

# Open Enrollment Program Regulations

These regulations have been adopted in conjunction with Thompson School District Board Policy JFBB (hereinafter referred to as “the Policy”) regarding the open enrollment program.

## Program Compliance

The principal of each school shall be responsible for ensuring program compliance, including the following duties related to the open enrollment program which may be delegated to a designee of the principal’s choosing:

1. Checking student enrollment records to determine that each student is a non-resident of that school’s attendance area and has been validly enrolled through the open enrollment program, or is placed pursuant to an open enrollment program exception.
2. Providing open enrollment staff accurate information regarding the number of seats available per grade level as determined in conformity with the provisions of these regulations regarding sufficient staffing and space availability.
3. Ensure students do not enroll in or otherwise commence their education within the school at times other than the beginning of the school year unless the student has been placed into the school through an open enrollment program exception, in which case the principal or designee shall ensure that the commencement occurs at a natural break in instruction as that term is defined in the Policy.
4. Communicate use of elementary reserve seats to open enrollment staff pursuant to the change in residence provision noted *infra*.

## Program Timelines and Deadlines

For purposes of this section, open enrollment has been abbreviated to “OE”

The OE application window opens.....	First School Day in November.
The OE application window closes.....	First day of school for the next school year.
Offers of admission sent.....	After the First Friday School day in May.
OE admissions acceptance deadline..	5 school days after the offer of admission.
Deadline for filing of CE appeals.....	10 school days after the offer of admissions.
Waitlist Expiration.....	First school day of the following school year.
CE start date.....	First school day of the following school year.

All applications for open enrollment must be submitted before the first day of school.

## Program Notice Requirements

1. **Defined:** As used in this subsection, “notice” shall mean written notice via email to the student’s parent or guardian on file at the time of the notice. Notice may also be satisfied by another method prescribed or permitted by other operation of law as that term is defined in the Policy.
2. **Annual Notice:** Non-resident students who have previously been enrolled in a TSD school will be notified on an annual basis of the open enrollment program and upcoming open enrollment program deadlines. No non-resident student or their parents/guardians shall be notified in advance of any other non-resident student or other parent/guardian.
3. **Notice of Application Status:** All students applying through the open enrollment program shall be notified in writing of a change in the status of their open enrollment application such as an offer of admission, waitlist status, or denial status.
4. **Notice of Open Enrollment Program Exception Placement:** All students must further be notified when their child is being moved outside the open enrollment program school via an open enrollment program exception prior to the commencement of the move. Such notices shall indicate the author by name and title, contain a justification for the change in application status or placement, and shall notify the recipient of their rights to appeal under the open enrollment program.

5. **Notice of Non-Discrimination and Appeal Rights:** Annual notices, notice of open enrollment program exception placements and final appeal determinations shall contain TSD's statement of non-discrimination as well as an appropriate notice of the student's right to appeal. For annual notices, the notice shall contain the summary of the bases for which an appeal may lie as set forth in these regulations. For notice of open enrollment program exception placements, notice shall include the applicable basis for appeal and the applicable standard of review for such appeals. Final determinations of appeal shall notify the party that no further appeal may be taken in accordance with this policy.
6. **Remedy:** Those experiencing a failure to provide notice by TSD staff in accordance with these provisions may contact the acting director of human resources by filing a complaint. Failure to provide notice in accordance with this policy shall not constitute grounds for enrollment or revocation of placement, although such failure may be the basis for TSD internal remedial action. Similarly, such notice failures shall not constitute a basis for appeal. These remedies shall under no circumstances be understood or interpreted to waive the confidentiality provisions contained in TSD Board Policy GBJ, or the statutory exceptions for employee personnel files contained within the Colorado Open Records Act (CORA) at C.R.S. 24-72-202(4.5).

