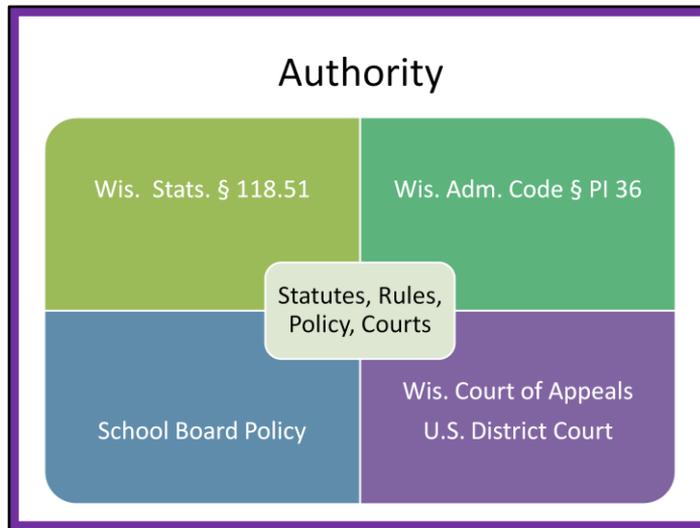


A nonresident school board that receives an open enrollment application must notify the parent whether the application is approved or denied.

A resident school board must only notify a parent if an open enrollment application is denied.

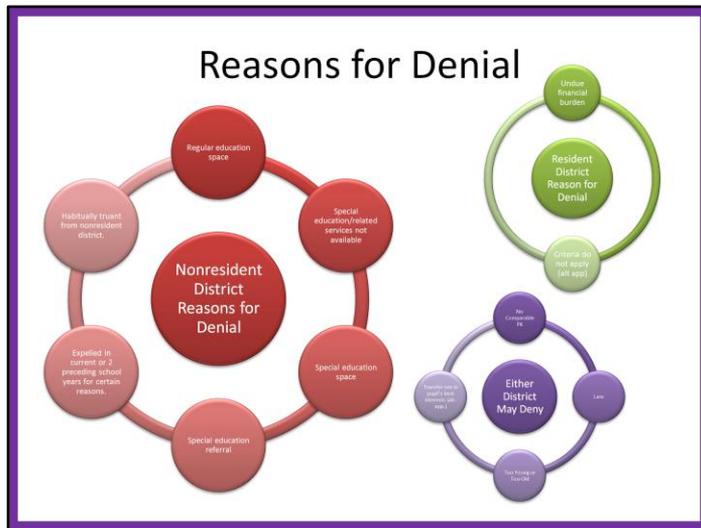
This presentation discusses the reasons that an open enrollment application may be denied by nonresident and resident school boards.

To move to the next slide, click the Next button.



There are four sources of authority that affect school boards' actions on open enrollment applications:

- The open enrollment statute is section 118.51, of the Wisconsin Statutes. The open enrollment statute provides specific reasons that nonresident and resident school boards may deny open enrollment applications.
- Administrative rules are promulgated by state agencies to implement and interpret state statutes. The Department of Public Instruction, or DPI, has promulgated chapter PI 36, which establishes regulatory guidance and procedures for acting on open enrollment applications.
- School boards are required to adopt open enrollment policies, including the board's criteria for approving and denying open enrollment applications. While a school board's reasons to deny open enrollment are limited to the reasons specified in state law, a school board may still not deny for any of those reasons unless the board has adopted the reason in its policy.
- Finally, the courts have weighed in on school board and DPI actions on open enrollment applications. Two notable decisions are:
 - McMorrow v. DPI, is a Wisconsin Appeals Court decision which requires school boards to follow their open enrollment criteria and space designations exactly, without exception. See 2000 WI App 173
 - Doe v. Burmaster is a decision of the U.S. District Court for the Eastern District of Wisconsin which provides that a resident district may not deny open enrollment to a child with a disability unless the denial was based only on the actual, additional cost for the nonresident school district to provide special education to the pupil.



