**STATE BOARD OF EDUCATION – ADMINISTRATIVE RULE SUMMARY**

**Title/OAR #:** Interdistrict Transfer / OAR 581-021-0019

**Date:** April 10, 2014

**Staff/Office:** Emily Nazarov, Board Staff

**[ ] New Rule** **[x] Amend Existing Rule**  **[ ] Repeal Rule**

**Hearing Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[ ]  Hearings Officer Report Attached**

**Prompted by: [x]  State law changes [ ]  Federal law changes [ ]  Other**

**Action Requested:**

**[x]  First Reading/Second Reading [ ]  Adoption [ ]  Adoption/Consent Agenda**

**PROPOSED/AMENDED RULE SUMMARY:**

* Prohibits districts from considering race, religion, sex, sexual orientation, ethnicity, national origin, disability, health, whether a student has an individualized education program, the terms of an individualized education program, income level, residence, proficiency in the English language, athletic ability, or academic records when giving consent to interdistrict transfer;
* Clarifies which district is responsible for setting the length of consent and consenting to renewals;
* Updates interdistrict transfer agreement requirements to comply with state law; and
* Transfers responsibility for FAPE to receiving district.

**BACKGROUND:**

Interdistrict transfer allows students who are a resident of one district to request transfer to another district. Both the sending district and the receiving district must agree to the transfer, and the two districts and person in the parental relationship enter into an interdistrict transfer agreement.

The interdistrict transfer statute was amended by HB 2747 (2013) and HB 4007 (2014). The amendments to inter-district transfer apply to students seeking transfer for the 2014-15 school year. The changes to state law necessitated changes to the administrative rule governing interdistrict transfer agreements.

Significant changes to state law that need to be addressed in rule:

* Districts may not deny consent or establish any terms of consent based on a student’s race, religion, sex, sexual orientation, ethnicity, national origin, disability, health, whether a student has an individualized education program, the terms of an individualized education program, income level, residence, proficiency in the English language, athletic ability, or academic records.
* Receiving districts considering whether to consent to interdistrict transfer may only request the following information: name, contact information, date of birth, grade level, and expulsion information.
* Interdistrict transfers may be renewed, but only the receiving district’s consent is required for a renewal.

In addition, the Department has received significant feedback from districts leading the Department to recommend an additional change to the administrative rule. Specifically, the Department is recommending transferring the responsibility for ensuring that the student receives a free and appropriate public education (FAPE) to the receiving district. Currently, if a student transfers to another district under interdistrict transfer, the receiving district receives the ADMw for that student, but the sending district retains responsibility for ensuring FAPE. In other words, the responsibility for special education spending stays with the sending district.

Under the proposed revision to OAR 581-021-0019, the receiving district would assume responsibility for FAPE once the student transfers into the district. This is consistent with how FAPE responsibility is handled under the other three methods of interdistrict transfer (open enrollment, tuition, and contract).

**ISSUES/CONCERNS THAT SURFACED DURING RULE WORK:**

District School Board policies will need to be revised to comply with the revised rule. The Department has vetted the proposed changes to OAR 581-021-0019 with the Oregon School Board Association.

Department Guidance will need to be revised to comply with the new rules and relfect the new division. The Department has revised the guidance documents and they will be released upon adoption of the revised rule.

**CHANGED SINCE LAST BOARD MEETING?** (so members can focus on what’s different)

[x]  N/A; first read—hasn’t been before board

[ ]  No; same as last month

[ ]  Yes – As follows:

**FISCAL IMPACT:**

**STAFF RECOMMENDATION**:

[ ]  Adopt administrative rule as prepared this month

[x]  Adopt administrative rule next month

[ ]  No recommendation at this time (rarely used)

**581-021-0019**

**Interdistrict Transfer Agreement**

(1) Definitions. As used in this rule:

(a) “ADM” means the average daily membership as defined in ORS 327.006.

(b) “Individualized education program” means a written statement of an educational program for a child with a disability that is developed, reviewed and revised in a meeting in accordance with criteria established by rules of the State Board of Education for each child eligible for special education and related services under ORS Chapter 343.

