



PUBLIC SCHOOL OPEN ENROLLMENT INFORMATIONAL BULLETIN

Bulletin 14-05

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Special Education and Open Enrollment

Pupils with disabilities can and do participate in open enrollment. For the most part, the procedures that apply for pupils with disabilities are the same as those that apply for non-disabled pupils. However, there are some additional provisions that apply for pupils with disabilities in all aspects of the open enrollment process. This bulletin summarizes the provisions of open enrollment that have particular significance for pupils with disabilities.

FILLING OUT THE APPLICATION

There are three questions on the open enrollment application (both regular and alternative applications) that the parent must answer concerning a pupil's status as a child with a disability:

- Does the pupil have an individualized education program (IEP)?

Answer "yes" if:

- The pupil has a current IEP that is being implemented in a public school district.
- The pupil has a current IEP that is not being implemented because the pupil is not attending school in a public school district.
- An IEP was developed for the pupil in the past but the IEP expired because the pupil ceased attending public school more than one year ago since the IEP was developed.

Answer "no" if:

- The pupil has never had an IEP.
- The pupil had an IEP in the past, but an IEP team determined the pupil no longer needed special education.
- An IEP team conducted an initial evaluation for the pupil, developed an IEP, and offered a placement, but the parent refused consent for special education services.
- The pupil had an IEP in the past, but the parent revoked consent for special education.
- The pupil was evaluated and found to need special education, but an IEP was not developed.
- The pupil is receiving services in a county birth-to-3 program, but has not yet had an initial special education evaluation in preparation for enrollment in a public school district.

- Does the pupil currently receive special education?

Answer "yes" if:

- The pupil is currently receiving special education in a public school district in accordance with an IEP.
- The pupil is enrolled in a private school and is receiving special education services from a public school district.

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Answer “no” if:

- The pupil is enrolled in a public or private school and is not receiving special education.
 - The pupil is enrolled in a home-based private educational program and is not receiving special education.
 - The pupil is not enrolled in school and is not receiving special education.
- Has the pupil been referred for an initial special education evaluation that has not yet been completed?

Answer “yes” if:

- A parent, teacher (or other professional) suspects the pupil may be a child with a disability and has referred the child to the child’s resident or nonresident (if open enrolled) school district for an initial special education evaluation, but the evaluation has not yet been completed.

Answer “no” if:

- A parent, teacher (or other professional) suspects the pupil may be a child with a disability and has referred the child to the child’s resident or nonresident (if open enrolled) school district for an initial special education evaluation, but the parent did not consent to an initial evaluation.

SPECIAL EDUCATION RECORDS AND COST ESTIMATE

Once the application has been submitted online or via paper application to the nonresident school district, a copy of the application will be provided to the pupil’s resident school district.

The resident school district is required to send a copy of the pupil’s IEP to the nonresident school district. If the district listed on the application as the resident district is not the district that has the pupil’s IEP (because the pupil is not currently attending that district), the nonresident school district should request a copy of the IEP from the last public school district the pupil attended.

Once the nonresident school district has received a copy of the pupil’s IEP, it must send to the resident school district an estimate of the actual, additional costs to implement the pupil’s IEP in the nonresident school district.

Actual, Additional Costs to Provide Special Education

The resident school district pays for the pupil’s open enrollment. There is a flat, state-set amount that applies to all pupils, including pupils with disabilities. However, a nonresident school district is permitted to charge to the resident school district any actual, additional costs it incurs to provide special education to the pupil.

Actual, additional cost means the actual and additional costs a nonresident school district incurs to provide special education to a specific nonresident pupil that the nonresident district would not incur if the pupil were not enrolled in the nonresident school district. Actual, additional cost excludes any averaged or prorated costs.

Some examples of costs that may not be charged:

- Any of the costs for the regular operation of its special education programs. It cannot include any evaluation costs, administration costs, or IEP team costs. It cannot include any costs for school psychologists or counselors.
- Any share of the cost to place a pupil in an existing classroom or caseload.
- Any prorated portion of the salary for a teacher, therapist, aide, sign-interpreter or other personnel.
- Costs for services not required by the IEP.

Some examples of costs that can be charged:

- Cost of a one-to-one aide, provided that the district needed to hire that aide for that pupil and that aide does not serve any other pupils.
- Additional costs incurred to provide transportation as a related service.
- Costs to increase the FTE of a therapist, provided the therapist is serving only that pupil during the increased time.

