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# Innovative Reforms for Utah's Open Enrollment Law



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# **Innovative Reforms for Utah's Open Enrollment Law**

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# Introduction

Utah has been a leader in education choice – both private and public – and can elevate that status with key reforms in its open enrollment law and implementation.

The state's passage of a universal education choice scholarship in 2023 made it one of the first states in the nation to adopt a universal education choice program.<sup>1</sup> This program allows families to use public funds to pay for private or home-school expenses.

Before that, and even before passage of a charter school law, Utah solidified itself in 1990 as a leader of *public school* choice when it created one of the country's first open enrollment laws.<sup>2</sup> Open enrollment policies facilitate students who want to transfer from the public school to which they are geographically assigned to another.

In fact, several reports show that Utah is among the top states with the most robust open enrollment law.<sup>3 4</sup> Last year Utah earned an "A" for its open enrollment policy according to a new metric.<sup>5</sup>

But having been named a public policy leader in private education choice – or open enrollment – does not mean the work is done.

Utah's open enrollment policy landscape and law should be improved in significant and substantive

ways. These improvements include: (1) ensuring districts are in full compliance with the current state open enrollment law as it applies to them, (2) calling for state-level, digestible open enrollment reporting and data, (3) requiring districts to provide parents with a reason any time a student is denied a transfer to a nonresident school or district, and (4) expressly prohibiting by statute residential address discrimination in open enrollment decisions.

Despite drawing praise for having a strong law on the books, Utah still has important gaps that need to be filled to ensure the law is just as strong in practice for parents navigating the open enrollment system in Utah. Such reforms would show another level of commitment and take Utah to another tier of leadership in this space.

Below is a report on the following:

1. History of open enrollment as a public policy in America,
2. Utah's current policies and implementation, and
3. Recommendations for how to improve open enrollment for Utah families going forward.

# History and open enrollment policies

Open enrollment policies help facilitate the transfer of a student from one public school to another public school – a key form of exercising education choice. Policies to this end can be varied, but the objective to help students transfer remains the same. Today, the idea that transferring schools ought to be available and easy to accomplish seems like a no-brainer, but it hasn't always been that simple.

More obvious has been the relationship between a student's residence and the school they were assigned to attend. This relationship still exists today. Consider how common it is that before a family moves into a new area, they ask how the schools in the neighborhood are. It's because we understand school assignment and residential address are linked.

The relationship between residence and school assignment has its roots during the early foundations of the nation as well as the use of local property tax to fund schools.

More recent American history reveals how coupling residence and schooling has sometimes even been used to keep students in certain schools, often preventing some students from obtaining an education that works best for them.

Together, all this history and more has created a need for policies that separate residence from assigned schooling – an approach that has become the default – so that parents have robust choice within the public school system.

Before the founding of America, the Massachusetts Act of 1647 – called the “Old Deluder Satan Act,” as it intended to prevent Satan's attack against the uneducated – provided that education could be paid for by parents or the general inhabitants, which would mean through local property taxes.<sup>6</sup> With time the policy spread, and today we have public schools being financially supported by local property taxes.<sup>7</sup>

Of course, today, public schools are also supported by state and federal sources too, but local taxes have remained a fixture even though some states have tried to get rid of it.<sup>8</sup>

For instance, fiscal year 2022 data about the Minimum School Program (MSP), which is the primary source of funding in Utah for public schools, says that 24.14% of MSP sources came from local revenue.<sup>9</sup>

At some point in American history, a solidified relationship developed between where a family lives, the local taxes paid to schools, and where students attended school. It even became a backdrop for perpetuating racial segregation in schools.