There are specific denial reasons that apply to nonresident or resident districts, or both. Each of these reasons will be discussed in turn. However, to skip ahead to any reason, click on the circle containing the reason.



Nonresident District Reasons for Denial

Regular Education Space

Criteria may include:

The availability of space in the schools, programs, classes or grades within the district. May consider criteria such as class size limits, pupil-teacher ratios, or enrollment projections.

Space must be filled randomly after preferences for currently-attending pupils & siblings.

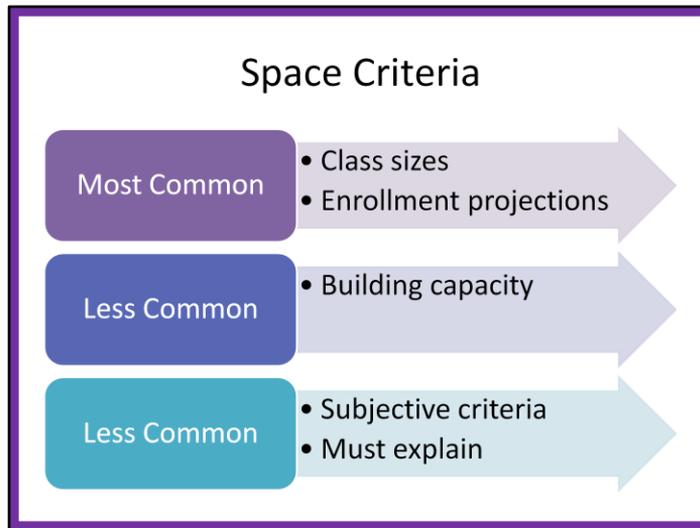
May include in projections:

Pupils attending the district whose tuition is paid by another district.

Pupils and siblings of pupils who are already attending the nonresident district, including 8th grade pupils attending an underlying K8 of a UHS district.

Wis. Stats. § 118.51 (3) (a) 2. & (5)

A nonresident school board may deny open enrollment if space is not available in the schools, programs, classes or grades in the district.



The board may consider criteria such as class size limits, pupil-teacher ratios, or enrollment projections. The state does not specify any class size criteria nor any method for establishing class size criteria; it is up to the school board to do so.

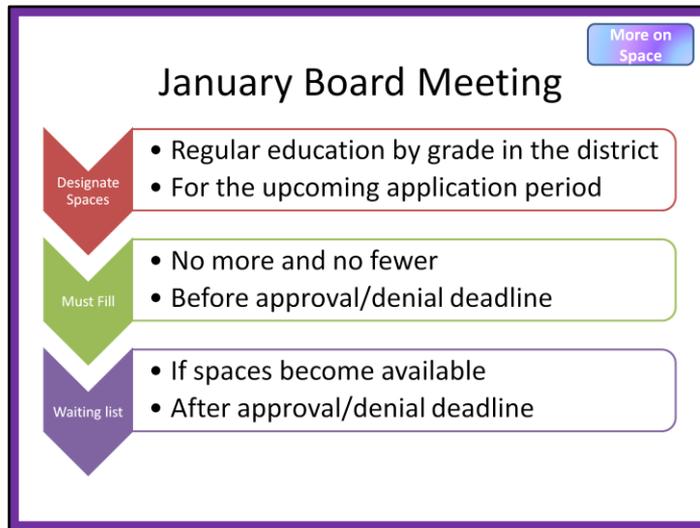
The most common criteria used are:

Class Size: By far, the most common criterion used for determining space is class size coupled with enrollment projections. The most common formula for determining space is class size x the number of expected classes (or sections) minus projected enrollment.

Building Capacity: Some school boards deny open enrollment because a school building is at or near the capacity for which it was built. In such cases, the board must deny all open enrollment applications into all grades in that school (unless, of course, approval is guaranteed). Since open enrollment is to a district, and not to a school, the board could not use building capacity of one building to deny open enrollment when there are other buildings that offer that grade.

