



PUBLIC SCHOOL OPEN ENROLLMENT INFORMATIONAL BULLETIN

Bulletin 17-02

April 2017

Full-Time Public School Open Enrollment Appeals Information for School Districts (Respondents)

DECISIONS THAT MAY BE APPEALED

Pursuant to Wis. Stat. § 118.51(9), parents whose open enrollment applications have been denied may file an appeal with the Department of Public Instruction (DPI) within 30 days after the application has been denied. The following decisions may be appealed to the DPI:

Nonresident School Board Decisions

- A nonresident school board's denial of an application submitted during the regular (February to April) application period.
- A nonresident school board's determination that the special education or related services required in an individualized education program (IEP) developed or revised after the pupil begins attending the nonresident school district are not available in the nonresident school district, or there is not space to provide them.
- A nonresident school board's termination of open enrollment due to habitual truancy.
- A nonresident school board's termination of open enrollment in a virtual charter school for failure to participate.

Resident School Board Decisions

- A resident school board's denial of an application submitted under the alternative application procedure.

DECISIONS THAT MAY NOT BE APPEALED

The following decisions may not be appealed to the DPI.

- A nonresident school board's denial of an application submitted under the alternative application procedure.
- A school assignment made by the nonresident school board.
- A pupil's placement on or removal from a nonresident district's wait list.

The DPI will **reject** an appeal that is based on the parent's reasons for applying for open enrollment. The open enrollment law assumes that parents have a good reason for applying for open enrollment, but the school board and the DPI cannot consider those reasons in acting on an application.

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Common appeal reasons that are NOT acceptable include, but are not limited to:

- The location of a job or daycare in relation to school facilities.
- Parent's home address is close to the nonresident school district's boundary.
- Transportation issues.
- The pupil's educational preferences or needs.
- Problems with the resident school district.
- Parent's desire for school board to reconsider its decision.
- The pupil has been attending the nonresident district for several years.

There is one exception to the unacceptable appeal reasons described above. If a school board denies an alternative application because the pupil's resident school board determined that the transfer is not in the pupil's best interests, the DPI will consider an appeal that describes the reasons for the open enrollment request and the reasons the school board's decision is not in the pupil's best interests.

REQUIREMENTS IN THE NOTICE OF DENIAL

For applications submitted during the regular application period, the school board's notice of denial must be made in writing and must be sent (post-marked) or personally delivered to the parent on or before the deadline specified by statute. If no written denial is sent or a late denial is sent to the parent, the application is considered approved.

For applications submitted using the alternative application procedure, the school board's notice of denial must be made in writing and must be sent to the parent on or before the 20th calendar day after the alternative application has been submitted. If no written denial is sent or a late denial is sent by the nonresident district to the parent, the alternative application is considered denied. If a resident district does not respond to an application on or before the 20th calendar day after the alternative application has been submitted, the alternative application is considered approved.

The denial notice must include:

- All of the reasons for denial. A school board will be permitted to defend on appeal only those reasons that were included in the notice. For example, if a nonresident school board denied an application because space is not available, the board may not argue in the appeal that the pupil has been habitually truant from the district.
- Notice of the parent's right to file an appeal with the state superintendent within 30 days of the date the decision is postmarked or personally delivered to the parent, including the following:
 - The DPI's address to which the appeal must be sent.
 - Where the parent may obtain other information about filing an appeal.

Note: PI 9418 Form for Filing an Open Enrollment Appeal may be obtained free of charge from the DPI at P.O. Box 7841, Madison, WI 53707, or by contacting the DPI at 888-245-2732 or openenrollment@dpi.wi.gov or from the open enrollment web site at <http://dpi.wi.gov/oe>.

Failure to notify the parent of the right to appeal will not result in an automatic reversal of the school board's decision. However, the DPI may accept an appeal as long as the appeal is filed within 30 days after the parent receives notice that the denial may be appealed.

The nonresident district does not need to include a notice of the parent's right to file an appeal of a denial of an alternative application because parents cannot appeal these decisions.

