

## MEMORANDUM

TO: Superintendents, Principals and School Boards  
FROM: Molly Bachman, General Counsel  
SUBJECT: Public High School Choice (16 V.S.A § 822a)  
DATE: March 27, 2017

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We have received several inquiries regarding limits on the number of students that may transfer from a school under the public high school choice law, which is codified at 16 V.S.A. § 822a.

There are two limits in the law:

1. First, the number of new transferring students is calculated annually and may not be fewer than 5 percent of the resident students enrolled in the sending high school or 10 students, whichever is less. The number of resident students is determined as of October 1 of the year in which the calculation is made.
2. Second, the maximum total number of students that may transfer in any year is 10 percent of all resident high school students or 40 students, whichever is less. This means that a school must allow 10 new transfers each year (or 5 percent if that is a smaller number) until the total number of students participating in public high school choice reaches the maximum limit of 40 students (or 10 percent of the student population if that is a smaller number).

A student who is participating in the school choice program must be permitted to continue in successive years. This may have an impact on how many new students may transfer in a given year. For example, a school has 100 students. In year one, 5 students participate in school choice, which is 5 percent of the resident students. In year two, 5 more students may participate, which brings the total number of students participating in school choice to 10 percent. No additional students may participate until some of the 10 students who currently participate graduate or otherwise leave the school choice program.

If a school has 500 students, 5 percent of the student population is 25 students. Consistent with the law, the school board may limit new transferring students to 10 in year one. If the school similarly limits new transfers in each of years 2, 3 and 4 to 10 students, there will be a total of 40 participating students. No more students may be allowed to participate in high school choice until some of the students who are participating graduate or otherwise leave the school choice program. If the same school permitted a full 5 percent of its students – 25 students - to transfer in year one, and all of the students continued in school choice, there would be 15 slots available for year 2. If 15 students were permitted to transfer in year 2, no additional students could transfer in years three or four unless some of the 40 participating students graduate or otherwise leave the program. Note that a “new transferring student” for purposes of calculating the five percent does not necessarily mean a freshman student.

For specific questions, contact AOE’s Legal Department at (802) 479-1756 or (802) 479-1761.