Subjective Criteria: A few school districts use subjective criteria, for example, asking principals to determine the number of spaces available in their individual schools. However, even with subjective criteria, the district must be able to explain, on appeal, the criteria the principals used and how the principals determined, using that criteria, the number of available spaces.

A separate presentation on Space further discusses criteria, calculation of spaces, and acting on individual applications.



School boards are required to designate the number of available spaces in the district at the January board meeting.

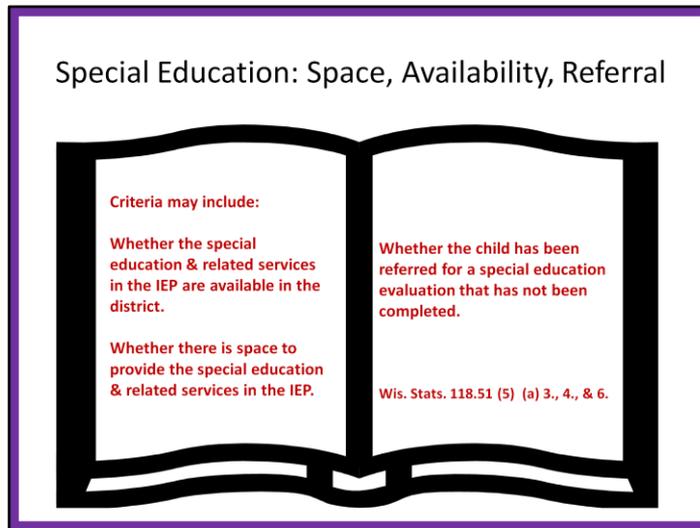
The board must designate spaces by grade in the district to be used to act on applications in the upcoming application period.

The statute requires an actual number of spaces, by grade. Adopting criteria without calculating and designated spaces does not meet the statutory requirement.

Once the board has designated the number of available spaces, it must fill those spaces if it has applications for them. The board may not reduce or increase the number of spaces before the deadline for approving and denying open enrollment applications.

If spaces become available after the approval/denial deadline, the board may fill them from a wait list. If the wait list is exhausted, the board may accept alternative applications, if it determines it has space.

For a more detailed presentation on space, click on the button in the upper right corner.



- A nonresident school board may deny open enrollment if the special education and related services required in the IEP are not available in the district.

- A school board has all of the same placement options for an open enrolled pupil as for a resident pupil. (The exception to this is placement at the School for the Blind and Visually Handicapped in Janesville or at the School for the Deaf and Hearing Impaired in Delavan. Because these are state schools and pupils are educated at state expense, there is no method to fund open enrollment.)

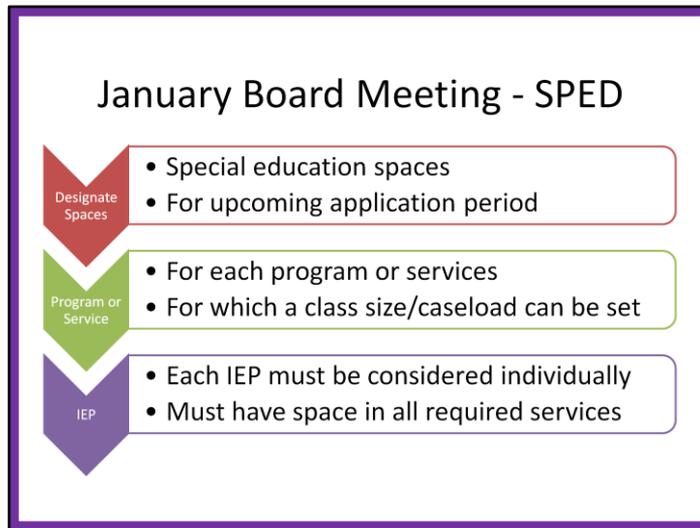
- However, a school board is neither required to create a program or service for a nonresident pupil nor to place the pupil in a school or facility outside the school district.

- A nonresident board may also deny open enrollment if the child has been referred for an initial special education evaluation that has not been completed.

- If a referral has been made, but the parent refused consent, the referral is completed and the application must be handled as a regular education application.

