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Chapter 3: Empowering Parents to Win the Race to the Top

Ashley Bonnett

Code Sections Affected

Education Code §§ 48350, 48351, 48352, 48353, 48354, 48356, 48357, 48358, 48359, 48359.5, 48360, 48361, 53300, 53301, 53302, 53303 (new).
SBX5 4 (Romero); 2010 STAT. Ch. 3.

I. INTRODUCTION

“For too many years too many children were trapped in low-performing schools and couldn’t do anything about it,” complained California Governor Arnold Schwarzenegger.¹ “[P]arents had no power to bring about change in their children’s schools,” he continued.²

Throughout 2009 and 2010, California cut billions of dollars from its education budget³ and tens of thousands of teachers were laid off because of those cuts.⁴ Fortunately, in 2009, “the Obama Administration came in with a big bang” when it announced the creation of the Race to the Top fund.⁵ President Obama’s Race to the Top Fund presents states with the opportunity to compete for \$4.35 billion by addressing four specific areas of reform.⁶ In 2010, the California Legislature passed several necessary legislative reforms, including Chapter 3,⁷ which it used to demonstrate the enactment of additional, significant reforms beyond those directly addressing the required areas.⁸

1. Arnold Schwarzenegger, Governor of Cal., Address at the Signing of SB 4 into Law (Jan. 7, 2010) [hereinafter Address by Arnold Schwarzenegger] (transcript available at <http://www.gov.ca.gov/speech/14136>).

2. *Id.*

3. Press Release, Cal. Dep’t of Educ., Schools Chief Jack O’Connell Issues Statement on Budget Deal (July 21, 2009), available at <http://www.cde.ca.gov/nr/ne/yr09/yr09rel110.asp> (on file with the *McGeorge Law Review*).

4. Press Release, Cal. Dep’t of Educ., State Schools Chief Jack O’Connell Warns State Budget Cuts Are Leading to Future Teacher Shortage, •Hurt State’s Ability to Produce Educated Workforce (Apr. 6, 2010), available at <http://www.cde.ca.gov/nr/ne/yr10/yr10rel34.asp> (on file with the *McGeorge Law Review*).

5. Address by Arnold Schwarzenegger, *supra* note 1.

6. Press Release, U.S. Dep’t of Educ., Delaware and Tennessee Win First Race to the Top Grants (Mar. 29, 2010), available at <http://www2.ed.gov/news/pressreleases/2010/03/03292010.html> [hereinafter Press Release, Delaware and Tennessee Win First Race to the Top Grants] (on file with the *McGeorge Law Review*).

7. About the Race to the Top Fund, www.racetothetop.org/cs/rtt/print/htdocs/about.htm (last visited Feb. 22, 2010) (on file with the *McGeorge Law Review*).

8. See State of Cal., Race to the Top Application for Initial Funding: Phase One (Jan. 19, 2010), available at <http://www2.ed.gov/programs/racetothetop/phase1-applications/california.pdf> (on file with the *McGeorge Law Review*) (using “creating a policy environment for strengthening the role of parents in the education of their children, especially when those children attend low-performing schools” as an additional measure to “build a foundation of reform”); State of Cal., Race to the Top Application for Initial Funding: Phase Two (June 1, 2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/california.pdf> (on file with the *McGeorge Law Review*) (listing “[e]nactment of legislation that strengthens the role of parents in the education of their children, especially when those children attend low-performing schools”

II. LEGAL BACKGROUND

Chapter 3 not only enhances California's chances in competing for the Race to the Top educational funds,⁹ but also gives parents new power over their children's education by allowing them to transfer their child to any higher-performing school in California¹⁰ and by providing them with a new way to get involved through the parent petition.¹¹

A. *Race to the Top*

On February 17, 2009, President Barack Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA) to stimulate job creation and encourage robust education reforms.¹² The ARRA invests approximately \$77 billion in direct funding for education.¹³ Of that \$77 billion, \$4.35 billion goes towards Race to the Top grants, which the U.S. Department of Education (DOE) will award on a competitive basis to those "states leading the way on school reform."¹⁴

The DOE will evaluate states based on four areas of reform: (1) "[a]dopting internationally benchmarked standards and assessments that prepare students for success in college and the workplace"; (2) "[r]ecruiting, developing, rewarding, and retaining effective teachers and principals"; (3) creating "data systems that measure student success;" and (4) reforming the lowest-performing schools.¹⁵ Each state must submit an application that addresses each area of reform and demonstrates that the state is "taking a systemic approach to education reform."¹⁶ The DOE will award grants in two phases, with applications for the first phase due January 19, 2010, and those for the second phase due June 1, 2010.¹⁷

as an additional significant reform condition).