During the early 1900s, the federal government used “redlining” – a practice of delineating financially risky areas on neighborhood maps using the color red – to determine where to offer federal home loans.<sup>10</sup> This practice often took into account race when determining whether neighborhoods or

areas were risky or not.<sup>11</sup> As a result, families in redlined areas were usually stuck living in areas without opportunity for economic growth – and also had worse schools.<sup>12</sup>

This happened across the country, including Utah, where scholars have said that this practice of redlining has led to the economic divide seen in the east and west sides of Salt Lake City today.<sup>13</sup>

Some scholars have pointed out that while segregation in education is illegal, de facto redlining often continues – sometimes as a lingering result of such policies – and that many of the redlined areas across the nation match school district attendance zones of today.<sup>14</sup> Basically, the impacts of those efforts to keep students in undesirable areas from being able to move to another neighborhood may still be felt. In fact, in almost all states, address discrimination is not explicitly prohibited in state open enrollment law or other statutes.<sup>15</sup>

By the 1980s, the idea that where one lived determined the school they had to attend started to crack. There were ideas emerging about open enrollment policies, which could make the transfer of students from one public school to another easier and less burdensome. Prior to this, it might have been possible for students to transfer based on local decision-making, but statewide laws on the topic could make the expectation and process more accessible and predictable for families.

Minnesota in 1988 became the first state to pass an open enrollment law that required districts and

schools to allow students to transfer.<sup>16</sup> The next year, in 1989, a handful of states passed open enrollment laws. In 1990, two years after Minnesota passed the first law, Utah passed its own law along with Idaho and Washington.<sup>17</sup> Many more states followed in time, and today nearly all states have some sort of open enrollment policy.<sup>18</sup>

In 2001 Congress passed the federal law No Child Left Behind, which had an open enrollment type of provision.<sup>19</sup> Students in schools that didn't meet Adequate Yearly Progress for two years had to be able to transfer to a higher-performing school in that districts.<sup>20</sup> While the policy implementation was frustrated by logistics,<sup>21</sup> it demonstrated that the idea of helping students attend the public school that met their need regardless of residence had made its way somewhat into the mainstream.

According to 2024 research, among parents who reported wanting to send their children to public schools, 25% said they wanted to send their children to a school outside their assigned school.<sup>22</sup>

Furthermore, another survey showed that 67% of Americans support ending residential school assignment, alongside 63% who support expanding access to education savings accounts and 66% who support expanding access to education tax credits.<sup>23</sup>

Clearly, the demand for open enrollment exists in today's policy landscape, where families have come to expect the best of both private and public education choices.



# What Utah's approach to public school open enrollment includes

## Mandatory open enrollment

Utah's open enrollment law is considered strong by some rubrics. The law says that a school is open for enrollment if the enrollment level is at or below the enrollment threshold and mandates that a school "shall" allow a nonresident student to enroll in a school if it is below the open enrollment threshold.<sup>24</sup> It allows for open enrollment even beyond that.<sup>25</sup>

It also requires local school boards to create policies on open enrollment, including how to apply, application forms, and other information.<sup>26</sup> Notification of the decision to accept or reject a student must be provided to parents of the applying student.<sup>27</sup> Notification must be given to the student's resident school or district if the applying students get accepted to a nonresident school.<sup>28</sup>

## Acceptance and rejection of applicants

While the law says it is up to local boards to create the specific policy for accepting students, the state statute does outline what can and cannot be reasons for acceptance or rejection of a student's application to attend a different school.<sup>29</sup> For example, acceptance or rejection can be dependent on the enrollment threshold, grade level or program capacity; not offering or having capacity in a special education program;

compliance with state or federal requirements (through maintaining heterogeneous populations or reduced class sizes); the prospective student's willingness to comply with district policies; or prioritizing intradistrict transfers over interdistrict transfers.<sup>30</sup> Additionally, applications can be denied based on serious infractions or misbehaviors in certain instances.<sup>31</sup>

Reasons that are not allowed to be considered when accepting or rejecting student applications are academic achievement, athletic or other extracurricular abilities; the fact that a student needs special education services; English language proficiency; or previous disciplinary proceedings.<sup>32</sup>