- If an evaluation has been completed and an IEP created, but the parent refused consent for initial placement, the application must be handled as a regular education application.

- Finally, a nonresident school board may deny open enrollment if space is not available in the special education or related services required in the IEP.



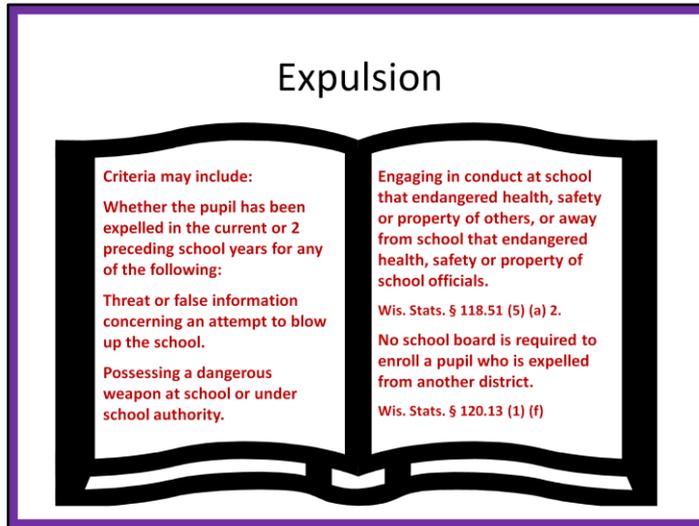
The board must also designate the number of special education spaces at the January board meeting.

However, instead of designating special education spaces by grade, the board should designate space in each program or service for which a class size/caseload can be set.

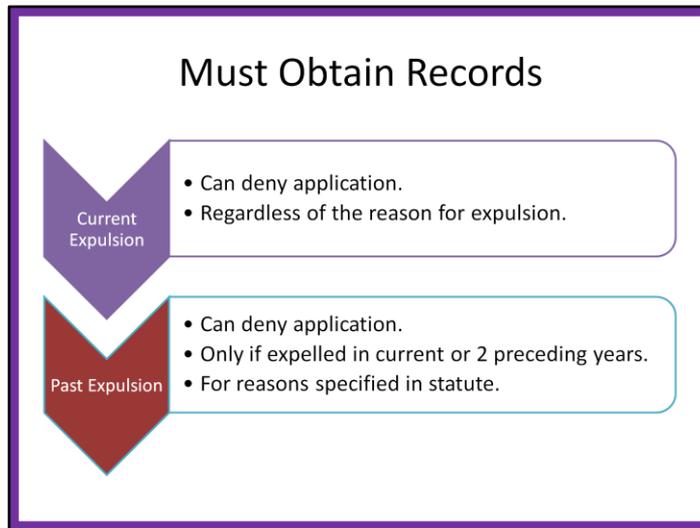
For example, if the board designates a caseload of 20 for its one speech and language therapist (remember, the board can designate a caseload solely for open enrollment purposes), and the projected caseload for the following school year is 18, there are two spaces for speech and language therapy.

When a pupil applies for open enrollment, there must be space in all the special education and related services required in the IEP. If the pupil needs speech and language therapy, where there is space, and occupational therapy, where there is not space, the application will be denied.

Expulsion



A nonresident district may deny a pupil who is currently expelled or who has been expelled in the current or 2 preceding years for certain conduct.



It is essential, when acting on an application, to obtain a copy of the actual expulsion record. Not doing so could result in a denial being overturned

Considering an application from an expelled pupil can be both simple and complicated.