NONRESIDENT SCHOOL BOARD APPROVAL AND DENIAL

A nonresident school board is not required to accept any open enrollment pupils for whom it does not have space. A nonresident school board is not required to hire any staff or create any program or services for a nonresident pupil.

A pupil with a disability can be denied open enrollment for any of the reasons any pupil can be denied open enrollment. However, when a pupil needs special education, there must be space in the pupil's grade and in all of the special education programs and services required in the pupil's IEP. For example, if a kindergarten pupil needs speech and language therapy, the board must consider whether there is space for the pupil in both kindergarten and in the speech and language program.

In summary, a nonresident school district can deny open enrollment if:

- There is no space in the pupil's grade.
- The special education or related services required in the pupil's IEP are not available in the nonresident school district.
- There is no space in the special education or related services required in the IEP.
- The pupil has been referred for an initial special education evaluation that has not been completed.

The nonresident school board is required to designate the number of regular and special education spaces at its January board meeting. The number of regular education spaces is designated by grade. The number of special education spaces is designated by program or service. Determining special education spaces can be more complicated than determining regular education spaces. School districts might use pupil-teacher ratios, caseload factors or other criteria.

RESIDENT SCHOOL BOARD APPROVAL AND DENIAL

A resident school board may deny open enrollment if the actual, additional cost to provide special education and related services in the nonresident school district would impose an undue financial burden on the resident school district.

Undue Financial Burden

The statute describes "undue financial burden in light of the resident school district's total economic circumstances, including its revenue limit..., its ability to pay tuition costs for the pupil and the per pupil special education or related services costs for children with disabilities continuing to be served by the resident school district."

It must be noted that many school districts may consider a payment in any amount to be a burden. Any money that a school district must pay to another school board is money the district cannot spend on its own programs. However, the statute does not permit a school board to deny open enrollment unless the burden to pay the special education cost is "undue." "Undue" is defined as "excessive" or "unwarranted."

In order to determine whether a particular cost is an “undue financial burden,” the resident school district must first determine a “net special education cost.” The “net special education cost” is equal to the actual, additional costs to be charged by the nonresident school district minus any amount the resident school district may save if the pupil transfers.

The following costs may not be considered when determining “net special education cost”:

- The basic open enrollment amount that applies to all pupils.
- Any savings the resident district would experience as a result of the pupil’s transfer, as shown in the examples below:
 - The nonresident district proposes to hire an individual aide for the pupil at a cost of \$45,000. The resident district also provides an individual aide, at a cost of \$45,000, who will no longer need to be employed if the pupil transfers. Thus the amount the nonresident district will charge is completely offset by resident school district savings and the resident district cannot consider the cost of the aide to be an undue financial burden.
 - The nonresident district proposes to hire an individual aide for the pupil at a cost of \$45,000. However, the resident district does not provide an individual aide only for that pupil. Instead, a classroom aide provides individual assistance to this and one other pupil who will still need the individual assistance if this pupil transfers. Thus, the resident district will not experience any savings if the pupil transfers and it can consider the entire cost of the aide in determining whether the cost is an undue financial burden.
 - The nonresident district proposes to hire an individual aide for the pupil at a cost of \$45,000. The resident district also provides an individual aide, but only pays the aide \$35,000. The resident district can consider only the difference of \$10,000 in determining whether the cost is an undue financial burden.

After calculating the net special education cost, the resident school district must consider its “total economic circumstances,” in light of one or more of the following:

- The resident school district’s revenue limit.

State law limits the total amount of money a school board can raise through general state aid and property taxes. The school district’s revenue limit is based on a per pupil amount times a three-year-average enrollment plus a percentage of summer enrollment plus certain allowable exemptions. Allowable limited revenue is equal to the total revenue limit minus the school district’s general state aid.

A school board may levy for (use) the full amount of its allowable limited revenue or it may levy for a lesser amount. A district that levies the full amount is sometimes said to “levy to the max.” If the difference between the allowable limited revenue and the amount used is greater than 0, the amount is the district’s under-levy. A board is not permitted to over-levy.

A school board that already levies to the max does not have the ability to raise additional funds to pay any additional costs for a pupil’s open enrollment. It would have to pay the amount by reducing spending somewhere else. A school board that has levied to the max may determine that it cannot cut costs elsewhere and, thus, the actual, additional special education cost is an “undue financial burden” to the district.