## **Applications for Open Enrollment**

In order to apply, families must use the district's online application form. A single application may be submitted for each open-enrollment applicant. Each open-enrollment applicant may submit a maximum of four (4) schools the student seeks open enrollment into. Each desired school the student seeks enrollment into must be assigned a relative preference of one (1) to four (4). Schools designated by the applicant as their first (1st) preference indicates that the school is the most highly sought-after school by the student. Schools designated by the applicant as their fourth preference (4th) indicates that the school is the least sought-after school amongst those schools the child seeks enrollment into.

Students may submit as many open enrollment applications as they wish with each application indicating up to four preferences. However, only the final of the applications will be considered as the students actual open enrollment

application. The school district will disregard all previous open enrollment applications without exception.

Families experiencing difficulty with the online platform may contact the district for assistance, but in no event will the open enrollment application deadline be extended, nor will late applications be considered except where expressly authorized by the Policy or these regulations.

Non-resident students must indicate on their open enrollment application if they have ever been expelled from any school district for any of the reasons listed in subpoint 5 or 6 of the “Grounds for Denial of Open Enrollment” section of these regulations. Non-resident students must also indicate each victim of the offense for which they were expelled in order for open enrollment staff to determine that the victim student has not been enrolled into a TSD school for which the open-enrollment applicant has applied. Non-Resident students shall also identify all pending criminal charges, active temporary and permanent civil and criminal protective orders, and criminal convictions for which the student has received. Open enrollment staff will follow up with the student to receive copies of official court documents from the open-enrollment applicant regarding any of these items. Failure to disclose such information shall constitute fraud by omission and the student’s open enrollment application will be denied or revoked.

## **Open Enrollment Admissions**

TSD runs its choice enrollment program for resident students. This program consists of a two-phase enrollment process where phase 1 addresses students in transition grades, and phase 2 addresses all other resident students. Open enrollment admissions are offered on a rolling basis, but in no event are offers of admissions made until after the choice enrollment program phases have closed in order to ensure priority seating is available to resident students. Seats available to students applying through open enrollment shall not include reserved seats.

Students applying through open enrollment shall only be offered admission where there exists no resident students on the waitlist for a desired school. So

long as a resident student is on the waitlist, no offer of admission shall be provided to an open enrollment applicant.

Within the determination of which open-enrollment applicants should be offered admission, open enrollment staff shall prioritize non-resident applicants applying pursuant to C.R.S. 22-32-116, returning non-resident applicants to their previous TSD school, and non-resident academic program participants over all other applicants.

In the event a resident student enrolls in their designated attendance area school or is placed pursuant to a choice enrollment program exception into any TSD school, the student's seat shall be selected from the reserve seats available. Open enrollment program staff shall not revoke a non-resident student's offer of enrollment due to late enrollment by a resident student, although the non-resident student may be strongly encouraged to accept enrollment in another TSD school to avoid a future denial of re-enrollment due to overcrowding as an extenuating circumstance.

## **Accepting Offers of Admission**

1. **Priority 1 Acceptance:** Open-enrollment applicants who accept an offer of admission to their first preference school shall be enrolled into the school and removed from all other waitlists. If the open-enrolled student no longer wishes to attend their first preference enrolled school after accepting an offer of admission, the student must reapply through the open enrollment program if there is time, or alternatively, the student may be placed into a preferred school with the most available seats.
2. **Priority 1 Denial:** Open-enrollment applicants who do not accept their offer of admission to their first preference school shall be added to the bottom of the waiting list for their second preference school.
3. **Priority 2, 3, or 4 Acceptance:** Open-enrollment applicants who accept an offer of admission other than their first preference school shall remain on each waitlist for each more preferred school. If an open-enrollment applicant is selected off the waiting list for a higher priority school, the open-enrollment applicant can accept the higher priority seat by revoking

their current seat offering, which in turn shall be offered to the next student on the waiting list.

4. **Priority 2, 3, or 4 Denial or Waitlist Expiration.** Should an open-enrollment applicant deny all open enrollment offers or still be on the waiting list when the waitlist expires, the student shall not be enrolled in any TSD school.

