



# PUBLIC SCHOOL OPEN ENROLLMENT INFORMATIONAL BULLETIN

Bulletin 17-03

April 2017

## Full-Time Public School Open Enrollment Appeals Information for Parents (Appellants)

### DECISIONS THAT MAY BE APPEALED

If your open enrollment application has been denied by either the nonresident or resident school district, you may file an appeal with the Department of Public Instruction (DPI) within 30 days of the day the notice was postmarked or delivered to you, whichever is earlier. If your appeal is postmarked later than the 30th day after the notice is mailed or delivered, the DPI will notify you that we will not accept it.

An appeal is a request for DPI to review a school board's decision to determine whether the school board's decision was arbitrary or unreasonable. In reviewing the decision, the DPI will determine whether the school board has done all of the following:

- Adopted a policy as required in state law and that complies with state law.
- Adopted criteria upon which to base its decision (example, adopted class size criteria to determine how many spaces are available in the district).
- Considered all factors it is required to consider.
- Followed its policy exactly, with no exceptions.

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.

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.

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Madison, WI 53707-7841

Open Enrollment Program  
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School Management Services  
Tricia Collins, Director  
(608) 266-7475  
[tricia.collins@dpi.wi.gov](mailto:tricia.collins@dpi.wi.gov)

You may file an appeal if:

- Either the nonresident or resident school board denied an open enrollment application that was submitted during the annual February-April application period.
- A nonresident school board has notified you that your child's open enrollment is being terminated because:
  - The special education or related services required in your child's new or revised IEP are not available in the nonresident school district or there is no space.
  - Your child has been habitually truant.
  - Your child who is enrolled in a virtual charter school has failed to respond appropriately to assignments from school staff.
- Your resident school district has denied an application submitted under the alternative application procedure.

You may not file an appeal if:

- Your application was approved by the nonresident school board, but you did not get the school assignment you requested.
- Your application submitted under the alternative application procedure was denied by the nonresident school district.
- Your application was denied by the nonresident school board, you were placed on a wait list, and you disagree with the placement on or removal from the district's wait list.

### **REQUIREMENTS FOR FILING AN APPEAL**

An appeal must be in writing and must be signed. You can either use the DPI's appeal form or you can write a letter or brief. The appeal must include all of the following:

- A copy of the notice of denial. (If you no longer have the notice, you may still file an appeal, but processing will be delayed as DPI must obtain this information from the school district before we can begin to process your appeal.)
- A copy of the postmarked envelope in which the notice of denial was mailed and any other information that came with the notice. (If you do not have the envelope, you may still file the appeal; however, it may delay processing the appeal while the DPI contacts the school district to find out when the notice was mailed.)
- 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 you believe 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, you must explain why you believe 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 you are represented by legal counsel, enclose a notice of representation.

If your 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 your only reason for filing the appeal is not related to the reason the application was denied, the DPI will reject your appeal. Your reasons for applying for open enrollment will not be considered in reviewing the appeal, unless you are appealing 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 you do 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, for submitting evidence or briefs, or for responding to an appeal. However, the DPI is prohibited from providing legal assistance to either party. If you need 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

Alternatively, you may scan and email your appeal to [openenrollment@dpi.wi.gov](mailto:openenrollment@dpi.wi.gov) or fax it to 608-267-9207.

## **PROCESSING APPEALS**

When the DPI receives your appeal and it is accepted, we will send an acknowledgment letter to you and to the school board that denied the application. The letter has several purposes. It will:

- Acknowledge to you that that we have received your appeal.
- Notify the school board that we have received your appeal.
- Direct the school board to provide the record of the decision<sup>1</sup>: a copy of the application, the notice of denial, the school board's policy, minutes of any relevant school board meetings, all data used to make the decision, and an explanation of the procedures used to make the decision.
- Establish a schedule for submission of the record and briefs, as follows:
  - The school board's record and initial brief (if any) is due two weeks after our letter is mailed.
  - Your brief, if any (including the parent's initial brief and any reply to the school board's brief), is due 10 days after the due date for the school board's record and brief.
  - The school board's reply brief, if any, is due seven days after the due date for your brief.

You are not required to file a brief. However, we recommend that you review the school board's record and brief when you receive them. This is your opportunity to add any evidence or argument to what you have already submitted or to comment on or refute the school board's evidence or argument.

We do not require any particular format for a brief. You may submit a letter in your own words. A brief generally includes a statement of the facts in the case following by your explanation of why you believe the school board's decision was arbitrary or unreasonable and why you believe the DPI should overturn the decision. You should include any evidence you believe supports your argument.

If your appeal is not accepted by DPI, we will send a letter to you explaining the reason(s) why it was not accepted.

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<sup>1</sup> Bulletin 17-02, Appeals Information for School Districts, specifies the required elements of the record of the decision. See <http://dpi.wi.gov/sites/default/files/imce/open-enrollment/pdf/Bulletin-17-02-Appeal-Info-Dist.pdf>

**DECISION AND ORDER**

The DPI is required to affirm a school board's decision unless the DPI finds 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 policy and criteria are in accordance with state law and are neither arbitrary nor unreasonable, the school board properly and consistently applied its policy and criteria, and the school board followed state law and its policy in determining which applications will be approved and denied, it is likely the decision of the school board will be upheld.

If your resident school board denied an application submitted under the alternative application procedure because the school board believes the transfer is not in your child's best interests, the DPI must overturn the school board's decision if the DPI determines that denial of open enrollment is not in the child's best interests.

The DPI's decision will be in writing and will be mailed to you to the address you state on the appeal. If you move during the time in which the DPI is deciding the appeal, you must notify us of your new address or the decision may be lost or delayed in reaching you.

The DPI will make every effort to decide all appeals before the beginning of the school year. However, given the number of appeals usually received and the short period of time in which to decide them, this may not always be possible. Failure of DPI to decide an appeal by the start of the school term does not deprive the DPI of jurisdiction in the matter.

Either party (you or the school district) may appeal the DPI's decision to the circuit court in your county by filing a petition for review within 30 days after the DPI's decision is mailed. (However, the DPI's decision in an alternative application appeal is final and is not subject to appeal.)

If the school board's decision is upheld by the DPI and you wish to appeal the DPI's decision to circuit court, we recommend you consult an attorney. The DPI is unable to provide any legal advice or assistance with an appeal filed in circuit court.

**ADDITIONAL INFORMATION AND ASSISTANCE**

For more detailed information about the appeals process, see Bulletin 17-02 Public School Open Enrollment Appeals: Information for School Districts (Respondents).

<http://dpi.wi.gov/sites/default/files/imce/open-enrollment/pdf/Bulletin-17-02-Appeal-Info-Dist.pdf>

The open enrollment statute is Wis. Stats. § 118.51. It may be found at

<https://docs.legis.wisconsin.gov/document/statutes/118.51>

The open enrollment administrative rule is Chapter PI 36, Wis. Adm. Code. It may be found at

[http://docs.legis.wisconsin.gov/code/admin\\_code/pi/36.pdf](http://docs.legis.wisconsin.gov/code/admin_code/pi/36.pdf)

For additional information or assistance, contact:

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

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

Web site: <http://dpi.wi.gov/oe>

Toll-free phone: 888-245-2732

Direct phone (from out of state): 608-264-6707