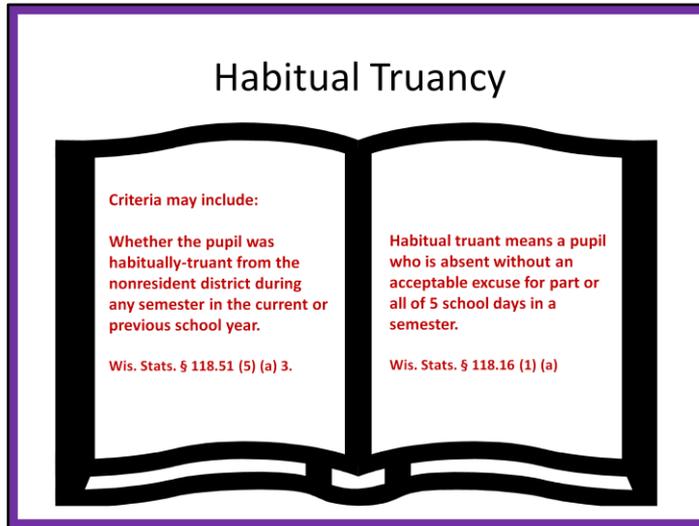
Simple, because a school board is not required to enroll a pupil who is currently under expulsion from another district, regardless of the term of the expulsion or the reason for expulsion. This is not an open enrollment law, it is a law under school board powers.

However, if a pupil has been expelled in the past but has since been allowed to return to school in the expelling district, the open enrollment law allows a district to deny open enrollment under certain circumstances:

- If the pupil has been expelled in the current or two preceding school years, and
- The pupil has been expelled for one of four reasons specified in state law, briefly:
 - Making or conveying a real or false bomb threat.
 - Engaging in conduct while at school or under school authority that endangered the health, safety or property of others.
 - Engaging in conduct while not at school or under school authority that endangered the health, safety or property of others at school or under school authority or employed by the school or a member of the school board.
 - Bringing a dangerous weapon to school.

It is important to pay attention to the reasons, because there are statutory reasons to expel a student that are not included in the reasons to deny open enrollment.

Habitual Truancy

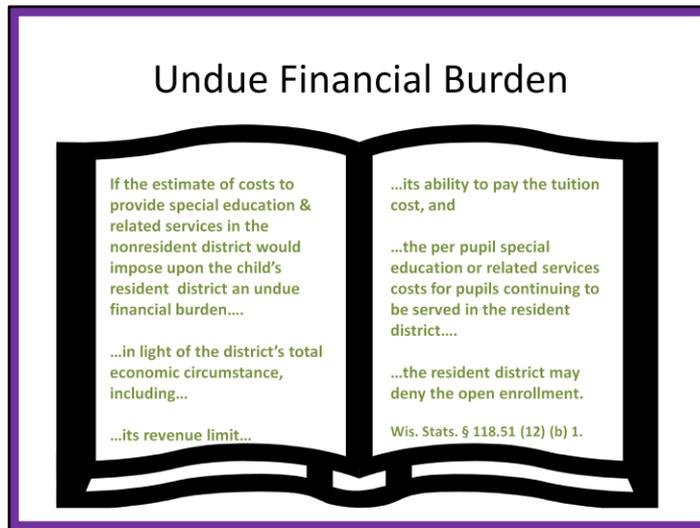


A nonresident school district may deny a pupil who has been habitually truant, from that nonresident district, in any semester of the current or preceding school year.

Habitual truant means a pupil who is absent from school without an acceptable excuse for part or all of 5 days in a school semester.



Resident District Reasons for Denial



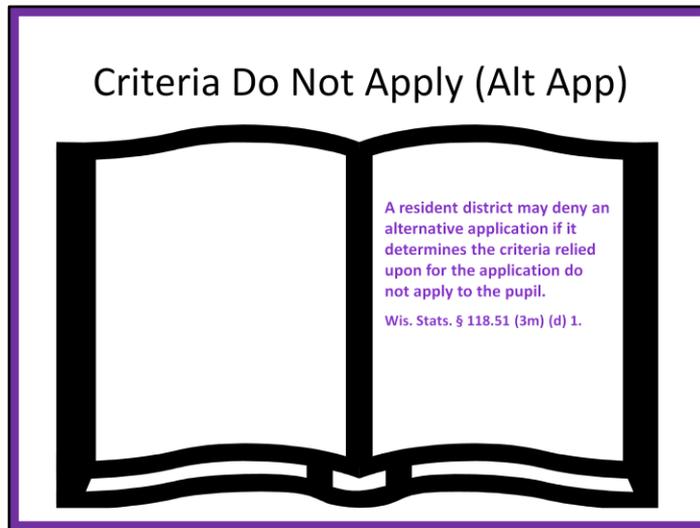
When a pupil transfers from a resident to a nonresident school district, a state-set amount of money follows the pupil from the resident to the nonresident district. For a pupil with a disability, the nonresident district may also charge the resident district for any actual, additional costs it incurs to provide special education to the pupil.