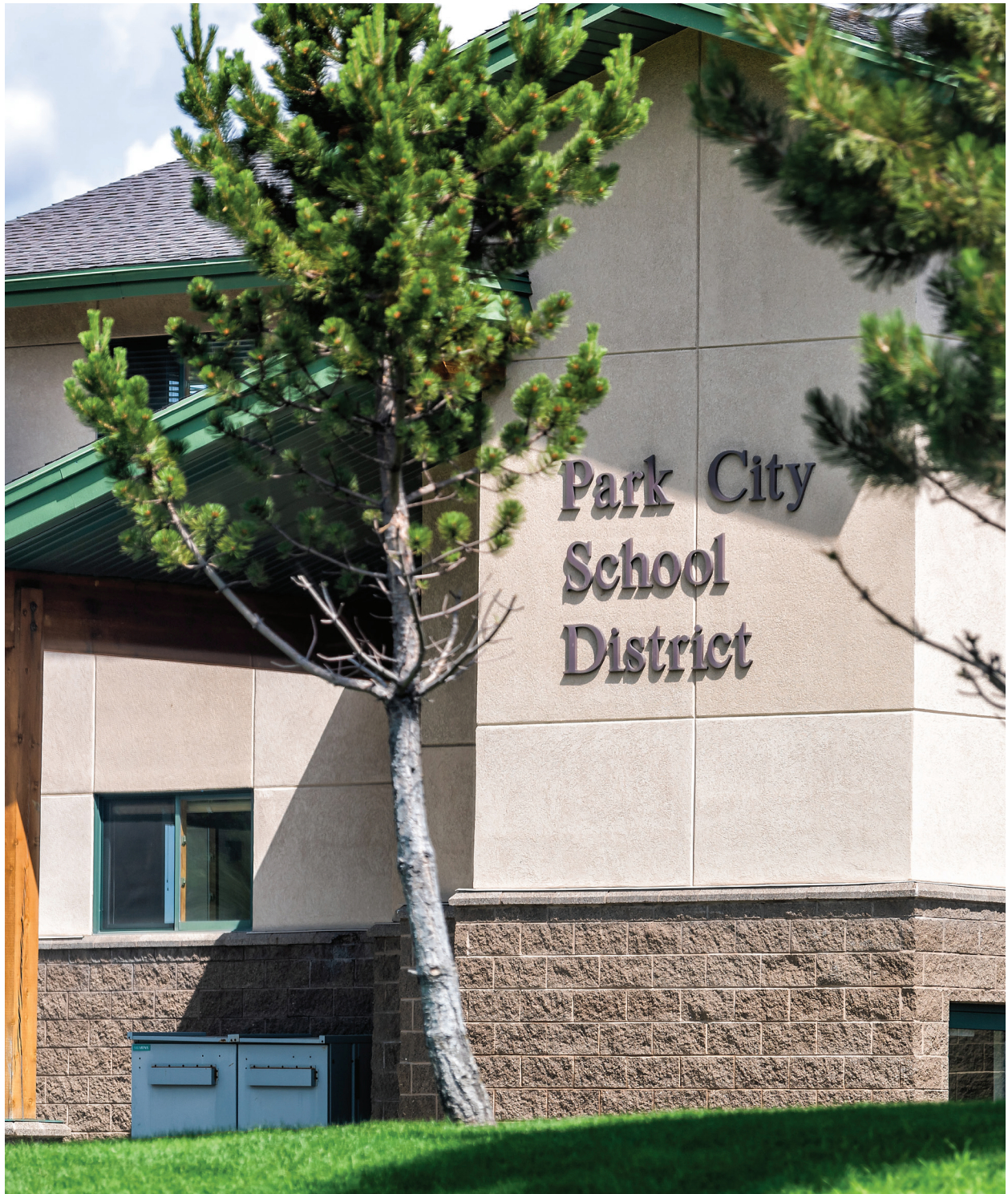
Appeals of decisions can be made to the local school board of the nonresident student, but the decision has to be found, by clear and convincing evidence, to be a violation of law or regulation or to be arbitrary and capricious.<sup>33</sup>

