

September 28, 2023

Dear District and Charter School Administrators,

The State Department of Education continues to be committed to assisting local education agencies (LEAs) with navigating the changes in education law which occurred during the 2023 legislative session. The Department has recently received questions relating to [S1125](#), which significantly modified the “Transfer of Pupils” statutes under Title 33, Chapter 14 of the Idaho Code.

The statement of purpose for S1125 indicates the legislature’s intent was to update the “Open Enrollment” statutes so that “families can more easily send their children to the public school that works best for them.” Further, that “[t]his bill modernizes the law to reflect best practices around the state and give parents more choice.”

Effective July 1, 2023, Idaho Code section 33-1402(1) provides, in part, that “[s]chool districts shall adopt policies to govern the process for enrollment options pursuant to this chapter, including in-district transfers.”

This subsection makes clear that LEAs must develop and update policies to ensure compliance with the law. Many LEAs already have relevant policies related to open enrollment. The Idaho School Boards Association provides updated, comprehensive model policies on this topic.

These changes in law raise questions for LEAs to address including but not limited to, the following:

- When must LEAs accept open enrollment applications?
- How must open enrollment applications be evaluated?
- How does the statutes’ new language impact programs, including special education programs?

### **Key Principles**

The policies should provide parents and legal guardians flexibility in enrolling their children in the LEA of their choice and reflect the LEA's ability to incorporate student mobility and assist with data transfer and up-to-date reporting. Finally, the policies shall prohibit discrimination against any student on the basis of residential address, ability, disability, race, ethnicity, sex, or socioeconomic status.

### **Timeframe to Accept Open Enrollment Applications**

Idaho Code section 33-1402(3) provides that open enrollment applications "must be submitted to the receiving school district by February 1 for enrollment during the following school year..." Idaho Code section 33-1402(4) further provides that, "Open enrollment applications shall be accepted at any time throughout the year. However, those applications received after the February 1 deadline will be considered based on capacity stated in policy at the receiving district."

Based on this language, LEAs are required to accept receipt of open enrollment applications after February 1 and must evaluate whether a student is eligible to transfer mid-year.

### **Evaluating Applications**

Upon receipt of an open enrollment application, the receiving LEA must determine whether: (1) procedural requirements were fulfilled, including the completion of an approved application form and that records were requested from the home district or school by the parent or guardian; and (2) space is available for students submitting transfer applications based on maximum enrollment for each grade-level, or core classroom size per grade level for secondary grades, as defined by district policy.

The only priority for acceptance identified in the statute is that of students applying to attend another school within their home district.

Reasons to reject an application are enumerated under Idaho Code section 33-1402(6). They are: (1) expulsion from the student's previous district; (2) significant documented disciplinary issues or chronic absenteeism (unless related to a disability); and (3) the receiving school does not have space available.

### **Capacity of Programs**

Prior to July 1, 2023, Idaho Code section 33-1404 provided that LEAs could adopt policies which defined standards for acceptance and rejection of open enrollment applications, including the capacity of a program, class, grade level, or school building. That language was stricken in S1125. Therefore, it appears that the only basis upon which to reject an open enrollment application are those enumerated under Idaho Code section 33-1402(6), as discussed above.

To eliminate the perception of possible discrimination against students with disabilities, LEAs may wish to consider adopting a “lottery” system for all open enrollment applications.

LEAs must ensure *consistency of practice* when accepting and rejecting *all* students via their open enrollment policy. Whenever an LEA is reviewing a student’s open enrollment application, the SDE encourages a team approach to review the application and make a determination as to whether the student qualifies for open enrollment and whether there is space available as identified in the LEA’s policy.

During the 2024 legislative session, SDE staff will work with the authors and sponsors of S1125 to better understand the legislative intent of the bill and possibly seek clarifying language regarding the limitations and capacity for determining maximum enrollment for in-district and out-of-district student transfers.

### **Final Thoughts**

Again, this guidance is meant to assist LEAs in updating or creating policy pertaining to open enrollment to ensure compliance with S1125. District policies should be vetted by local district staff and legal counsel.