



# CLIENT NEWS BRIEF

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## ROMERO BILL CREATES NEW INTERDISTRICT ATTENDANCE ALTERNATIVE AND REQUIRES SCHOOL DISTRICTS TO DEVELOP NEW POLICIES GOVERNING ROMERO BILL TRANSFERS

Earlier this year, the Legislature enacted the Open Enrollment Act (the "Romero Bill"), which creates another alternative for interdistrict attendance in addition to interdistrict transfer agreements under Education Code section 46600 et seq., "Allen Bill" transfers under Education Code section 48204, and the School District of Choice program codified in Education Code section 48301 et seq. Although initially adopted as part of the State's attempt to obtain federal Race to the Top ("RTTT") funds, it appears that the Romero Bill will remain in effect whether or not California ultimately receives some share of federal RTTT dollars. And, as with much of the RTTT-related legislation and the RTTT application and grant process in general, there are many uncertainties with regard to the Romero Bill and how it will operate.

The Romero Bill allows pupils attending one of a list of 1,000 low achieving schools, identified by the State based on the school's Academic Performance Index ("API") ranking, to transfer to a school in another school district not on the list of low-achieving schools and which has a higher API ranking. The list of 1,000 lowest performing schools excludes alternative schools such as community day and charter schools, and schools that would result in a given school district having more than 10% of its schools on the low performance list.

No later than the first day of the school year (starting with the 2010-2011 school year), school districts of residence with schools on the low performance list must notify students of their transfer rights. School districts of residence may only prohibit students from transferring to another district under the Romero Bill if allowing the transfer would negatively impact a court-ordered or voluntary desegregation plan or the racial and ethnic balance of the district, so long as such action is consistent with State and federal law. As with similar statutory language for the School District of Choice program, a district runs the risk of legal challenge for denying transfers on the basis of race or ethnicity due to California Constitution, Article I, Section 31, otherwise known as Proposition 209, which prohibits preferential treatment on the basis of race and other factors in public education. School districts of residence are otherwise excluded from adopting any policy that prevents or discourages students from seeking to transfer under the Romero Bill.

The Romero Bill identifies school districts that a student may seek to transfer into as "school districts of enrollment." All potential school districts of enrollment (which includes all school districts) must develop specific written standards regarding the acceptance and rejection of transfer students under the law. Such standards "may include consideration of the capacity of a program, class, grade level, school building, or adverse financial impact." All school district communications regarding the Romero Bill must be factually accurate, and districts of enrollment cannot target their Romero Bill communications to specific individuals, families, or residential neighborhoods, or on the basis of students' actual or perceived

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academic or athletic performance, or any other personal characteristic. Any exercise of discretion by a school district under the Romero Bill, including presumably the decision to deny an Romero Bill transfer based on lawful factors may not be overturned absent the finding by a court (as opposed to a county office of education) that the school district acted arbitrarily or capriciously. This means county offices of education cannot review Romero Bill transfer decisions, but students may challenge the denial of Romero Bill transfers in court, likely by way of a writ proceeding.

Significantly, left unclear under the Romero Bill is whether a school district must accept student transfers under the law. Not only was adoption of the Romero Bill not required for the State's RTTT application, but many argued the new transfer alternative was unnecessary following reauthorization and amendment of the State's School District of Choice program. The School District of Choice program is not mandatory, and a school district is not required to become a school district of choice or accept student transfers pursuant to same. However, it tentatively appears that the prevailing interpretation of the Romero Bill will be that, absent a showing of a lack of capacity in a district, school, or class, or another "adverse impact" on the school district, school districts will have to accept Romero Bill student transfers.

If a school district accepts Romero Bill transfer applicants, standards for acceptance "shall not include consideration of a pupil's previous academic achievement, physical condition, proficiency in the English language, family income, or any of the individual characteristics set forth in Section 200" of the Education Code, such as race, ethnicity, gender, sexual orientation or religion. The Romero Bill sets forth a priority of enrollment to be applied when there is an excess of Romero Bill transfer students seeking admission into a district of enrollment. When transfers to a specific school of a district of enrollment exceed available space the district of enrollment must conduct a lottery for the random selection of students.

Other considerations under the new law include coordination of the timelines under which school districts process open enrollment application for their students of residence. The Romero Bill calls for school districts to allow open enrollment transfers for students of residence into a different school in their district before the district accepts non-resident student transfers under the Romero Bill. However, Romero Bill transfer applications are due by January 1 preceding the school year in which the student would transfer, and school districts must provide a response to the applicant within 60 days. Consequently, assuming a school district chooses to accept Romero Bill transfers, the district should ensure that its timeline for accepting open enrollment transfers for students of residence is complete before making decisions on Romero Bill transfer applications.

Once a student's transfer application is accepted, the Romero Bill appears to relieve students from the obligation of submitting a new application in subsequent years. In other words, although a student of residence cannot be displaced because of an initial Romero Bill transfer application by a non-resident student, much like an open enrollment transfer by a student of residence to another school within the student's district of residence, a successful Romero Bill transfer applicant is presumed to be enrolled in their transfer school thereafter, without the need for any further applications. It is unclear under the law whether a student who successfully transfers to another elementary school district under the Romero Bill must then return to their high school district of residence upon enrollment into high school, or whether they may attend the high school district into which the student's "open enrollment district" elementary school district feeds.

Starting in the second year of a student's enrollment in a basic aid district of enrollment, the basic aid district is entitled to 70 percent of the district revenue limit that would have been apportioned to the transfer student's district of residence for the attendance of the transferred student. A basic aid district that accepts Romero Bill transfers will not receive any money from the State for the student's first year of

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funding in the Romero Bill itself and is unclear whether and how transportation will be funded for Romero Bill transfer students. These and other issues may be addressed more fully by the State Board of Education's yet to be published emergency regulations for implementing the Romero Bill, which are required under the enactment.

Most important for school districts at this time is the obligation under Education Code section 48356 of the Romero Bill that school districts develop and adopt board policies and regulations governing acceptance and rejection of Romero Bill transfer applicants. Such policies and regulations should be in place prior to the beginning of the 2010-2011 school year and the required Romero Bill notification to pupils attending one of a list of 1,000 low achieving schools in California of their right to apply for a Romero Bill transfer for the 2011-2012 school year before January 1, 2011.

If you have questions regarding the Romero Bill and the new Open Enrollment Act, or need assistance in developing Romero Bill policies and regulations or revising existing interdistrict and intradistrict transfer policies to align with the Romero Bill, please contact one of our [seven offices](#) located statewide or consult our [website](#).

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