## Information on websites

Likewise, school districts are responsible to provide certain information on their respective websites about open enrollment. Specifically, Utah Code 53G-6-403 (5) requires each local school board to post on their website the following seven pieces of information: (1) the school's maximum capacity; (2) the school's adjusted capacity; (3) the school's projected

enrollment used in the calculation of the open enrollment threshold; (4) actual enrollment on October 1, January 2, and April 1; (5) the number of nonresident student enrollment requests; (6)

the number of nonresident student enrollment requests accepted; and (7) the number of resident students transferring to another school.<sup>34</sup>





# Policy recommendations

## **Audit school district compliance with open enrollment law**

As part of our effort to understand what Utah's law already accomplishes in practice, we sought to find what information the 41 local school districts offered about open enrollment. The good news is all provide some type of information related to the subject.

However, our search became more challenging when we checked compliance with a small portion of the law, information that should be easy to find online: the seven pieces of data required by statute to be posted on the websites for each of the 41 local school districts or what could be called the "capacity report." What we found during our review of this specific data was a significant lack of compliance.

For example, only six school districts – Canyons, Duchesne, Jordan, Kane, Nebo and Provo – post on their websites the entire capacity report, or in

other words, all categories of information required by law for each school in their boundaries.

Another 15 districts post a partial capacity report, meaning some or most of the school-specific information required in the statute.

This means, of course, that we could not find a capacity report as described in statute on the websites of almost half of Utah districts (20 out of 41).

At the same time, because all 41 districts post some information online, they may have offered information like open/closed status of schools<sup>35</sup>, local board policy language about open enrollment as required by law, application links, or other admission details that varied widely. Open enrollment or admissions may also play out differently in some rural or small districts and therefore may affect their approach to sharing open enrollment information. Likewise, after additional direct outreach, a few local school districts that did not have any of the capacity report data said



they would be updating their websites with that information soon.

Though we recognize the workload that districts already have trying to comply with proliferating

policies may be a challenge, our limited review of capacity reports suggests there is merit in looking further at what open enrollment information is actually available.

District	Posts entire open enrollment capacity report as described in statute	Posts partial capacity report as described in statute	Capacity report not found but provides other open enrollment information
Alpine		X	
Beaver			X
Box Elder		X	
Cache		X	
Canyons	X		
Carbon			X
Daggett			X
Davis		X	
Duchesne	X		
Emery		X	
Garfield County			X
Grand County			X
Granite			X
Iron			X
Jordan	X		
Juab		X	
Kane	X		
Logan City			X
Millard			X
Morgan		X	
Murray			X
Nebo	X		
North Sanpete		X	
North Summit			X
Ogden City		X	
Park City		X	
Piute			X
Provo	X		
Rich			X
Salt Lake			X
San Juan			X
Sevier			X
South Sanpete		X	
South Summit		X	
Tintic		X	
Tooele			X
Uintah			X
Wasatch		X	
Washington		X	
Wayne			X
Weber			X
<b>TOTAL</b>	<b>6</b>	<b>15</b>	<b>20</b>

**Auditors for the Utah Legislature or Utah State Auditor should conduct an audit to better understand what parts of the existing policy are already being complied with and which are not.** The audit could be much broader in scope than simply looking at what's required to be posted on the websites. For example, it could include things like assessing whether or how well their policies match the requirements regarding acceptance and rejection or whether they have an open enrollment policy at all.

## **Report open enrollment information on a state website**

Utah's law does not require open enrollment reporting from its state education agency (or Utah School Board of Education). This is probably due to the fact that local boards are required to offer information. The current compliance problem at the local level with sharing key, useful information on their websites might not go away with adding a reporting requirement to the state agency, but it might provide better oversight, highlighting when a district has not offered the data or encouraging districts to gather and provide the information.

Additionally, it's likely more efficient for the public seeking information to check one website rather than many individual websites. The state reporting could include additional items that districts are not yet required to offer, including reasons for denial of application (so long as there are sufficient numbers to protect the identity of students).

