

Open Enrollment and January Special Education Space Determinations

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PUBLIC INSTRUCTION
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January Space Determinations

January Space Determinations: Overview

January Space Determinations

- Nonresident school boards are required to designate regular and special education spaces available for the next school year at a January board meeting.
- Boards must specify criteria in their open enrollment policy.
 - Criteria must be applied consistently so decisions on space are not arbitrary or unreasonable.
 - Not following criteria is the most common reason DPI overturns OE denials for space.

January Space Determinations

- If the board does not intend to deny applicants due to regular education or special education space, it may make that determination and it must be documented in its January board minutes.

January Space Determinations

- **Even if board has indicated no special education space is available, the district must still review each student's IEP in its entirety to determine the following:**
 - Whether the district has space available in the special education and related services required in the student's IEP
 - Whether the district has the special education and related services required in the student's IEP.

January Space Determinations

- **If the nonresident school board wishes to consider whether it has available space in the special education or related services required in the student's IEP, the board must specify this in its open enrollment policy as well as the criteria it will consider when making its determinations.**

January Space Determinations

- On appeal, DPI is required to affirm a school board's decision unless it finds that the decision was arbitrary or unreasonable.
- **This means that DPI will most likely uphold a denial decision if both of the following are true:**
 - The school board's policy and criteria are in compliance with state law and are neither arbitrary nor unreasonable.
 - The school board properly and consistently applied its policy and criteria, and followed state law and its policies in determining application decisions.

Space Determinations - Policy

Space Determinations - Policy

Space Determinations - Policy

- **The policy may not specify that it cannot provide services to students with a specific disability.**
- **The policy can only consider the availability of space in special education and/or related services.**

Space Determinations - Policy

- **If the nonresident school board wants to make any changes to its open enrollment policy, this must be done before the regular application period begins (the first Monday in February).**

Space Determinations - Policy

- **Per state law, the nonresident school board must adopt a policy that:**
 - Specifies that it will consider the availability when approving and denying applications.
 - Establishes space criteria. This includes the description of the criteria (i.e. class size limits) and what the criteria are (i.e. numeric or other criteria) that will be used to determine the availability of space.
 - Specifies whether currently-attending applicants and/or siblings of currently-attending students will be granted preferences or guarantees.
 - Provides for a waiting list, if desired.

Space Determinations - Policy

- **DPI does not have model policies on making space determinations for regular education or special education for open enrollment.**
- **DPI does not, as a matter of course, approve district policies on space determinations.**
- **If an application denial is appealed, DPI will review local policy/criteria and ensure it has not been applied in an arbitrary and unreasonable manner.**

January Space Determinations

Policy

Availability of Special Education or Related Services

The District may deny an application if the special education or related services described in the nonresident student's individualized education program (IEP), if any, are not available in the district.

Special Education Space Availability

The District may deny an application if there is no space available in the district to provide the special education and related services identified in the nonresident student's IEP, after consideration of class size goals, student-teacher ratios, and enrollment projections.

Special Education Evaluation Referral

The District may deny an application if the nonresident student has been referred to their resident school board for a special education evaluation under Wis. Stat. § 115.777(1) or identified by their resident school board under Wis. Stat. § 115.77(1m)(a), but not yet evaluated by an IEP team appointed by their resident school board.

Space Determinations - Criteria

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Space Determinations - Criteria

- **If the board wishes to consider whether there is space to provide special education or related services, it must specify criteria it will use.**
- **Specific criteria must be outlined in the board's open enrollment policy.**
- **Criteria must be followed exactly and consistently.**

Space Determinations - Criteria

- **There are no state or federal special education caseload requirements.**
- **Local school districts are responsible for determining policies and criteria related to space/staff capacity to provide special education services.**

Space Determinations - Criteria

- **Criteria may include:**
 - **Class size limits or pupil-teacher ratios**
 - **Caseload or staffing capacity limits, including:**
 - The amount of services pupils may need (e.g., minutes/hours, days per week).
 - Class/group size based on intensity of pupil needs (e.g., 1:1, small group, crisis intervention).
 - The type of staff to address various disability-related needs (e.g., special education teacher, pupil services staff, related services, paraprofessional, etc.)

Space Determinations - Criteria

- **Criteria may include:**
 - **Projected pupil enrollment and changes to services in pupils' IEPs.**
 - **Other considerations concerning availability of space in the special education or related services.**

Space Determinations - Criteria

- Criteria may not include:
 - Limitations that are based on pupil eligibility category labels (e.g., SLD, Autism, ID)
 - Limitations that are based on IDEA environment codes (e.g. amount of time in general education classroom, IDEA Env. Code B)
 - Limitations related to transportation

Space Determinations - Criteria

- **Both state and federal laws prohibit discrimination against a student based on the student's physical, mental, emotional, or learning disability.**
- **The board may not deny open enrollment based on the student's eligibility for or need of a reasonable accommodation in a Section 504 plan.**

January Space Determinations

Criteria

Criteria for Determining Open Enrollment Special Education Space Availability

The following method will be used to determine available special education open enrollment space availability. The Director of Special Education will review each special education teacher and related service provider's current caseload, project caseload for the next school year, and compare the projected caseload with projected enrollment and DPI caseload recommendations.