A school board that does not levy to the max has the ability to raise some additional funds. If the school board has unused revenue authority and denies the application, the board must explain on appeal why it determined it cannot not use the available revenue to pay the cost.

- The resident school district’s ability to pay the tuition costs for the pupil.

Even if the resident district has enough revenue limit authority to pay the costs, the board can also consider whether it has the ability to do so. If the board determines the cost is an undue financial burden in spite of the

ability to raise revenue, the board must explain whatever circumstances preclude it from increasing the levy to pay the costs.

- The per pupil costs for children with disabilities continuing to be served by the resident school district.

Per pupil cost is often misunderstood. Many believe that if you multiply per pupil cost by the number of pupils, you get the cost of a program. However, that is rarely, if ever, true. Rather, you arrive at per pupil cost by dividing the total cost of the program by the number of pupils.

For example, if a classroom has 10 pupils and the teacher's salary and benefits is \$60,000, per pupil cost of the program is \$6,000: that is, \$60,000 divided by 10. If a pupil transfers into the classroom, per pupil cost goes down, because the same \$60,000 is now divided by 11: that is, \$60,000 divided by 11 equals a per pupil cost of \$5,454. If a pupil transfers out of the program, the per pupil cost increases, because the same \$60,000 is now divided by 9; that is, \$60,000 divided by 9 = \$6,667.

The fact that per pupil cost changes as a result of an open enrollment transfer does not automatically constitute undue financial burden.

But a change of per pupil cost might affect the ability of a program to continue or might make such a significant change as to be excessive. For example, if two pupils in a classroom need a hearing interpreter at a cost of \$40,000, the per pupil cost of the hearing interpreter is \$20,000. If one pupil transfers to another school district, the per pupil cost for the remaining pupil served by the hearing interpreter will double; that is the entire cost of \$40,000 will be attributable to one pupil. If the district then needs to pay an additional \$40,000 for a hearing interpreter in another school district, a board might conclude that the cost is an undue financial burden in light of the per pupil cost of the pupil continuing to be served by the resident school district.

- It is essential that a school board consider all factors "in light of its total economic circumstances." The following factors, while relevant to a board's consideration of undue financial burden, do not automatically constitute an undue financial burden:
 - The fact that the school board can provide special education to the pupil does not automatically constitute an undue financial burden. Except for 4-year-old kindergarten, the open enrollment statute permits a pupil to attend a nonresident school district even if the resident school districts offers the same or comparable program.
 - The fact that the resident school board can provide special education to the pupil at a lower cost than the nonresident district's cost does not automatically constitute an undue financial burden. However, the difference in cost between the programs will go into the calculation of the net special education cost.
 - The fact that the resident school district would implement the pupil's IEP differently than the nonresident district proposes to implement it does not automatically constitute an undue financial burden. Different school districts may implement similar IEPs differently. One school district may provide individual assistance to a pupil with a classroom aide or an aide shared by two or more pupils. Another school district may determine that the individual assistance called for in an IEP requires the district to hire an aide for that pupil. As stated above, the difference in the costs of implementing the IEP in the two districts goes into the calculation of the net special education cost, but it does not automatically mean the cost is an undue financial burden.
 - The fact that the amount of the cost is high does not automatically constitute an undue financial burden. Clearly, the higher the cost, the more likely it is to be an undue financial burden. But the board must consider whether the burden on the district to pay the cost is "excessive" or "unwarranted," given the district's specific economic circumstances.

APPEAL OF DENIAL

A parent may file an appeal of a resident or nonresident school district's denial of open enrollment to the state superintendent within 30 days after the denial notice is postmarked or personally delivered to the parent, whichever is earlier.

Information about filing an appeal is included on any notice of denial. Other information about filing an appeal is at:

- PI 9418 Form for filing an open enrollment appeal (<http://oe.dpi.wi.gov/files/forms/pdf/pod9418.pdf>)
- Bulletin 14-03 Full-Time Public School Open Enrollment Appeals: Information for Parents (http://oe.dpi.wi.gov/files/oe/pdf/oe_bulletin_14-03_appeals_info_parents.pdf)

TRANSPORTATION

Parents of open enrolled pupils, including pupils with disabilities, are required to provide transportation to and from school in the nonresident school district, except as follows:

- Either the resident or nonresident school district may (but are not required to) provide transportation, but the nonresident school district is prohibited from picking up or dropping off the pupil within the boundaries of the pupil's resident school district, unless the pupil's resident school district agrees.
- Transportation required in the pupil's IEP must be provided by the nonresident school district. In this case, the nonresident school district does not need approval from the resident school district to pick the pupil up at home within the boundaries of the resident district.