## **Determining Availability of Space or Teaching Staff**

### **Sufficient Staffing**

Sufficient staffing shall mean as follows:

1. With respect to schools primarily offering in-person learning or synchronous in-person learning in grades kindergarten through twelfth, “sufficient staffing” is defined as a reasonable ratio (as determined by the district in its sole discretion) of students within the open-enrollment applicant’s grade level relative to the number of teachers assigned, hired, or seeking voluntary transfer to the desired school, of that are licensed to teach the open-enrollment applicant’s grade, required courses, or specialized academic programming. Sufficient staffing excludes any situation in which a desired school would be required to eliminate elective course offerings in order to ensure an open-enrollment applicant’s access to courses required for graduation, nor shall it include any situation where the desired school would be required to hire additional teachers or support staff to comply with collectively bargained for student-to-teacher staffing ratios. Nevertheless, sufficient staffing shall not be the basis to deny any student admissions where a voluntary or involuntary transfer would not be impractical due to a lack of space availability.
2. For schools or programs offering primarily asynchronous online learning, sufficient staffing shall not be a reason for denial of admissions for open enrollment. However, such programs shall be limited on a space availability basis.

### **Space Available**

1. For schools or programs offering primarily in-person learning, space available shall mean a reasonable number of students which can be accommodated within all classrooms or other learning spaces servicing a

grade level while complying with the application priority requirements announced in the Policy and these regulations. Space available also includes considerations regarding the relative importance of individualized teacher-to-student attention for class and/or program offerings. The district further reserves the right to retain space for projected student enrollment.

2. For schools or programs offering primarily asynchronous online learning, space available shall mean 100 seats reduced by the number of students currently enrolled or offered enrollment into the program.

## **Open Enrollment Program Exceptions**

### **Administrative Placement**

The primary purpose behind administrative placements is to accommodate matters of safety and security. Students moved under the administrative placement exception to the open enrollment program include, but are not limited to:

- For Students with pending charges related to a crime of violence or unlawful sexual offense where the victim is a student, the school's investigation has determined the charges are founded by sufficient evidence, and the student has had the appropriate due process protections afforded in such circumstances (generally requiring only an opportunity to be heard).
- Students convicted of crimes of violence or unlawful sexual offenses where the victim is a student or there is a foreseeable risk that the unlawful conduct may reoccur on school grounds or at school activities.
- Students who engage in conduct that is detrimental to the safety, welfare, and morals of other students or school personnel.
- Students who engage in conduct that does or would cause substantial disruption to the school day's functioning or environment, or otherwise create a dangerous and unsafe learning environment.
- Student removals in compliance with Title IX's permissible responses to complaints of unlawful or discriminatory sex-based harassment as noted in 34 CFR § 106.44(c).

For students with disabilities, the district will comply with state and federal law in connection with consideration of administrative placement.

The factual basis underlying the determination that a student will be administratively placed into another school or program shall be kept confidential from all persons without a legitimate educational interest in such underlying facts, except where disclosure is required by law or court order. The fact that a child has been administratively placed in a school shall not be considered confidential.

Designated TSD staff permitted to make administrative placements are TSD's Intensive Discipline Team and/or the acting Executive Director of Student Services.

## **Academic Programs**

The following programs shall be offered as academic program placements in the open enrollment program:

- Agricultural Education Pathways Program
- Dual Language Immersion
- Alternative Education Campus
- International Baccalaureate (IB)
- Loveland area Integrated School of the Arts (LISA)
- Science, Technology, Engineering, and Math (STEM)
- Secondary Options for Achievement Resulting in Success (SOARS)
- Thompson Career Campus / Career Technical Education Pathways (TCC/CTE)
- Thompson Online (TOL)

This list of programs is illustrative of the program types that are to be offered through open enrollment. Any program that a) has a separate application from the regular enrollment process, and b) the programing is offered at fewer than all schools serving the grade levels for which the program is offered, or c) requires education in a non-traditional in-person classroom setting.