9. About the Race to the Top Fund, *supra* note 7.

10. Gloria Romero, *Power to the Parents*, S.F. CHRON., Jan. 17, 2010, at E3.

11. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SBX5 4, at 1 (Jan. 4, 2010).

12. U.S. Dep't of Educ., *The American Recovery and Reinvestment Act of 2009: Education Jobs and Reform* (Feb. 18, 2009), <http://www2.ed.gov/policy/gen/leg/recovery/factsheet/overview.html> (on file with the *McGeorge Law Review*).

13. *Id.*

14. Press Release, U.S. Dep't of Educ., *President Obama, U.S. Secretary of Education Duncan Announce National Competition to Advance School Reform* (July 24, 2009), available at <http://www2.ed.gov/news/pressreleases/2009/07/07242009.html> (on file with the *McGeorge Law Review*).

15. *Id.*

16. About the Race to the Top Fund, *supra* note 7.

17. *Id.*

B. Public School Residency Requirements

Existing law requires all youth ages six to eighteen, unless otherwise exempt, to attend a public school within the school district “in which the residency of either the parent or legal guardian is located.”¹⁸ However, a school district may voluntarily accept inter-district transfers.¹⁹ Additionally, the No Child Left Behind Act provides that a student attending a low-performing school may transfer to a better-performing school within their school district of residency.²⁰

C. Parental Involvement in Public Education

Existing law also acknowledges the importance of parental involvement in improving public schools.²¹ Parents and guardians of students attending public schools have the legal right to access information from their children’s schools and to participate in their education.²² Existing law protects parental participation by giving parents enumerated rights, such as the right to observe their children’s classrooms, to meet with their children’s teachers and the school’s principal, to have access to their children’s school records, and to examine the curriculum taught to their children.²³

D. Related Legislation

Chapter 3 stems from enactment of Chapter 2,²⁴ which established the general framework for California’s application for the Race to the Top grants.²⁵ Chapter 2 also enumerated the four interventions parents may request under Chapter 3.²⁶ Additionally, Chapter 2 established an alternative route for teacher credentialing through the Science, Technology, Engineering, Math, and Career Technical Education Educator Credentialing Program.²⁷ Furthermore, local educational agencies may now use the California Educational Information System data²⁸ to evaluate current and prospective school staff.²⁹

18. CAL. EDUC. CODE § 48200 (West 2006).

19. *Id.* § 48301(a) (West Supp. 2010).

20. U.S. Dep’t of Educ., Overview: Four Pillars of NCLB, <http://www2.ed.gov/nclb/overview/intro/4pillars.html> (last visited Feb. 22, 2010) (on file with the *McGeorge Law Review*).

21. *See* CAL. EDUC. CODE § 51100 (“It is essential to our democratic form of government that parents and guardians of schoolage [sic] children attending public schools . . . participate in improving public education institutions.”).

22. *Id.* § 51101(a).

23. *Id.*

24. *See* ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SBX5 4, at 3 (Jan. 4, 2010) (stating that SBX5 4 required enactment of SBX5 1).

25. SENATE FLOOR, COMMITTEE ANALYSIS OF SBX5 1, at 3 (Jan. 6, 2010).

26. CAL. EDUC. CODE § 53202(a) (enacted by 2010 Stat. Ch. 2).

27. SENATE FLOOR, COMMITTEE ANALYSIS OF SBX5 1, at 11 (Jan. 6, 2010).

28. The California Education Information System “maintains pupil data regarding demographic,

III. CHAPTER 3

Chapter 3 establishes an Open Enrollment Program and a Parent Empowerment Program for students attending public schools.³⁰ The Open Enrollment Program allows parents to apply for their children to attend a school outside of their school district of residence if the school within their district is a low-achieving school.³¹ School districts “may adopt specific, written standards for acceptance and rejection of applications,” such as capacity or adverse financial impact.³² However, they must select students through a “random, unbiased process.”³³

The Parent Empowerment Program provides parents the opportunity to petition a local educational agency to implement certain interventions at specified schools.³⁴ The petition may demand one of four interventions: the “turnaround model;” the “restart model;” the “transformation model;” or school closure.³⁵ Parents may petition for intervention when the school is “not identified as a persistently lowest-achieving school,” if it was subject to corrective action but failed “to make adequate yearly progress,” and if it has an Academic Performance Index (API) score less than eight hundred.³⁶ To succeed, at least one-half of the parents of students attending the school, or “a combination of at least one-half of the parents . . . of [students] attending the school and the elementary or middle schools that normally matriculate into a middle or high school, as applicable,” must sign the petition.³⁷

program participation, enrollment, and statewide assessments” and “enables analysis of workforce trends, evaluation of teacher preparation programs, and the monitoring of teacher assignments.” CAL. EDUC. CODE § 10601 (West Supp. 2010).