The Utah State Board of Education should report simple, user-friendly open enrollment data on its website for easy access by parents. Having a central

location for digestible open enrollment information by district or school could make pursuing open enrollment much easier for parents. The USBE's Parent Portal could be a possible location. Perhaps a central location could also eventually be made to serve as a one-stop shop for available openings and application processes.

## **Show transparency to parents on reasons for denial**

Utah's current law requires that parents be notified of a nonresident school district's decision to accept or deny a student's application to transfer. What it does not require is that a specific reason for a denial be provided to them in that communication.

**Utah school districts should be required to give parents the reasons for their decisions on open enrollment applications.** Offering parents a reason is good policy because it: (1) gives parents better transparency and may help them remedy their circumstance or look for another school option, (2) creates accountability for school districts that discourages the use of unlawful reasons for denying an open enrollment application, and (3) builds trust through openness between parents and schools in an era where the parent-school relationship needs strengthening.

## **Prohibit address discrimination**

As already noted, Utah's law prohibits several reasons for accepting or denying a student application to transfer, but it doesn't explicitly bar address discrimination. Address discrimination refers to making determinations to accept or reject

someone's open enrollment application based on their residential address.

This is important, since addresses have not only been used as a default to assign students to schools, but historically have also been a tool to keep students from undesirable areas out of certain schools. While most school leaders act in good faith and do not make decisions based on a student's neighborhood, recent news articles suggest subtler forms of bias or exclusion might sometimes creep into open enrollment policy implementation or attitudes, as made headlines in Oklahoma and Kansas in 2022.<sup>36 37</sup>

Furthermore, Idaho recently passed a law to strengthen its open enrollment policy and

included a prohibition of address discrimination as a preventive approach.<sup>38</sup> Given the history of discrimination enabled by assigning public schools based on residential address, it makes sense to provide that such discrimination is prohibited by law.

**Utah should prohibit address discrimination in Utah's open enrollment law.** Although most or even all current education leaders may already abide by this policy, having it in code prevents any potential for misuse or misunderstanding and bolsters Utah's place as a leader in this space.

# Conclusion

Utah is a state that seeks balance in its policy-making, a place where education policy is created to support both private and public options. While Utah has made great strides in increasing funds for public schools and simultaneously providing families with scholarships for private education,

there are problematic gaps in its open enrollment policy and implementation that should be filled. Doing so will further improve public education as part of the choice landscape for students and their families.





# Endnotes

<sup>1</sup> Funding for Teacher Salaries and Optional Education Opportunities, HB 215, 65th Utah Legislature (2023).

<sup>2</sup> Marga Torrence Mikulecky, "Open Enrollment is on the Menu – But Can You Order It?" Education Commission of the States, June 2013, <https://www.ecs.org/clearinghouse/01/07/96/10796.pdf>.

<sup>3</sup> Jude Schwalbach, "Public Schools Without Boundaries: Ranking every state's K-12 open enrollment policies," Reason Foundation, November 2022, <https://reason.org/open-enrollment/public-schools-without-boundaries-a-50-state-ranking-of-k-12-open-enrollment/>.

<sup>4</sup> Jude Schwalbach, "Examining Every State's Open Enrollment Policies," Reason Foundation, October 2023, <https://reason.org/open-enrollment/public-schools-without-boundaries-2023/>.

<sup>5</sup> Jude Schwalbach, "Public Schools Without Boundaries 2024," Reason Foundation, October 2024, <https://reason.org/open-enrollment/2024-public-schools-without-boundaries/>.

<sup>6</sup> Old Deluder Satan Law, Trial Court Law Libraries, Massachusetts Court System, <https://www.mass.gov/doc/old-deluder-satan-law>.

<sup>7</sup> Martin F. Lueken, "History of School Funding in the United States," EdChoice, September 2019, [https://www.edchoice.org/wp-content/uploads/2019/09/PDF-Primer\\_School-Funding-in-US-v8-.pdf](https://www.edchoice.org/wp-content/uploads/2019/09/PDF-Primer_School-Funding-in-US-v8-.pdf).