**Application Priority:** Open enrollment applications for students who have been accepted to an academic program offered only at specific TSD schools shall be prioritized on all school open enrollment waitlists.



**Continuous Program Compliance Requirements:** All open-enrolled students enrolled through an academic program placement must continuously meet all program eligibility and participation requirements. Accordingly, open-enrolled students enrolled through academic program placements must actively participate in the academic program, continuously attend all mandatory academic program events and activities, and meet pre-established program levels of performance, so long as such requirements do not result in disparate access for students on the basis of a protected classification.

**Program Participant Non-Compliance:** In the event that a student fails to meet the continuous program compliance requirements outlined *supra*, the open-enrolled student may be denied academic program placement priority in future enrollment years.

## **Accessible Education Placements**

Thompson School District is committed to equal access for all students under the provisions of the Policy and these regulations. As a result, the district shall not inquire about an applicant's disability status until after the open-enrollment applicant has been admitted to their desired school. Students with disabilities shall retain their application's relative priority until the time in which a final decision has been made on the application.

Where it appears to school personnel that a student with a disability has accepted open enrollment into a school but, due to the unique characteristics of a student's disability and/or necessary special education services, modifications, accommodations, and/or related services, the student's individual plan of education cannot be implemented in the desired school without denying the student a free and appropriate public education, the following provisions shall apply.

1. The school personnel shall immediately send notice to the student's IEP or 504 team of such concern if applicable (for personnel other than those serving on the student's IEP or 504 team).
2. When possible, the student's IEP or 504 team shall convene a minimum of thirty (30) days in advance of the student commencing the new placement to determine if the child can receive a free and appropriate public education in the desired school for which the student was admitted and to consider parent input on location. For students receiving special

education services through an IEP, the team shall notify the director or assistant director of special education. For students with 504 plans, the team shall notify either the coordinator for 504 or the executive director of student services.

3. If the IEP or 504 team determines that the desired school can provide the student with a free and appropriate public education, then the desired school must take no action to interfere with the student's enrollment and participation in their open-enrolled school. The open-enrolled school may, however, in conformity with the requirements state and federal law, consider reevaluation or other modifications to the student's IEP or 504 plan.
4. If the IEP or 504 team determines that the open-enrolled school cannot provide the student with a free and appropriate public education, then the IEP or 504 team must draft and provide the parent with a specific explanation supporting such a determination. The written explanation must meet the requirements of 34 C.F.R. § 300.503. Under such circumstances, the IEP or 504 team may permit the student to either return to the school they last attended, or may permit the parent to select another school originally requested for open enrollment so long as the school has space available and sufficient staffing and the selected school is able to provide the student with a free and appropriate public education. If no consensus is reached between the Parent and the IEP or 504 team on the placement, the director of special education or executive director of student services shall have the final decision-making authority to assign the student to an appropriate school or program placement.

**Designated TSD staff member to make accessible education placements:** IEP/504 Team first, otherwise the executive director of student support services.

## **Appeal Procedure**

After exhaustion of any other, more specific processes expressly noted and applicable within the Policy or these regulations, the following procedure may be utilized by any parent to seek appeal of an improper denial of open enrollment.

1. **Timeline:** TSD staff strives to resolve all appeals before the end of the spring semester. However, depending on the number of appeals filed and the press of other business, final determinations may be made later. All final

determinations regarding appeals shall be rendered before the end of June 30th each year.