If the projected caseload for any special education teacher or related service provider is below DPI caseload recommendations, then space will be available to provide that specific type of special education or related services up to that caseload recommendation. If a teacher or related service provider's projected caseload is above the DPI caseload recommendations, then no space will be available to provide that type of special education or related service for the next school year.

Space Determinations – Contracted Services

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Space Determinations – Contracted Services

- A nonresident school board is not required to designate special education spaces if it contracts outside of the district for special education services because the programs are not available in the district.
- The school board can deny the application because the services are not available in the district.

Space Determinations – Contracted Services

- However, the school board can choose to approve applications for students who required the contracted special education services that it does not have in the district.
- If the school board determines that it wants to approve these applications, the board is required to designate special education spaces for those services based on its contract for special education services.

Space Determinations – Board Minutes

Space Determinations Board Minutes and Examples

January Space Determinations

- **Board action must be reflected in the board minutes.**
 - Minutes must reflect the actual number of spaces by special education program or service for which a caseload or class size can be established.
 - Minutes should not simply make reference to the board passing a motion related to open enrollment spaces.

January Space Determinations

Example of Acceptable Open Enrollment Space Determinations in Board Minutes:

Motion to approve 45 regular education open enrollment seats and 11 seats in the speech and language program for the 2020-2021 school year, based on the criteria outlined in the District's open enrollment policy #425.

Motion made by Donna Smith, second by Mark Jones.

Discussion was held.

Final Resolution: Motion Carried.

Yea: Donna Smith, Mark Jones, Jeannie Edwards, Tom Thompson, Leon Jones, Peter Peppers

Nay: None

The school board approved 11 special education seats in speech and language for grades 4K through 8. Due to the district's caseload formulas, there are no other seats available in any other special education services at any grade level.

Students with Disabilities Spaces by Program	
Cross Categorical	0
Occupational Therapy (OT)	0
Physical Therapy (PT)	0
Speech and Language (SL)	11

January Space Determinations

Example of Unacceptable Open Enrollment Space Determination in Board Minutes:

Space Available for Special Education Services

Autism-2

Early Childhood-10

Emotional Behavioral Disabilities-5

Hearing Impaired-0

Intellectual Disability-0

Occupational Therapy-0

Orthopedic Impairment-0

Other Health Impairment-0

Physical Therapy-0

Significant Developmental Disability-0

Specific Learning Disability-2

Speech and Language-0

Traumatic Brain Injury-0

Vision Impaired-0

Important Considerations

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Must Review Student's IEP

- **Even if board has indicated no special education space is available, the district must still review each student's IEP in its entirety to determine the following:**
 - Whether the district has space available in the special education and related services required in the student's IEP
 - Whether the district has the special education and related services required in the student's IEP.

Preferences and Guarantees

- **Preference must be given to currently-attending applicants and siblings of currently-attending students.**
 - Preference requires space.
 - If there are no spaces, students entitled to preference must be denied.
- **Guarantee may be given to currently-attending applicants or siblings of currently-attending students.**
 - Guarantee means approval, regardless of space.
 - District must have policy to guarantee approval – otherwise may only grant preference.

Preferences and Guarantees

- If board policy specifies “may” guarantee approval of currently-attending applicants or siblings of currently-attending students, the board must make decision at their January board meeting.
 - If the board fails to specify, then the board may not guarantee approval.
 - Must grant preference and only if there is space to do so.

OE Termination After Attendance

- When districts make their space determinations, it is for new applicants only.
- The January space determinations are only good through the 3rd Friday in September.
- A continuing open enrolled student's IEP revision or development is independent of any special education space determinations established by the district.

OE Termination After Attendance

- **Under Wis. Stat. § 118.51(12)(b), if an IEP is developed or revised for a continuing open enrolled student, the nonresident district may consider:**
 - Whether it has the special education and related services required in the student's IEP or
 - Whether it has space in the special education and related services required in the student's IEP.
- **If it does not, the nonresident district may, but is not required to, notify the parent and the resident district that the student's open enrollment is terminated.**

Space Determinations and Alternative Applications

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- After the January board meeting and up until June 30th, a nonresident school board may approve an alternative application submitted for the current school year if the board did not limit the number of spaces available in the pupil's succeeding grade or special education service for applications submitted under the regular application period for the following school year.

Space Determinations and Alternative Applications

- From July 1st to the 3rd Friday in September, a nonresident school board may approve an alternative application for the current school year in the pupil's grade or special education service that does not have space limitations established by the school board for the following school year.

Space Determinations and Alternative Applications

- **When a nonresident school district makes their January space determinations, those spaces are only good through the 3rd Friday in September.**
 - When an alternative application is submitted after 3rd Friday but before the next January board meeting, districts can take a look at their numbers at the time of application to determine whether or not they have space or they can continue to use their space determinations from January.

Resources

Resources

Open Enrollment Webpage

<https://dpi.wi.gov/open-enrollment>

Open Enrollment Bulletins

<https://dpi.wi.gov/open-enrollment/resources/bulletin>

Open Enrollment and Special Education

<https://dpi.wi.gov/open-enrollment/special-education>

Contacts

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