29. SENATE FLOOR, COMMITTEE ANALYSIS OF SBX5 1, at 12-13 (Jan. 6, 2010).

30. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SBX5 4, at 1 (Jan. 4, 2010).

31. CAL. EDUC. CODE § 48354(a)-(b) (enacted by Chapter 3). A low-achieving school is one that ranks in the bottom one thousand schools of the state, based on its Academic Performance Index (API) score. *Id.* § 48352 (enacted by Chapter 3). The California Department of Education calculates a school’s API score based on students’ performance on statewide testing across multiple subjects. CAL. DEP’T OF EDUC., 2009-10 ACADEMIC PERFORMANCE INDEX REPORTS: INFORMATION GUIDE 6 (2010), available at <http://www.cde.ca.gov/ta/ac/ap/documents/infoguide09.pdf>.

32. CAL. EDUC. CODE § 48356(a) (enacted by Chapter 3).

33. *Id.* § 48356(d) (enacted by Chapter 3).

34. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SBX5 4, at 1 (Jan. 4, 2010).

35. CAL. EDUC. CODE § 53202 (enacted by 2010 Stat. Ch. 2). The “turnaround model” mandates the firing of the school principal and the rehiring of up to half the school’s staff. Under the “restart model,” the school’s local education agency converts the school into a charter school. The “transformation model” requires the school’s local education agency to fire the principal, reward top performing teachers and staff, provide staff training, and provide incentives to recruit and retain the best staff. U.S. Dep’t of Educ., *Race to the Top Fund: Final Rule*, 47 Fed. Reg. 59,688; 59,764; 59,828; 59,829 (Nov. 18, 2009) (to be codified at 34 C.F.R. subtit. B, ch.2).

36. CAL. EDUC. CODE § 53300 (enacted by Chapter 3). API scores range from two hundred to one thousand. CAL. DEP’T OF EDUC., *supra* note 31.

37. CAL. EDUC. CODE § 53300 (enacted by Chapter 3).

IV. ANALYSIS

A. Parental Empowerment

Chapter 3 expands the potential for parental involvement, giving parents more power over their children's education by allowing them to remove their children from failing schools and to petition for change when the schools fail to improve.³⁸ Studies suggest parents who take advantage of parent choice programs are more active at their children's schools and more involved in their children's education.³⁹ Another benefit of the Open Enrollment Program is that parents who are active in their children's education are more likely to have children who excel in school.⁴⁰ Moreover, choice systems encourage competition among schools to attract and retain students.⁴¹ For example, Natomas Unified School District, which has approximately 12,000 students, lost over 2,000 students to nearby charter schools, costing the district millions of dollars in funding.⁴² As a result, district officials made "retaining and attracting students a part of their budget recovery plan."⁴³

Those skeptical of Chapter 3 point out that the new laws will only work if parents utilize the new powers.⁴⁴ Unfortunately, not all parents are active in their children's education.⁴⁵ For example, F.C. Joyce Elementary School in North Highlands, California, has difficulty filling the four parent seats on the school council.⁴⁶ Nonetheless, research suggests that parents "want and know how to make informed choices for their children's education."⁴⁷ California State Senator Gloria Romero, Chapter 3's author, stated that "[t]o assume that all less-educated and lower-income parents won't act in their children's best interest is cynical."⁴⁸ She credits her own mother as an example of an uneducated parent who took responsibility for her child's school performance.⁴⁹

38. See Romero, *supra* note 10 ("We are, in every way, riding a wave of parental involvement, one that started recently . . . and manifested itself as the real force behind our latest parental choice laws in Sacramento.").

39. See Philip Vassallo, *Empowering Parents Through School Choice*, CATO.ORG, Oct. 20, 2000, http://www.cato.org/pub_display.php?pub_id=4472 (on file with the *McGeorge Law Review*) ("[S]tudies indicate that parents with children in choice programs attend more school activities, volunteer more in their children's schools, communicate more with teachers, and help more with homework.").