2. **Standard:** All appeals will be reviewed by an abuse of discretion standard. Under such a standard, the reviewing staff member will determine if the alleged circumstances would or did contravene the provisions of the Policy and these regulations. Where the Policy or these regulations delegate a staff member discretion in determining how a portion of the program will be implemented, the reviewing staff member shall only be permitted to override action taken within the delegated staff members discretion if it constitutes a) a plain error in interpreting or applying the Policy, or b) is against the weight of the evidence supporting the factual allegations.
3. **Reviewing Staff Member:** All appeal determinations shall be issued under authority of the applicable assistant superintendent, although the actual review and final determination may be delegated to another TSD staff member with minimum credentials of executive director or an equivalent designation.
4. **Contents of Final Determination:** All final determinations regarding appeals shall indicate to the appellant in writing the following information:
  - a. A concise description of each appeal basis reviewed.
  - b. A final determination for each appeal basis indicating if the alleged circumstances would, when taken as true, constitute a violation of the Policy and these regulations. Where the alleged circumstances do not constitute a violation of the Policy and these regulations, the final determination shall provide a concise explanation of why the facts do not constitute a violation of the Policy and these regulations and the basis shall be dismissed without further comment or process.
  - c. If the appeal basis would constitute a violation of the Policy or these regulations, the final determination shall set forth what investigation of underlying facts was conducted, what relevant facts could or could not be verified through the investigation, and how those facts influence any course of action.
  - d. Where non-compliance is discovered or verified, the final determination shall have broad discretion to take action to require compliance with the Policy and these regulations, or may take other appropriate remedial actions to cure the harm incurred. Such actions and directives shall be

summarized in the final determination. Appropriate remedial actions shall comply with state and federal law, but need not necessarily comply with the provisions of this policy except this subsection regarding appeals.

## **Fraud / Material Omissions**

Material misstatements, implied falsities, and material omissions shall constitute extenuating circumstances resulting in withdrawal of an open enrollment application and revocation of open enrollment. The following is a non-exhaustive list of facts that are material to the determination of a open enrollment application:

- Falsification of address.
- Failure to notify of a change in address within TSD's designated attendance boundaries.
- Failure to notify of a change in address outside TSD's designated attendance boundaries.
- Failure to notify of pending or active expulsion.
- Failure to notify of an active or pending civil or criminal protective order by another student.

## **Change in Residence**

In the event that a resident student wishes to enforce those provisions set forth in C.R.S. 22-32-116, any such re-enrollment shall be allocated through reserve seats in the previously enrolled school.

## **Eligibility for Activities**

Open-enrolled students will have the same curricular and extracurricular status as all other students attending the school as determined by applicable law, the bylaws of the Colorado High School Activities Association, and the district's eligibility requirements. Students should be aware that changing schools may have an effect on the student's eligibility for athletics. Current information about eligibility related to school transfers or open enrollment is available at [www.chsaa.org](http://www.chsaa.org).

Any student who gains open enrollment into a school by fraud or omission forfeits eligibility to participate in the school's activities.

## **Grounds for Denial of Open Enrollment**

An open enrollment request may be denied at any time if:

- 1) There is a lack of space or teaching staff within a particular program or school requested.
- 2) The school requested does not offer appropriate programs for the student, is not structured or equipped with the necessary facilities to meet the student's special needs, or does not offer a particular program requested.
- 3) The student does not meet the established eligibility criteria for participation in a particular program including age requirements, course prerequisites, and required levels of performance.
- 4) A desegregation plan is in effect for the school district, and such denial is necessary in order to enable compliance with the desegregation plan.
- 5) The student has been expelled or is in the process of being expelled from any school district for any of the following reasons:
  - a) Habitually disruptive conduct as defined in C.R.S. 22-33-106 (1)(c.5).
  - b) Possessing a dangerous weapon without the authorization of the school or the school district on school grounds, in a school vehicle, or at a school activity or sanctioned event.
  - c) Using, possessing, or selling a drug or controlled substance as defined in section C.R.S. 18-18-102 (5) on school grounds, in a school vehicle, or at a school activity or sanctioned event.
  - d) Committing an act that, if committed by an adult, would be robbery pursuant to part 3 of article 4 of title 18, C.R.S., or assault pursuant to part 2 of article 3 of title 18, C.R.S., other than the commission of an act that would be third degree assault under section 18-3-204, C.R.S., if committed by an adult on school grounds, in a school vehicle, or at a school activity or sanctioned event.
- 6) The student has demonstrated behavior in another school district during the preceding 12 months that is detrimental to the welfare or safety of other students or of school personnel including but not limited to behavior that has

resulted in an out-of-school suspension in the other school district or would constitute grounds for an out-of-school suspension in TSD, unless the behavior was or is ultimately determined to be a manifestation of the student's disability.