PROVISION OF SPECIAL EDUCATION IN A NONRESIDENT SCHOOL DISTRICT*Responsibility*

Once a pupil has transferred to a nonresident school district under open enrollment, the nonresident district becomes responsible to provide a free appropriate public education (FAPE) to the pupil. This means that the nonresident school district is responsible for the following:

- Receiving referrals for pupils who are suspected of having a disability.
 - A referral may be made to either the nonresident or resident school district. Whichever school district receives the referral must notify the other school district.
- Appointment of an IEP team.
 - The resident school district must appoint a representative to the IEP team.
- Conducting initial evaluations and re-evaluations.
- Development of and revisions to a pupil's IEP.
- Notification and provision of procedural safeguards and due process.
- Providing a placement to deliver the special education and related services required in the pupil's IEP.

Development and Revision of IEPs

If an IEP for a pupil is developed or revised after the pupil begins attending school in the nonresident school district:

- The nonresident school district may consider whether it has the special education and related services required in the IEP and whether it has space to provide them.
 - If not, the nonresident school district may notify the parent that the pupil must return to school in the resident school district.

- If yes, the nonresident school district must provide to the resident school district an estimate of the actual, additional cost to implement the new or revised IEP.
- The resident school district may consider whether the cost to provide the special education and related services required in the new or revised IEP would impose an undue financial burden on the resident school district. If yes, the resident school district may notify the parent that the pupil must return to school in the resident school district.

If either the nonresident or resident school district notifies the parent that the pupil must return to the resident school district, the parent may file an appeal with the state superintendent within 30 days of the date the notice of denial was postmarked or hand-delivered to the parent.

CONFIDENTIALITY OF PUPIL RECORDS

State and federal law strictly limits the sharing of pupil records. When a pupil participates in open enrollment, some sharing of records is necessary to process applications and make payments for the pupil's open enrollment. State law requires certain information to be shared and by applying for and participating in open enrollment.

However, only information necessary for the administration of open enrollment may be shared (unless the parent provides written consent), as follows:

During the Application Process

- Only the following records may be provided to the nonresident school district by the resident school district.
 - The most recent IEP.
 - The most recent special education evaluation, if an IEP is not available.
 - Information that the pupil has been referred to his or her resident school board for a special education evaluation.
 - Any expulsion finding and orders pertaining to the pupil, records of any pending disciplinary proceeding involving the pupil, a written explanation of the reasons for the expulsion or pending disciplinary proceeding and the length of term of the expulsion or the possible outcomes of the pending disciplinary proceeding.
- Only the following records may be provided to the resident school district by the nonresident school district:
 - Estimate of the special education cost.
 - Information needed to justify the cost estimated, including a description of the special education provided and an explanation of how the cost was calculated.
 - If the pupil is attending the nonresident school district or if the nonresident school district obtained any records from a school board other than the resident school board named on the application, a copy of the pupil's IEP or special education used to develop the cost estimate.

During the Pupil's Attendance in the Nonresident School District

- Only the following pupil records may be provided to the resident school district by the nonresident school district:
 - Estimate of any new or revised special education cost.
 - Invoice for the basic and special education cost.
 - Information needed to justify the cost estimate or billing, including a description of the special education provided, a copy of the IEP used to develop the cost estimate, and an explanation of how the cost was calculated.
- Records that may not be provided to the resident school district by the nonresident school district without the parent's written consent include (but are not limited to):
 - Any part of the IEP developed or revised for the pupil while the pupil is attending the nonresident school district (except an IEP needed to justify a cost estimate, as indicated above).
 - Updated evaluation reports.
 - Discipline records.

- Attendance records.
- Report cards.
- IEP progress reports.

INFORMATION AND RESOURCES

Information about the open enrollment program may be obtained as follows:

Phone: 888-245-2732

Email: openenrollment@dpi.wi.gov

Internet: <http://oe.dpi.wi.gov>

Information about special education may be obtained as follows:

Phone: 608-266-1781

Email: dpisped@dpi.wi.gov

Internet: http://sped.dpi.wi.gov/sped_parent

For information about resources available to assist parents in resolving questions, concerns and disagreements with a resident school district about special education, go to <http://sped.dpi.wi.gov/files/sped/pdf/par-comm-options-for-families.pdf> or contact the DPI special education team at 608-266-1781.