40. *Id.*

41. *Id.*

42. Laurel Rosenhall & Diana Lambert, *Race to the Top: Parents Get New Say in Schools*, SACRAMENTO BEE, Jan. 7, 2010, at A1.

43. *Id.*

44. *Id.*

45. See *id.* ("Torie England, principal of F.C. Joyce Elementary in North Highlands, said it's tough to get parents engaged.").

46. *Id.*

47. Vassallo, *supra* note 39.

48. Romero, *supra* note 10.

49. *Id.*

B. Opposition

Aside from the lack of parental involvement, critics also argue the Open Enrollment Program amounts to little change.⁵⁰ California already allows school districts to voluntarily accept inter-district transfers,⁵¹ and the No Child Left Behind Act allows students in under-performing schools to transfer to other schools within the district.⁵²

Research on the No Child Left Behind Act demonstrates that most students do not take advantage of the ability to transfer schools.⁵³ Parents may not transfer their children because they prefer that reforms focus on improving the school rather than abandoning it.⁵⁴ Opponents stress that we should “strengthen the quality of all schools rather than allowing parents to search from among fairly mediocre alternatives in a lot of communities.”⁵⁵

Critics also fear that Chapter 3 creates a mandate without providing the money for its implementation.⁵⁶ Chapter 3 requires open enrollment but does not provide funding for busing or transportation, and opponents fear the lack of funding will force schools to use scarce classroom resources for transportation costs.⁵⁷ This issue is especially problematic in high poverty areas.⁵⁸

Critics further argue that Chapter 3 punishes schools but does nothing to provide resources to help them improve.⁵⁹ They see the issue as one relating to California’s budget cuts, not to failing schools.⁶⁰ Opponents fear that Chapter 3 will “set those students and schools up for failure.”⁶¹

50. Rosenhall & Lambert, *supra* note 42.

51. CAL. EDUC. CODE § 48301(a) (West Supp. 2010).

52. Rosenhall & Lambert, *supra* note 42.

53. *Id.*

54. See Press Release, Cal. Sch. Bds. Ass’n, SBX5 1 (Romero) Is Not the “Reform” California Needs (Nov. 3, 2009), available at http://www.csba.org/NewsAndMedia/News/NewsReleases/2009/110309_RTTTresponse.aspx (on file with the *McGeorge Law Review*) (“The fact is most parents want their neighborhood school to be their school of choice. Making that a reality is where the real focus should be.”).

55. Rosenhall & Lambert, *supra* note 42.

56. Press Release, Cal. Teachers Ass’n, Defeat Newest Version of Bad Race to the Top Bill (Jan. 3, 2010), available at <http://www.cta.org/Issues-and-Action/Legislation/Alerts/20100103.aspx?print=true> [hereinafter Press Release, Cal. Teachers Ass’n] (on file with the *McGeorge Law Review*).

57. *Id.*

58. Rosenhall & Lambert, *supra* note 42 (“We’re not convinced the funding mechanisms are in place to allow a student from a high poverty area (the transportation they’ll need to get to a better school in another district).”).

59. Press Release, Cal. Teachers Ass’n, *supra* note 56.

60. Press Release, Cal. Sch. Bds. Ass’n, Education Leaders Implore Governor Not to Throw Schools Under the Bus (Jan. 4, 2010), available at http://www.csba.org/NewsAndMedia/News/NewsReleases/2010/010410_EducationLeadersImploreGovNotToThrowSchoolsUnderBus.aspx (on file with the *McGeorge Law Review*).

61. Press Release, Cal. Teachers Ass’n, *supra* note 56.

Money, however, may not solve all school issues: since 1999, both the state and federal governments provided \$2.5 billion to 2,240 failing public schools.⁶² Yet “[f]or at least seven years, 924 of those schools continued failing Over the past decade, only eight of them have turned around.”⁶³ Research shows that student performance at those failing schools remained stagnant even after receiving the money, and the studies could not draw a direct link between any improvement and the extra funds.⁶⁴ Fifty-two percent of adults believe that an open enrollment program would better improve education than spending money.⁶⁵ The same survey also found that fifty-nine percent believe that an open enrollment program “is more likely to produce accountability than oversight by a school board.”⁶⁶

C. California’s Race to the Top

California, along with forty states and the District of Columbia, applied for the first phase of the federal Race to the Top funds.⁶⁷ Unfortunately, California was not among the sixteen finalists.⁶⁸ Yet one application reviewer commented that “California [did] a good job of ‘demonstrating other significant reform conditions,’” and that “[p]arent empowerment is essential.”⁶⁹ Another reviewer noted that California “provided compelling evidence that it is committed to additional systemic reforms related to empowering parents.”⁷⁰