- 7) Failure to comply with the provisions of part 9 of article 4 of title 25, C.R.S.
- 8) The student has graduated from the 12th grade of any school or is in receipt of a document evidencing completion of the equivalent of a secondary curriculum.

The district will comply with all due process requirements established in state law and Policy JF.

## **Nondiscrimination**

The Board, the superintendent, other administrators, and district employees will not unlawfully discriminate based on a student's disability, race, creed, color, sex, sexual orientation, gender identity, gender expression, marital status, national origin, religion, ancestry, or need for special education services in the determination or recommendation of action under this policy and its accompanying regulation. A lack of English skills will not be a barrier to admission or participation in the open enrollment program.

## **Contact**

The following person/people has/have been designated to handle inquiries regarding the nondiscrimination policies:

<b>Title IX/Employee ADA/504/EEO Compliance Officer.</b>	<b>Student ADA / 504 Compliance Officer</b>
Director of Human Resources 800 South Taft Avenue Loveland, Colorado 80537 (970) 613-5009 nondiscrimination@tsd.org	Executive Director of Student Services 800 South Taft Avenue Loveland, Colorado 80537 (970) 613-5092 nondiscrimination@tsd.org

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Revised February 2, 2022  
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## Legal References

- C.R.S. 22-1-102 (definition of district resident)
- C.R.S. 22-1-102.5 (definition of homeless child)
- C.R.S. 22-20-106 (designation of general and special education responsibilities for students with disabilities)
- C.R.S. 22-20-107.5 (defining district of residence for students with disabilities)
- C.R.S. 22-32-109 (Board duties to adopt specific policies)
- C.R.S. 22-32-110 (1)(k) (definition of racial or ethnic background includes hair texture, definition of protective hairstyle)
- C.R.S. 22-32-110 (1)(m) (Board power to fix boundaries)
- C.R.S. 22-32-116 (if a student becomes non-resident)
- C.R.S. 22-32-138 (duties regarding students in foster care).
- C.R.S. 22-33-104.5 (defining nonpublic home-based education)
- C.R.S. 22-33-106 (grounds to deny admission)
- C.R.S. 22-36-101 *et seq.* (open enrollment)
- C.R.S. 22-36-107 (inbound active duty military families open enrollment and registration)
- C.R.S. 22-54-103 (10.5) (definition of pupil enrollment count day)
- 1 CCR 301-8, Rules 4.03 and 8.07 (prohibiting administrative units from

inquiring about a transferring child's IEP or disability status until after the child has been admitted)

- 1 CCR 301-39 (3.01 - 3.06). (regarding calculation of the pupil enrollment count day).
- 12 CCR 2509-4, 7.301.241 (education requirements for students in foster care).
- 20 U.S.C. § 1400 *et seq* (Individuals with Disabilities Education Act)
- 20 U.S.C. §1681 *et seq* (Equal Opportunity in Education Act, A.K.A.Title IX)
- 29 U.S.C. § 794 (§504 of the Rehabilitation Act of 1973)
- 42 U.S.C. 12101 *et seq* (The Americans with Disabilities Act)

## **Cross References**

- EEAA, Transportation: Walkers and Riders
- IHB, Special Instructional Programs
- IHBG, Home Schooling
- IIB, Class Size
- JC, School Attendance Areas
- JF, Admission and Denial of Admission
- JFABD, Homeless Students
- JFABE, Students In Foster Care
- JFBB, Open Enrollment
- JGA-E
- JHD, Exclusion and Exemptions from School Attendance
- JJJ, Extracurricular Activity Eligibility
- LBD, Charter Schools