



**STATE OF VERMONT**

**DEPARTMENT OF EDUCATION**  
120 State Street  
Montpelier, VT 05620-2501

**To: Superintendents and Public High School Principals**  
**From: Commissioner Armando Vilaseca, DOE**  
**Re: Revised Interpretation of 16 V.S.A. §§1621 and 1622**  
**Date: January 25, 2012**

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### **Background**

Given that I have received an inquiry from a Vermont high school, and given the adoption of several legislative changes since it was issued, I have reviewed the January 5, 2005 memo to superintendents from former DOE Commissioner Richard Cate. A copy of that memo, *Interpretation of Act 150 (Public High School Choice) Provision Regarding Numbers of Students Allowed to Transfer in Any Year*, can be found [here](#).

Public school choice in grades 9 – 12 became law through Act 150 of 2000. Given its experimental nature, it was scheduled for automatic repeal on July 1, 2007. In addition, it remained “session law” for eight years, and was therefore not published in Title 16 of the Vermont Statutes. In 2006, the automatic repeal provision was itself repealed. And, in 2009, the law was codified as 16 V.S.A. §§1621 and 1622. What was once experimental has become a fixture of Vermont education law. Its stated purpose of “facilitating increased public school choice in the future” has been effective, and its positive attributes are widely acknowledged.

The January 2005 memo from DOE interpreted Sec. 2 (h) of the law, which states that “...a high school board may refuse to allow more than five percent of the students enrolled or 10 students, whichever is fewer, to transfer from one school to another school under this section in one year.”

The 2005 memo resolved differences among schools’ interpretations of Sec. 2 (h), and, as the table in the memo shows, for the most part adopted the five percent criterion in determining the minimum number of students schools should allow to transfer. The memo’s approach, furthering the initial legislative intent, protected small schools.

### **Revised Interpretation**

Given the legislative changes described above, and the relatively low number of students exercising choice in recent years – 379 in SY 2007 – 2008; 333 in SY 2008-2009; 308 in SY 2009-2010; and 306 in SY 2010-2011 – a revised interpretation of the transfer section of the law is warranted. We also know that attitudes about broadening school choice are

increasingly supportive over time. For these reasons, in my opinion, the time has come to apply a more liberal, and arguably more literal, interpretation of the “5% or 10” transfer provision.

The revised interpretation hinges on the premise that the “five percent of the students enrolled or 10 students, whichever is fewer...in *one* year,” should be read as, “in *every* year.” Furthermore, as authorized by § 1622 (l), since the students who transfer to other schools become enrolled in the receiving schools, they are not counted in the next year’s enrollment to which the 5% or 10 students transfer limit is applied.

Under this interpretation, if a school has opted to limit transfers to the fullest extent permitted by law, the 5% or 10 students limit is calculated based on the school’s current full 9-12 enrollment, which excludes those who have already transferred, but have not yet graduated. In determining how many transfer slots are available in any given year, the number is the lesser of 5% of the then-enrolled students, or 10. And this standard is cumulative over a four-year period.

For example, a high school with 180 presently-enrolled students may limit transfers (during the following year) to 9 students (the lesser of 9 (5% of 180) or 10). In the following year, if enrollment at the school is 171, and if all of the 9 remained in other schools, the transfer limit for students participating for the first time would be 8, for a total of 17.

See the table below for further illustrations of this interpretation. For purposes of the table, the number of transfers assumes that enrollment in sending schools is reduced by the number of students who are already exercising choice. We know, however, that enrollment may also be influenced by other factors. Please note that the new interpretation takes effect in the current school year, 2011 – 2012. The transfer numbers for this year are identical to the column headed “Combined number of transfers in year 1” in the January 2005 table. For schools with enrollments of 200 or less, the 5% criterion applies; for schools with enrollments above 200, the 10 students criterion applies.

<b>Initial Grade 9-12 Enrollment</b>	<b>SY 2011-2012</b>	<b>SY 2012-2013</b>	<b>SY 2013-2014</b>	<b>SY 2014-2015</b>	<b>Year 5 combined number of transfers</b>
100 Students	5	10	14	19	18
200 Students	10	20	29	37	35
300 Students	10	20	30	40	40

500 Students	10	20	30	40	40
1,000 Students	10	20	30	40	40

The revised interpretation creates the possibility that more students will exercise high school choice. Given our experience over the past decade, however, the likelihood of disruptively large numbers of students transferring appears very unlikely. Furthermore, in the cases where transfers increase, benefits to the students will substantially outweigh any negative consequences for sending high schools.

I trust that this updated memorandum is clear and helpful. If you have any questions, please feel free to contact the DOE's high school choice coordinator, Peter Thoms, at (802) 828-5104, or at [peter.thoms@state.vt.us](mailto:peter.thoms@state.vt.us).

Sincerely,

Armando Vilaseca, Commissioner  
Vermont Department of Education