



SUPERINTENDENT OF PUBLIC INSTRUCTION

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(X) Informational

BULLETIN NO. 106-18 STUDENT ENGAGEMENT AND SUPPORT

TO: Educational Service District Superintendents
School District Superintendents
School District Business Managers
School District Principals
School District Choice Transfer Coordinators

FROM: Chris Reykdal, Superintendent of Public Instruction

RE: Choice Transfer Appeals

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PURPOSE/BACKGROUND

This bulletin informs school districts about common errors exercised in district-level processing of Choice Transfers. By eliminating these procedural errors, districts will better ensure consistent and fair processing of student transfer requests and experience more successful outcomes on appeal.

When a student and family requests a Choice Transfer, the resident district may deny the student's release or the nonresident district may deny admittance. [RCW 28A.225.230](#) gives parents and guardians the right to appeal these decisions to the Office of Superintendent of Public Instruction (OSPI).

Appeal hearings are conducted by an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH), typically by phone. After listening to information presented by the parents or guardians and/or their representatives and the district's representatives, the ALJ makes the decision to either grant or deny the parent's Choice Transfer request.

REVIEW OF CHOICE TRANSFER APPEALS FINDINGS

This bulletin outlines the most commonly repeated errors made by districts in processing Choice Transfers and district information presented in appeal hearings, as identified from a review of appeal findings from the past 18 months.

MISSING NOTIFICATIONS ARE THE MOST COMMON ERRORS

The three most common district procedural errors that result in the ALJ's decision to grant a parent's Choice Transfer request on appeal all relate to the failure of the district to properly notify parents and guardians of:

- 1) The specific reason for the denial allowed by the law or district policy*;
- 2) The parent's right to appeal the district's decision to OSPI; and/or
- 3) The district's acceptance or denial of the Choice Transfer request within 45 days.

All three notifications must be provided to the parent in order for a district to meet the standards required in law. All notifications to parents or guardians must be in writing.

*School districts make their own policies, but school district policy cannot be in conflict with the law.

DENIALS BASED ON ATTENDANCE ARE NOT PERMITTED

A student's history of attendance is not a reason permitted by law to deny, rescind, or revoke a student's nonresident transfer request.

Prior to 2015, OAH decisions allowed school districts to reject nonresident applicants on grounds not listed in the statute, as long as those grounds were disclosed in the district's policies and appeared rational and equitably applied. Following an extensive review of relevant legal authorities, it was concluded that [RCW 28A.225.225 \(2\) and \(4\)](#) contains the exclusive list of reasons that districts may deny Choice Transfer requests by nonresident students, not an illustrative list to which school districts are free to add.

DISTRICT PRACTICE IS NOT CONSISTENT WITH ITS OWN POLICY

School districts are obligated to consider all transfer applicants equally and to apply the standards for acceptance and rejection of applications established in its policy as per [RCW 28A.225.225 \(4\)](#).

For example, a district or school reaching "capacity" is frequently cited as a reason for the denial of a nonresident student transfer, and is a reason consistent with [RCW 28A.225.225 \(2\)](#). The District's acceptance of nonresident students subject to available capacity is related to its obligation to meet the needs of students who live within their district.

A frequent problem that arises is when a district denies a nonresident student transfer based on capacity, but has made exceptions to allow other nonresident students to attend in the district when those exceptions were not specified in the district's written policies. When this happens, ALJ's have determined that the district has violated its obligation under this statute and have ordered the district to admit the student.

DISTRICT ACTION IS ALWAYS REQUIRED WITHIN 45 DAYS

It is a nonresident district's obligation to: 1) notify a parent of the acceptance or denial within 45-days of the Choice Transfer request; 2) notify the parent of the specific reason for the denial; and 3) notify the parent of the right to appeal the decision to OSPI:

[WAC 392-137-205 \(2\)\(a\)](#) - All applications must be acted upon by accepting or denying the application within forty-five calendar days of receipt by the nonresident district or the application will be deemed to have been denied for purposes of this section.

When a district does not act on a transfer request based on the assumption that after 45 days the student will automatically be denied, ALJ's have ruled on appeal that the district has failed to act on all three notification requirements and ordered the district to admit the student.

INTERNAL APPEALS PROCESS REQUIRES COMPLETION WITHIN 45 DAYS

Many school districts have a policy that includes a district-level appeal process made available to the parent when a Choice Transfer request is denied. Having a district-level appeals process is good practice and is often where many Choice Transfer disputes are resolved without further appeal to OSPI.

In providing a district-level appeal option for parents and guardians, districts will want to make sure that:

- 1) All steps of the district's appeals process are fully completed within 45-days from the time the district received the student transfer request. This includes a written notification to the parent of the final district-level appeal decision. If the parent should still decide to appeal to OSPI, the district will have met its obligation to provide a final notification of the acceptance or denial decision within the 45-days.
- 2) Parents or guardians are notified of their appeal rights to OSPI, in writing, at the time of the first Choice Transfer denial decision. Districts are obligated to notify parents of their right to appeal to OSPI after the initial denial decision, not after the district-level appeal process.

Parents have the right to appeal to OSPI without a requirement to go through a district-level appeals process first.

CAPACITY AND FINANCIAL HARDSHIP RELATIONSHIP NEEDS CLEAR EVIDENCE

If a district has identified the Choice Transfer denial reason to be due to “financial hardship” as it relates to the issue of “capacity,” it is important that the district be able to demonstrate clear and direct evidence of the relationship between the capacity issue and financial hardship.

ADDITIONAL DENIAL REASONS CANNOT BE INTRODUCED IN THE HEARING

In an appeal hearing, only the facts related to the denial reason(s) identified by the school district, and communicated to the parent, will be considered by the ALJ. Any additional reasons the district may present in an appeal hearing will not be considered in the decision.

For example, if a school district notifies the parents that the reason for a student’s Choice Transfer denial is due to “school capacity,” but identifies, “student history of misconduct,” as another reason for the denial during the subsequent appeal hearing before an ALJ, the ALJ will only consider the information related to the original denial reason of school capacity. When making a decision on the appeal, the ALJ will not consider any information presented by the school district related to the student’s misconduct.

When a district follows all required procedural steps for processing Choice Transfers and implements a nonresident transfer policy that only includes denial reasons permitted by law, they ensure a fair and equitable process for acceptance or denial is applied for each nonresident student transfer request.

FOR INFORMATION AND ASSISTANCE

For questions regarding this bulletin, or more generally regarding school choice, please contact Joy Walton Kawasaki, School Choice and Enrollment Options Manager, at 360-725-6237 or email joy.waltonkawasaki@k12.wa.us. The OSPI TTY number is 360-664-3631.

This bulletin is also available on the [Bulletins and Memoranda](#) page of the OSPI website.

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