(c) “Interscholastic activities” includes but is not limited to athletics, music, speech, and other related activities.

(d) “Nonresident school district” means a school district that is not the resident school district of a child.

(e) “Person in parental relationship” means, as defined in ORS 339.133, an adult who has physical custody of a child or resides in the same household as the child, interacts with the child daily, provides the child with food, clothing, shelter and incidental necessaries and provides the child with necessary care, education and discipline. “Person in parental relationship” does not mean a person with a power of attorney or other written delegation of parental responsibilities if the person does not have other evidence of a parental relationship.

(f) “Resident school district” means the school district that has a legal responsibility to educate a child because the child resides in the district with a parent, guardian or person in parental relationship.

(g) “School district” means a school district as defined in ORS 332.002, a state-operated school or any legally constituted combination of such entities.

(2)(a) Pursuant to ORS 339.127, a nonresident school district may enroll a student who is a resident of another district and receive State School Fund money for the student if there is a signed Interdistrict Transfer Agreement between the resident school district, nonresident school district, and the parent/guardian(s) or person in parental relationship.

(b) In determining whether to admit or release a student requesting inter-district transfer through a signed Interdistrict Transfer Agreement, or in establishing any terms of such consent, neither the resident district nor the nonresident district may consider race, religion, sex, sexual orientation, ethnicity, national origin, disability, health, whether a student has an individualized education program, the terms of an individualized education program, income level, residence, proficiency in the English language, athletic ability, or academic records.

(c) The provisions of this rule do not affect the authority of a school district to enroll students under section 9, chapter 718, Oregon Laws 2011 (Enrolled House Bill 3681) and do not apply to students who attend a school under that section.

(d) The provisions of this rule do not affect the authority of a school district to enter into a contract with another district under ORS 339.125.

(3) It is understood that upon approval by the district of the Interdistrict Transfer Agreement that:

(a) The Resident District shall fully release the student to the Nonresident District. The Nonresident District shall claim the student as a resident student for the purposes of claiming basic school support under the State School Fund and shall report itself as the Resident District of record for ADM purposes.

(b) The Nonresident District shall report the student as a resident student for ADM per ORS 339.133. The Resident District turns over to the Nonresident District all portions of the ADMr and the ADMw that is paid from the State School Fund. Funds may only be exchanged between the districts for the student based on the Interdistrict Transfer Agreement.

(c) The Nonresident District will be accountable for meeting the requirements of the standards described in OAR chapter 581, division 22.

(d) The Nonresident District will be accountable for ensuring a free, appropriate public education (FAPE) in the least restrictive environment (LRE) for students on an Individualized Education Program (IEP).

(4) Modification to the original Interdistrict Transfer Agreement requires written consent by the nonresident school district and parent/guardian or person in parental relationship.

(5)(a) A district considering whether to admit a nonresident student through interdistrict transfer may only request the following information prior to admitting the student:

(i) Legal Name;

 (ii) Date of Birth;

(iii) Enrolled Grade;

 (iv) Primary Phone Number of Parent/Guardian/Person of Parental Relationship;

(v) Primary Email of Parent/Guardian/Person of Parental Relationship;

 (vi) Information on any student expulsions within the last calendar year;

(b) A district considering whether to admit a nonresident student through interdistrict transfer may not request information on the student’s race, religion, sex, sexual orientation, ethnicity, national origin, disability, health, whether a student has an individualized education program, the terms of an individualized education program, income level, residence, proficiency in the English language, athletic ability, or academic records.

(6) The Oregon Department of Education (ODE) will provide a sampleInterdistrict Transfer Agreement form. Resident school districts are responsible for developing their own written instructions.

(7) An Interdistrict Transfer Agreement shall only be between districts within the state of Oregon.

(8) Upon request by the nonresident district, a resident district shall release student records to the nonresident district.

(9) Nothing in this rule prevents a district school board from exercising the authority granted to the district under ORS 339.127(9).

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 339.133
Hist.: ODE 21-2008, f. 8-28-08, cert. ef. 8-29-08; ODE 1-2012, f. 2-1-12, cert. ef. 2-3-12