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July 19, 2010

Ted Mitchell, President  
California State Board of Education  
1430 N Street, Suite 5111  
Sacramento, CA 95814

**Open Enrollment Act  
State Board of Education Regulations**

Dear President Mitchell:

The Small School Districts' Association opposes the State Board of Education regulations and the draft list of low-achieving schools because the regulations and list do not comply with the Open Enrollment Act.

Senate Bill 4 of the Fifth Extraordinary Session requires the Superintendent of Public Instruction (SPI) to identify California's 1,000 lowest achieving schools. The identification process contains a number of provisions. Education Code Section 48352 (a)(2)(A) states:

*(A) A local educational agency shall not have more than 10 percent of its schools on the list. However, if the number of schools in a local educational agency is not evenly divisible by 10, the Superintendent shall round up to the next whole number of schools.*

This provision was developed to accomplish two goals; the first was to not overly burden a school district with significant flight of students from the district to other districts pursuant to the Act. The disruption that would occur by significant flight would create a significant penalty on those students whose parents chose to remain in the identified lower achieving school(s) and district. A second purpose was to reduce the number of students that would be transferring and, thereby, reduce the state's cost for declining enrollment funding to the district whose students were leaving pursuant to this provision.

The regulations and the draft low-achieving schools list is a clear violation of that law.

*(A) A local educational agency shall not have more than 10 percent of its schools on the list. However, if the number of schools in a local educational agency is not evenly divisible by 10, the Superintendent shall round up to the next whole number of schools. [This language is based on the total number of schools in the LEA, not the number of identified low-achieving schools.]*

The draft identification list includes schools in school districts with only one school. Consequently, those districts have 100% of their schools identified as low-achieving in a clear violation of the clear meaning of the law.

SSDA requests that the State Board of Education rescind the Open Enrollment Act regulations.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Walrath". The signature is stylized and cursive.

David L. Walrath

DLW:ad