A resident school board may deny open enrollment if the actual, additional special education cost to be charged by the nonresident district is an “undue financial burden” to the resident school district.

In determining whether a cost is an undue financial burden, the resident district must consider its total economic circumstances, including:

- First, its revenue limit. By far, the majority of undue financial burden denials are based on the school district’s revenue limit. If a school district has available revenue with which to pay the costs, it must have a reason other than the revenue limit to deny due to undue financial burden.
- Next, its ability to pay the cost. This includes factors other than the revenue limit that affect a school board’s ability to pay the tuition costs.
- Finally, the per pupil special education or related services costs for pupils with disabilities continuing to be served in the resident school district. Per pupil cost is equal to the total cost of a program or service divided by the pupils served. Any time a pupil goes into or out of a program, the per pupil cost changes, but this does not necessarily constitute an undue financial burden. An undue financial burden would mean that the per pupil cost changed to such a degree that it affects the quality or viability of the program or service.

While the payment of any tuition amount by a resident school district to a nonresident school district would impose a financial burden, the statute requires the burden to be “undue.” Black’s Law Dictionary defines undue as “excessive” or “unwarranted.”



A resident district may deny an alternative application if the criteria relied upon do not apply.

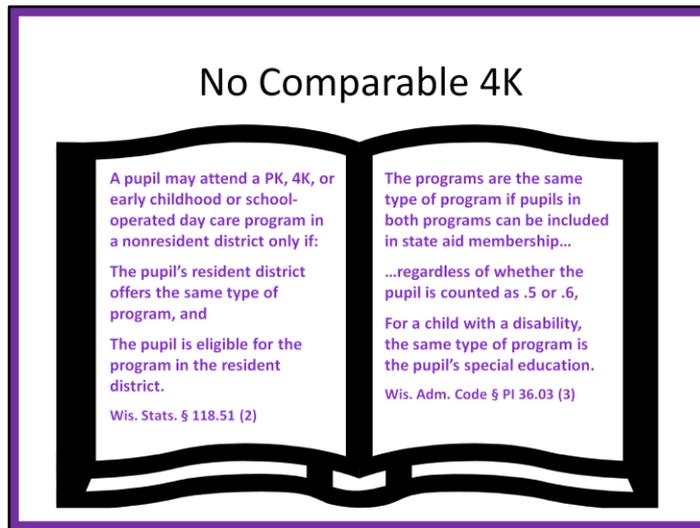
A resident district may deny an alternative application if the criteria upon which the application is based do not apply to the pupil.

For example, a pupil may submit an alternative application if the pupil moved into the state within the last 30 days. If the pupil did not move into the state within the last 30 days, the criteria do not apply. Unless the parent gave another reason for applying, the resident district may deny the application.

However, if the parent also applied based on the pupil's best interests, then it doesn't matter whether the pupil moved into the state or moved into the state more than 30 days ago. All that matters is whether the transfer is in the pupil's best interests.



Reasons Either District May Deny



A pupil may open enroll for 4-year-old kindergarten or early childhood education only if the pupil's resident district also offers 4K and the pupil is eligible for 4K in the resident district.