REQUIREMENTS FOR FILING AN APPEAL

An appeal must be in writing and must be signed. It may be filed using the DPI's appeal form or in the form of a letter or brief. The appeal must include all of the following:

- A copy of the notice of denial (if available).
- A copy of the postmarked envelope in which the notice of denial was mailed and any other information that came with the notice (if available).
- A statement of the decision being appealed. For example: "This is an appeal of the ABC School Board's denial of open enrollment for Johnny Brown to transfer to the ABC School District from the DEF School District."
- A statement of the reasons for the appeal, including why the appellant believes the decision was arbitrary or unreasonable, as it relates to the reason for denial. For example, if the application was denied due to space limitations, the appellant must explain why the appellant believes the board was arbitrary or unreasonable (i.e. wrong) when it determined it did not have space.
- Any other facts or evidence the parent believes are relevant to the appeal.
- If the appellant is represented by legal counsel, a notice of representation must be enclosed.

If the appeal is missing any required information, or does not allege the decision was arbitrary or unreasonable as it relates to the reason for denial, the DPI will reject the appeal.

If the appellant's only reason for filing the appeal is not related to the reason the application was denied, the DPI will reject the appeal. The appellant's reasons for applying for open enrollment will not be considered in reviewing the appeal, unless the appeal is of a resident school board's denial of an alternative application due to "best interests of the pupil."

If the appeal is postmarked more than 30 days from the date the denial was postmarked, it is untimely and the DPI will no longer have authority to review the decision. If the appellant does not provide a copy of the postmarked envelope, the DPI will contact the school board for proof of mailing to determine timeliness before proceeding to process the appeal.

It is not required for either the appellant or the school board to be represented by counsel. No specific legal format is required for filing an appeal, submitting evidence or briefs, or responding to an appeal. However, the DPI is prohibited from providing legal assistance to either party. If a party needs legal assistance, it may be desirable to consult an attorney.

The DPI may not engage in any ex parte communication with either party. This means the DPI will not discuss the specifics of an appeal with either party, although the DPI will provide whatever procedural information a party needs.

The appeal and all information concerning the appeal should be sent to:

Open Enrollment Program
Department of Public Instruction
P.O. Box 7841
Madison, WI 53707-7841

Alternatively, the appeal may be scanned and emailed to openenrollment@dpi.wi.gov or faxed to 608-267-9207.

PROCESSING APPEALS

Upon receipt and acceptance of the appeal, the DPI will issue an acknowledgment letter to the school board and the appellant. The letter will notify the school board that the appeal has been received, acknowledge receipt of the appeal to the appellant, instruct the school board to provide the record of the decision and set a schedule for submission of the record and filing of briefs.

Record

The record of the decision to be submitted by the school board will always include the following:

- Copies of the application, the notice of denial and any information that accompanied the notice of denial.
- Proof of mailing.
- A copy of the school board's policy and any other relevant policies (see appendix).
- Administrative procedures relied upon to approve or deny the application, including an explanation of the specific reasons for the decision.
- Minutes or transcripts of any school board meetings at which criteria or spaces were set or decisions made and a copy of all relevant materials provided to the school board.
- Minutes or transcripts of any committee meetings at which decisions were made.
- A copy of all information and data used in setting criteria or acting on the application (see appendix).
- Any other facts relevant to the appeal.

An appendix to this bulletin provides a detailed list of materials that must be submitted based on the reason for denial.

Briefs

Although neither party is required to submit a brief, either party may do so. The DPI will establish a schedule for submission of briefs and replies. The school board's initial brief is due on the same date as the record of the decision.

A brief is the party's argument in the appeal. It generally includes a statement of the facts of the case, followed by an argument explaining why the party believes the decision should be made in the party's favor, and includes facts, evidence and rationale to support the party's case.

There is no required format for the brief. It may be as simple as a letter or as formal as a "legal brief" submitted by an attorney.

Schedule

- The record of the decision and the school board's initial brief will be due two weeks after the DPI's letter.
- The appellant's reply brief, if any, will be due 10 days after the record is due.
- The school board's reply brief, if any, will be due 7 days after the appellant's brief is due.

REVIEW OF THE RECORD AND BRIEFS

The DPI is required to affirm a school board's decision unless the DPI finds that the decision was arbitrary or unreasonable.* This means that the DPI is likely to affirm the school board's decision if the school board's policies and criteria are in compliance with state law and are neither arbitrary nor unreasonable, the school board

* If the appeal is of a resident school board's determination that an alternative application is not in the best interests of the pupil, the DPI must overturn the school board's decision if the DPI determines that the denial is not in the pupil's best interests

properly and consistently applied its policy and criteria, and the school board followed state law and its policies in determining which applications will be approved and denied.

