



# PUBLIC SCHOOL OPEN ENROLLMENT INFORMATIONAL BULLETIN

Bulletin 16-05

June 2016

## 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**

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.

## **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.

## **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://dpi.wi.gov/sites/default/files/imce/forms/pdf/pod9418.pdf>
- Bulletin 14-03 Full-Time Public School Open Enrollment Appeals: Information for Parents  
<http://dpi.wi.gov/sites/default/files/imce/open-enrollment/pdf/Bulletin-16-03-Appeal-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 the nonresident 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.

*During the Pupil's Attendance in the Nonresident School District*

- 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.
  - 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](mailto:openenrollment@dpi.wi.gov)

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

Information about special education may be obtained as follows:

Phone: 608-266-1781

Email: [dpisped@dpi.wi.gov](mailto:dpisped@dpi.wi.gov)

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

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://dpi.wi.gov/sped> or contact the DPI special education team at 608-266-1781.