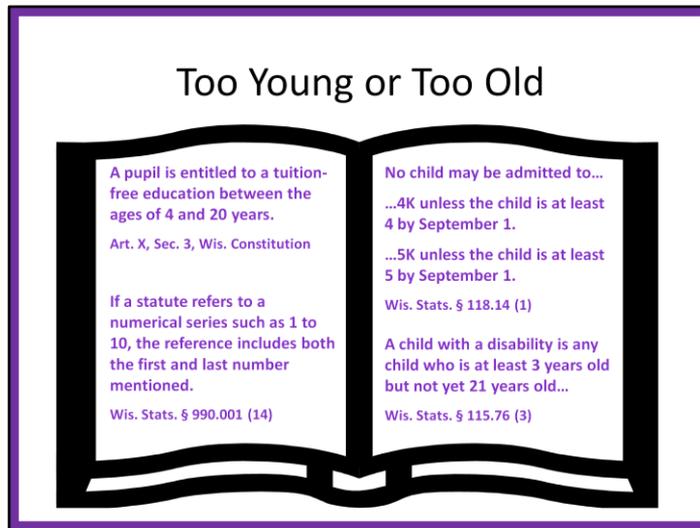
4K programs are the same type of program if pupils in both programs can be counted in membership for state aid. It doesn't matter whether the membership FTE is .5 or .6; as long as the pupils can be counted, they are the same type of program.

For early childhood/special education, the same type of program is determined by the special education and related services required in the pupil's IEP.

A resident district that does not offer 4K must deny a 4K application-out. Failure to do so can cause problems and anger when a parent doesn't find out until the parent enrolls the pupil in the nonresident district. It is essential for districts that do not have 4K to find and deny these applications.

A nonresident district that has 4K may either approve or deny a 4K application when a pupil applies to transfer from a resident district that does not offer 4K. There are pros and cons of doing either.

- If both districts deny the application, it is clear to the parent that the pupil cannot transfer.
- On the other hand, a nonresident district may not want to deny a pupil for whom there is space.



Too Young:

A pupil must be 4 years old on or before September 1 in order to enter 4-year-old kindergarten.

A pupil must be 5 years old on or before September 1 in order to enter 5-year-old kindergarten.

A parent may request early admission to 4K or 5K. A nonresident district may (but is not required to) approve an application contingent upon the pupil being found eligible for early admission. The pupil only needs to be eligible in the nonresident district for 5K, but needs to be eligible in both the nonresident and resident districts for 4K. (If a pupil is evaluated and found not eligible for early admission to 5K, the pupil may not attend for 4K unless the pupil's resident district also offers 4K.)

If the nonresident district is not willing to evaluate a child for early admission, the application should be denied because the pupil is too young.

3-year-olds may only be approved if they are eligible for special education. A child younger than 3 who is being served in a county birth to 3 program may apply for open enrollment if the pupil will be 3 and receiving services on or before the 3rd Friday in September. However, the pupil is unlikely to have an IEP. If the nonresident district approves the application, it is assumed an IEP will be developed (by the resident district), which may then be reviewed by the nonresident district at that time. If the application is denied, the reason is because the pupil is too young.

Too Old:

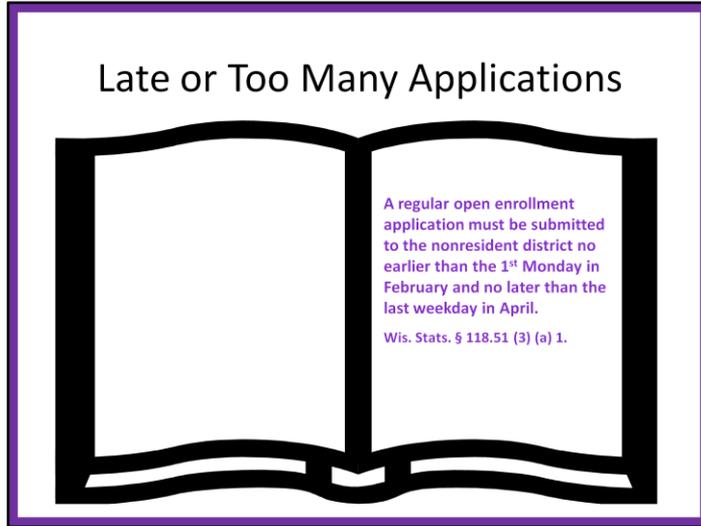
A pupil is entitled to a free education through age 20, whether or not the pupil has a disability.