The DPI may use any of the following procedures it determines to be appropriate in the appeal process:

- Provide technical assistance and attempt to resolve the matter informally.
- Conduct an investigation, including an on-site review or any other activity the DPI deems is appropriate.
- Issue a decision based on a review of the record of the school board, arguments from the parties and any other matter the DPI deems appropriate.

DECISION

The DPI's decision will be in writing and will state separate findings of fact and conclusions of law. The decision will be mailed to the school board and to the appellant at the address stated on the appeal.

APPENDIX

In addition to the elements of a record that apply to all appeals (see section on Processing Appeals, above), there are elements that are specific to the reason for denial. The following is a list of the additional information and data required from the school district depending on the reason for denial.

Note: If the school board is represented by counsel, a notice of representation should be enclosed with the record and brief.

Regular Education Space Not Available – Nonresident School Board

- Criteria, data and procedures used to determine space availability, including any class size limits or pupil-teacher ratios, building capacity, random selection procedures, or enrollment projections established by the school board.
- The number of spaces available, by grade.
- The number of applications received, by grade, the number approved, the number denied, the number granted through guarantees or preferences, and the number selected randomly.
- Whether any nonresident pupils were permitted to enroll in the school district in the current school year who were not subject to the school board's space limitations, except those who were participating under the full-time open enrollment program, whose tuition was paid by another governmental entity or who attended under Wis. Stat. § 121.84.
 - Form PI 9422, Record of Decision in an Open Enrollment Denial Due to Space. See <http://dpi.wi.gov/sites/default/files/imce/forms/pdf/pod9422.pdf>.

Expulsion – Nonresident School Board

- A copy of the expulsion order or notice of pending disciplinary proceeding that includes the reason for the expulsion or pending disciplinary proceeding.
- Evidence that the school board reviewed the expulsion order or notice of pending disciplinary proceeding to determine whether the denial is permitted under Wis. Stat. § 118.51(5)(a)2 or pursuant to Wis. Stat. § 120.13(1)(f).

Habitual Truancy – Denial of Application – Nonresident School Board

- A copy of the school board's attendance policy.
- Attendance records for the pupil during the semester or semesters in which the pupil was habitually truant.

Habitual Truancy – Termination of Open Enrollment – Nonresident School Board

- A copy of the school board's attendance policy.
- Attendance records for the pupil during the semester or semesters in which the pupil was habitually truant.
- Evidence that the pupil and parent were notified of the open enrollment consequences of habitual truancy, including the number of unexcused absences that may result in termination of the pupil's open enrollment.
- Copies of any notices the parent received concerning unexcused absences and the letter notifying the parent that the pupil was habitually truant.

Special Education Program or Space Are Not Available – Nonresident School Board

- Criteria, data and procedures used to determine the number of spaces available in each special education program and related service for which a class size or caseload may be established and calculated.
- The number of spaces available in each special education program and related service required in the pupil's IEP.
- A description of the services required in the pupil's IEP and the portion of the IEP that prescribes the special education and related services to be provided.
- Evidence that the school board reviewed the pupil's IEP to determine whether a free, appropriate public education can be provided to the pupil within the nonresident school district.
- The date on which the IEP was created or revised, if the pupil is being required to return to the resident school district based on a new or revised IEP.
- Information pertaining to whether or not any pupils are attending the nonresident district for whom tuition is paid by another school district under Wis. Stat. § 121.78(1)(a) or by a parent under Wis. Stat. 121.81(1).
 - Form PI 9426, Record of Decision in an Open Enrollment Denial Due to Special Education Space. See <http://dpi.wi.gov/sites/default/files/imce/forms/pdf/pod9426.pdf>.

Initial Special Education Evaluation Has Not Been Completed – Nonresident School District

- Evidence that the pupil has been referred for an initial evaluation and that the initial evaluation has not been completed. If a pupil has been referred, but the parent refused consent for an evaluation or for initial placement, the pupil is not eligible for special education and may not be denied for this reason.