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**From:** super-bounces@listsmart.osl.state.or.us on behalf of ODE Communications  
**Sent:** Friday, October 21, 2011 8:58 AM  
**To:**  
**Subject:** [Super] MEMORANDUM NO. 002-2011-12 - HB 3681 (Inter-district Transfers)  
**Attachments:** ATT00001.txt

**TO: School District Superintendents**  
**RE: 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 is 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.)

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