If the pupil will be 21 years of age on or before the first day of the school term, the application must be denied because the pupil is too old.

If the pupil will not yet be 21 years of age before the first day of the school term, the application may not be denied because of the pupil's age.

This is true, even if the pupil has previously dropped out of school.

Late or Too Many Applications

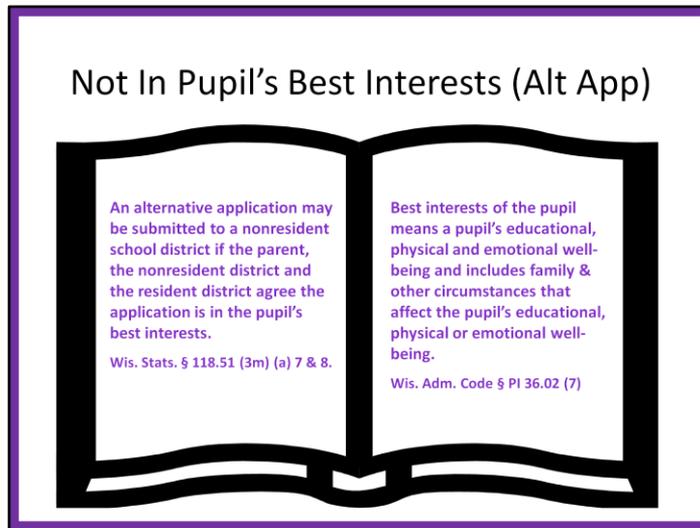


A regular open enrollment application must be submitted to the nonresident district no earlier than the 1st Monday in February and no later than the last weekday in April.

Wis. Stats. § 118.51 (3) (a) 1.

The online application will only be live during the application period. Therefore, it is impossible to submit an untimely application online.

However, if a nonresident school district receives a paper application after the deadline has passed, the nonresident district must deny it.



“Best interests of the pupil,” means a pupil’s educational, physical and emotional well-being and includes family and other circumstances that affect the pupil’s educational, physical or emotional well-being.

Both resident and nonresident boards may make a determination about what is in the best interests of the pupil, but there is a huge difference in the effect of a denial by a resident or nonresident school board.

A nonresident school board’s denial of an alternative application cannot be appealed to the DPI. Thus, by default, the nonresident school board’s determination of the pupil’s best interests carries more weight than the parent’s determination of the pupil’s best interests.

However, a resident school board’s denial of an alternative application may be appealed to the DPI. The DPI has determined that the parent’s determination of the pupil’s best interests carries the most weight. As a result, a resident school board’s denial of an alternative application based on the pupil’s best interests is almost certain to be overturned.

Knowledge Check – Question 1

- A pupil who is 19 or 20 years old may be denied open enrollment.
 - a. True
 - b. False

Correct answer:

False. A pupil is entitled to a free education through age 20.

Knowledge Check – Question 2

- Which of the following are reason(s) a nonresident district may deny open enrollment?
 - a. No space in pupil's grade.
 - b. No space in pupil's special education.
 - c. Pupil has been truant from resident district.
 - d. Pupil is currently expelled.
 - e. Pupil has been incarcerated for drugs, but has not been expelled by any school district.

Correct answers:

a., b. and d.

Incorrect answers:

c. A pupil may be denied for habitual truancy only if the pupil was truant from the nonresident district.

e. A pupil may not be denied for behavior that did not result in expulsion.

Knowledge Check – Question 3

- Which of the following are reasons a resident district may deny open enrollment?
 - a. 19-year-old pupil has dropped out and is not entitled to return to school.
 - b. Cost of special education is an undue financial burden.
 - c. Too many pupils are already open enrolled out.
 - d. Pupils should attend school in their resident school districts.

Correct answer:

b.

Incorrect answers:

- a. A 19-year-old is still entitled to a free education, even if the pupil previously dropped out.
- b. A resident school board may not limit the number of pupils who transfer out.
- c. Open enrollment allows pupils to attend school in nonresident school districts.