In the second phase of the competition, the DOE named California as one of the nineteen finalists.⁷¹ Ultimately, however, the grants went to ten other states.⁷² California’s score for “[d]emonstrating other significant reform conditions” was an average of 4.8 out of a possible five points in both phases of the competition.⁷³

62. Romero, *supra* note 10.

63. *Id.*

64. *Id.*

65. Vassallo, *supra* note 39.

66. *Id.*

67. Press Release, Delaware and Tennessee Win First Race to the Top Grants, *supra* note 6.

68. See Press Release, U.S. Dep’t of Educ., 16 Finalists Announced in Phase 1 of Race to the Top Competition (Mar. 4, 2010) (on file with the *McGeorge Law Review*) (listing the sixteen finalists).

69. U.S. Dep’t of Educ., Race to the Top Technical Review Form - Tier 1: California Application #1400CA-4, at 8 (2010), available at http://www.racetothetop.org/cs/rttt/download/resources/187/Round_1_Review?x-r=pcfile_d (on file with the *McGeorge Law Review*).

70. *Id.*

71. Press Release, U.S. Dep’t of Educ., 18 States and D.C. Named as Finalists for Race to the Top (July 27, 2010), available at <http://www.ed.gov/news/press-releases/18-states-and-dc-named-finalists-race-top> (on file with the *McGeorge Law Review*).

72. Press Release, U.S. Dep’t of Educ., Nine States and the District of Columbia Win Second Round Race to the Top Grants (Aug. 24, 2010), available at <http://www.ed.gov/news/press-releases/nine-states-and-district-columbia-win-second-round-race-top-grants> (on file with the *McGeorge Law Review*).

73. U.S. Dep’t of Educ., Race to the Top Panel Review by Applicant: for California, Phase 2, available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/score-sheets/california.pdf> (last visited on Feb. 22, 2010) (on file with the *McGeorge Law Review*).

The only reviewer that did not give California full marks did not give a reason why.⁷⁴ Even so, the “[d]emonstrating other significant reform conditions” category may not have had a significant impact on California’s overall success in the competition because it was only worth five out of a total five-hundred points.⁷⁵

V. CONCLUSION

Chapter 3 gives parents the opportunity to transfer their child from a failing school to any better-performing school within the state.⁷⁶ Chapter 3 also provides parents the opportunity to bring change to their child’s failing school and demand reforms.⁷⁷ Whether parents actually take advantage of their new powers is up to them, but because of Chapter 3, parents at least have the opportunity to do so.⁷⁸ Although California did not win a grant in either phase of the competition for the Race to the Top funds, Chapter 3 may not have contributed to California’s failure,⁷⁹ and many of its provisions will still remain in effect to provide California with many of the benefits it has left to offer.⁸⁰

74. U.S. Dep’t of Educ., Race to the Top Technical Review Form - Tier 2 California Application #2200CA-4, at 22 (2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/comments/california.pdf> (on file with the *McGeorge Law Review*). The particular reviewer gave California only four points. *Id.*

75. U.S. Dep’t of Educ., Race to the Top Panel Review by Applicant: For California, Phase 2, *supra* note 73.

76. Romero, *supra* note 10.

77. Shirley Ford, Parent Revolution Lead Organizer, Address at the Signing of SB 4 into Law (Jan. 7, 2010) (transcript available at <http://www.gov.ca.gov/speech/14136>).

78. See Address by Arnold Schwarzenegger, *supra* note 1 (“Now, because of SB 4, parents have the right to free their children from . . . underperforming schools [N]ow parents have the means to dismiss ineffective school principals and low performing school principals.”).

79. See U.S. Dep’t of Educ., Race to the Top Panel Review by Applicant: For California, Phase 2, *supra* note 73 (stating that “[d]emonstrating other significant reforms” is worth five out of five hundred points and that California scored an average of 4.8 in both phase one and phase two of the competition).

80. See Race to the Top Frequently Asked Questions (FAQ): Questions about Legislation, <http://www.caracetothetop.org/cs/rttu/print/htdocs/faq1.htm#SBX54> (last visited Feb. 22, 2010) (on file with the *McGeorge Law Review*) (“[SB X5 4] does contain several elements that would remain statewide requirements regardless of whether the State wins the Race to the Top competition. . . .”).

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