<sup>8</sup> Andrew Reschovsky, "The Future of U.S. Public School Revenue From the Property Tax," Lincoln Institute of Land Policy, July 2017, [https://www.lincolnst.edu/app/uploads/legacy-files/pubfiles/future-us-public-school-revenue-policy-brief\\_o.pdf](https://www.lincolnst.edu/app/uploads/legacy-files/pubfiles/future-us-public-school-revenue-policy-brief_o.pdf).

<sup>9</sup> "Minimum School Program," Utah State Board of Education, <https://schools.utah.gov/financialoperations/msp#:-:text=ResourcesMSP%20Descriptions,Overview,clicking%20on%20the%20tabs%20above>.

<sup>10</sup> Lindsey Burke and Jude Schwalbach, "Housing Redlining and Its Lingering Effects on Education," Heritage Foundation, March 2021, <https://www.heritage.org/education/report/housing-redlining-and-its-lingering-effects-education-opportunity>.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Stevie Shaughnessey, "The Lasting Effects of Redlining in Salt Lake City," The Daily Utah Chronicle, November 16, 2022, <https://dailyutahchronicle.com/2022/11/16/redlining-salt-lake-effects/>.

<sup>14</sup> Burke and Schwalbach, "Housing Redlining."

<sup>15</sup> Halli Faulkner, "No More Lines: Opening Public Schools to All Families by 2030," yes. every kid. foundation, May 2024, <https://yeseverykid.com/wp-content/uploads/No-More-Lines-Opening-Public-Schools-to-All-Families-by-2030-1.pdf>.

<sup>16</sup> Marga Torrence Mikulecky, "Open Enrollment is on the Menu – But Can You Order It?" <https://www.ecs.org/clearinghouse/01/07/96/10796.pdf>.

<sup>17</sup> Ibid.

<sup>18</sup> Schwalbach, "Public Schools Without Boundaries 2024."

<sup>19</sup> Mikulecky, "Open Enrollment."

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Colyn Ritter, Alli Aldis, John Kristof, and Paul DiPerna, "2024 Schooling in America: Public Opinion on K-12 Education, Transparency, Technology, and School Choice," EdChoice, August 2022, <https://www.edchoice.org/wp-content/uploads/2024/08/2024-Schooling-in-America.pdf>.

<sup>23</sup> "Landmark poll: Americans believe expanding freedom strengthens education," yes. every kid. foundation., October 2023, <https://yeseverykidfoundation.org/landmark-poll-americans-believe-expanding-education-freedom-strengthens-the-nations-education-system/>.

<sup>24</sup> Utah Code Ann. § 53G-6-402 (2) (2024).

<sup>25</sup> Utah Code Ann. § 53G-6-402 (3) (2024).

<sup>26</sup> Utah Code Ann. § 53G-6-402 (4) (2024).

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Utah Code Ann. § 53G-6-403 (1) (2024).

<sup>30</sup> Utah Code Ann. § 53G-6-403 (2) (2024).

<sup>31</sup> Utah Code Ann. § 53G-6-403 (3b) (2024).

<sup>32</sup> Utah Code Ann. § 53G-6-403 (3a) (2024).

<sup>33</sup> Utah Code Ann. § 53G-6-404 (2024).

<sup>34</sup> Utah Code Ann. § 53G-6-403 (5) (2024).

<sup>35</sup> R277-437-1. Open Enrollment.

<sup>36</sup> Jude Schwalbach, "High-Quality 'Public' Schools Don't Want Low-Income Students," Reason, March 2022, <https://reason.com/2022/03/24/high-quality-public-schools-dont-want-low-income-students/>.

<sup>37</sup> Ray Carter, "Mother Who Fears For Son Failed by Open-Transfer Law," Oklahoma Council of Public Affairs, November 2022, <https://ocpathink.org/post/independent-journalism/mother-who-fears-for-son-failed-by-open-transfer-law>.

<sup>38</sup> An Act Relating to the Transfer of Pupils, S.B. No. 1125, 67th Legislature of the State of Idaho (2023).





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