

**QUESTIONS AND ANSWERS ABOUT 2015 ACT 55 (2015-17 BUDGET)
OPEN ENROLLMENT CHANGES FOR PUPILS WITH DISABILITIES
(Updated January 2016)**

Open Enrollment Transfer Amount for Pupils with Disabilities

1. *What is the open enrollment transfer amount for open enrolled pupils with disabilities?*

Starting with the 2016-17 school year (the February – April 2016 regular application period), 2015 Wisconsin Act 55 has created a new transfer amount of \$12,000 for open enrolled pupils with disabilities, as defined by IDEA and Wis. Stats. § 115.76 (5).

2. *Does the nonresident district still need to prepare a cost estimate?*

No. Starting with the 2016-17 school year (the February – April 2016 regular application period), nonresident school districts will no longer be required to create and send a cost estimate of the basic open enrollment amount plus any actual, additional costs to provide special education and related services required in the pupil's IEP to the resident district.

3. *Does the nonresident district continue to bill the resident district for open enrolled pupils with disabilities?*

No. Beginning in the 2016-17 school year, nonresident school districts will no longer bill the resident district for the open enrollment basic transfer amount plus any actual, additional costs to provide special education for open enrolled pupils with disabilities.

The Department of Public Instruction (department) will make the aid transfer payments for all open enrolled pupils with disabilities in the same manner as open enrolled non-disabled pupils.

4. *Does this new aid payment apply to only new open enrolled pupils or does it also include continuing open enrolled pupils?*

The department will make the aid transfer payment for all pupils regardless if they were newly open enrolled or continuing open enrolled pupils from prior school years. The special education transfer amount will be the same for all pupils with disabilities.

5. Will the open enrollment transfer amount of \$12,000 be prorated if the pupil's open enrollment status changes?

Yes. If a pupil with a disability has an open enrollment status change, the transfer amount will be prorated based on the number of days the pupil was open enrolled. This is similar to the proration already done for open enrolled non-disabled pupils.

6. If an open enrolled pupil no longer requires special education services or if an IEP is developed for a pupil during the school year, how is the open enrolled transfer amount calculated?

Beginning in the 2016-17 school year, if a pupil is evaluated and identified with a disability after the school year begins, the resident district would be charged a prorated amount based on the number of days the pupil received special education services. The prorated amount would be based on the \$12,000 transfer amount for those days. For the days the pupil did not receive special education services, the resident district would be charged the daily rate based on the basic open enrollment amount.

Reasons for Denial, School Board Open Enrollment Policies, and Space Determinations

7. Can a resident district still deny a pupil's open enrollment due to undue financial burden?

No. Starting with the 2016-17 school year (the February – April 2016 regular application period), resident districts will no longer be able to deny a pupil's open enrollment for undue financial burden.

8. Can a nonresident district deny a pupil's open enrollment based on the pupil's disability?

No. Both state and federal laws prohibit discrimination against a pupil based on the pupil's physical, mental, emotional, or learning disability. The board also may not deny open enrollment based on the pupil's eligibility for or need of a reasonable accommodation in a Section 504 plan.

An application may only be denied if there is no space in the special education or related services required in the pupil's IEP or if the special education or related services are not available.

9. Can a nonresident district deny a pupil's open enrollment if it does not have the transportation required in the pupil's IEP?

No. The school board cannot deny an application solely on the basis that transportation is required in the pupil's IEP. Wis. Stats. § 118.51 (14) (a) 2. states that if a pupil with a disability has transportation required in their IEP, the nonresident district must provide such transportation. No billing may occur for any special education or related services, including transportation required in a pupil's IEP.

10. Does the school board need to update their open enrollment policy to reflect these changes?

Yes. These changes will require school boards to update their open enrollment policies. These updates must be completed before the first day of the regular application period to which the policy will first apply. Therefore, changes related to Act 55 that will apply to the 2016-17 school year must be completed before February 1, 2016.

11. Does the school board need to designate special education spaces at its January school board meeting?

Yes. School boards are required to designate the number of regular education and special education spaces available for the next school year. Space determinations must be made and approved by the school board at its January board meeting.

