30 1988).
OR. DEP'T OF EDUC., ODE EXECUTIVE MEMORANDA 23-1988-89, 42-1994-95.

Oregon School Boards Association Selected Sample Policy

Code: JECB-AR(1)
Revised/Reviewed:

Admission of Nonresident Students

By [January 15] of each year, the principals will establish an approximate number of nonresident students their respective buildings can accommodate for the following school year.

The amount of tuition will be established by [July 1] of each year. Nonresident students will not be admitted without tuition, with the exception of students who become "resident pupils" by written consent of affected school boards, written consent of the district board for the district the school is located and foreign exchange students attending district schools on a J-1 Visa.

The district is not required to provide transportation outside the boundaries of the district. The student will be allowed to use existing bus routes and transportation services of the district. Transportation will be provided if required by federal law.

[A written appeal for a denied request may be made to the Board whose decision, based upon review, will be final.]

Consent by Affected Boards and Tuitioned Students

1. The petition for admission must go through the [principal's office] to the [superintendent's office].
2. Student education records will be obtained and reviewed.
3. Initial admission and annual renewal must be approved by the superintendent.
4. Approved requests will result in a mutual tuition agreement between the parties. A mutual agreement signed by both affected boards (form following) will be filed with the business office for billing and payment control if student is tuitioned.
5. The business manager shall prepare semester bills for all tuitioned students, and any student whose tuition remains unpaid [15] days after presentation of bills shall be excluded; the superintendent may grant additional time for payment should circumstances warrant it.
6. Students will not be subject to the superintendent's annual review after the [sophomore year].

Consent of Board for the District in which the School is Located

1. By March 1, the Board shall establish the number of students, if any, that will be given admission for the following school year under this process. Resident students will have first opportunity to request an intradistrict transfer prior to the placement for nonresident student [to a specific school].

2. Nonresident students must make application no later than April 1, for admission in the following school year. Applications must be submitted to the [district office].
3. If the number of applications exceed the number of admissions to be given, an equitable lottery process will be used to determine admission. This lottery process may give priority to applicants who currently have siblings enrolled in the district. Priority cannot be given over an intradistrict transfer request. If the district determines that admission will not be given to any students under this process there is no district obligation to give admission to siblings.
4. Once the student has been given admission, the student is considered a resident for all educational programs and remains a resident of the district until the student:
 - a. Graduates from high school;
 - b. Is no longer required to be admitted to the school district under ORS 339.115; or
 - c. Enrolls in a school in a different district.
5. By May 1, prior to the next school year, the district shall provide written notification of the student receiving admission, to the district where the student's legal residence is located.



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December 7, 2011

TOM WELTER
EXECUTIVE DIRECTOR
EXT 230
tomw@osaa.org

To: Superintendents, Principals and Athletic Directors

From: Tom Welter

BRAD GARRETT
ASST. EXECUTIVE DIRECTOR
EXT 229
bradg@osaa.org

Subject: OSAA Position Statement–HB 3681

CINDY SIMMONS
ASST. EXECUTIVE DIRECTOR
EXT 227
cindys@osaa.org

There has been a lot of discussion and concern in recent months regarding the impact of HB 3681 ('Open Enrollment Bill') on OSAA activities. The OSAA Executive Board has thoroughly reviewed this new law enacted by the 2011 legislature. After lengthy discussions that included input from OSAA legal counsel and Legislative Counsel for the State of Oregon, the Board has concluded that the OSAA will not make any changes to existing OSAA transfer rules at this time.

PETER WEBER
ASST. EXECUTIVE DIRECTOR
EXT 231
peterw@osaa.org

The eligibility of students who choose to transfer next summer, between the 2011-12 and 2012-13 school years, will be determined by existing OSAA transfer rules as outlined in Rule 8.6. It is a Fundamental Rule of the Association that a student must attend the high school in the high school attendance boundary within which the Joint Residence of the student and the student's parents is located. There are several exceptions already built in to the Fundamental Rule including the following:

MOLLY HAYS
EVENT COORDINATOR
EXT 233
mollyh@osaa.org

- a. Entering 9th grade students—the Association already has 'open enrollment' when a student first enters the 9th grade.
- b. Students who transfer between school years are eligible if they meet one of the following exceptions:
 1. The student transfers to a full member private school or full member charter school and maintains a Joint Residence.
 2. The student transfers back to the public school within the attendance boundary of Joint Residence.
 3. The student transfers within a multiple high school district with the approval of the district administrator and maintains a Joint Residence.
 4. The student transfers between Oregon school districts under the terms of a reciprocal transfer agreement and maintains a Joint Residence. (student is released by the resident school district superintendent and is accepted by the receiving school district superintendent)

KYLE STANFIELD
PUBLIC RELATIONS /
MARKETING
EXT 239
kyles@osaa.org

STEVE WALKER
SPORTS INFORMATION
DIRECTOR
EXT 232
stevew@osaa.org

Students who transfer between school years under HB 3681 and are not released by their home district will NOT be eligible for one calendar year under current OSAA transfer rules. Schools could seek a reinstatement of eligibility through their District Athletic Committee if they feel that there are extenuating circumstances that warrant a review.

If you have questions or concerns regarding this issue, please contact the OSAA office.