If the board does not intend to deny applicants due to space, it may make that determination and document it in the January board minutes.

Please see our training module "Space Determinations" on our open enrollment training webpage at <http://dpi.wi.gov/open-enrollment/resources/training>. There is guidance available on special education caseloads at <http://dpi.wi.gov/sped/educators/initiatives/caseloads-taskforce>. The department is currently reviewing the special education caseload guidance and will update this guidance when that review is completed.

12. Does the school board need to designate special education spaces if the district contracts outside of the district for special education services?

No. The 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.

However, the school board can choose to approve applications for pupils who require 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.

13. What criteria may the school board use to determine special education space availability?

If the board wishes to consider whether there is space to provide the special education or related services, it must specify the criteria it will consider when making the space determination. Specific criteria must be applied consistently to ensure decisions on special education space are not arbitrary or unreasonable. Criteria may include:

- Class size limits or pupil-teacher ratios
- Caseload limits, including:
 - The amount of services pupils may need (e.g., minutes/hours, days per week, other)
 - 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...)
- Capacity
- Enrollment projections and IEP service changes
- Other considerations concerning space in the special education or related services

14. Does the DPI have caseload requirements related to special education?

No. There are no state or federal special education caseload requirements. Local school districts are responsible for determining special education caseloads or space capacities for services. The department is currently reviewing the special education caseload guidance and will provide updated information when that review is completed. Until updated resources are provided, districts may continue to refer to the 2001 DPI Task Force recommendations when determining special education caseloads. See http://sped.dpi.wi.gov/sped_cseldfr.

15. Can a nonresident district enter into a tuition agreement for an IEP placement with the pupil's resident district when the nonresident district has determined that there are no open enrollment special education spaces available in the program and/or services required in the pupil's IEP?

No. It is arbitrary for a school district to deny an open enrollment application due to a lack of space to one pupil and then accept another pupil. McMorrow v. Benson, 2000 WI App 173, ¶ 10, 238 Wis. 2d 329, 340, 617 N.W.2d 247, 253. If a school district denied

an application due to lack of space and then entered into a tuition agreement to take the pupil, the open enrollment denial would be reversed on appeal.

Open enrollment is a parental choice program and can only be denied or terminated for specific reasons in statute. A tuition agreement is a district choice that can be terminated at the will of the district. A district can offer the placement at another district and pay the costs (including transportation), but parents have a right to choose attendance at the non-resident district through the open enrollment program (parents pay the cost of transportation under OE). The district cannot deny the parent's choice in favor of their own choice because it may be more fiscally advantageous for them. In addition, Wis. Stats. § 118.51(17) is the exclusive means to pay for pupils with disabilities who are open enrolled.

Additional Year Tuition Waivers

16. Will the changes described above impact additional year tuition waivers?

Yes. The department will make an aid transfer payment of \$12,000 for all additional year tuition waiver pupils with disabilities. The nonresident district will no longer be required to send cost estimates. The nonresident district will not bill the resident district for the open enrollment basic transfer amount plus any actual, additional costs. Resident districts will not be able to deny an additional year tuition waiver due to undue financial burden.

If you have questions related to the topics covered above regarding open enrollment, please contact the open enrollment staff at openenrollment@dpi.wi.gov or at 888-245-2732, option 2.

Reporting Open Enrollment Transfer Amounts and State Categorical Aids for Open Enrolled Pupils with Disabilities

Below are questions and answers related to reporting open enrollment transfer amounts and state categorical aids for open enrolled pupils with disabilities, maintenance of effort (MOE), and transfer of service. If you have any questions regarding these topics, please contact Daniel Bush, School Finance Consultant at daniel.bush@dpi.wi.gov or at 608-267-9212.

17. What does the open enrollment transfer amount for pupils with disabilities pay for?

The \$12,000 is a transfer of general school aids, not a tuition payment for specific costs. The actual costs of providing special education and related services are the responsibility of the nonresident district.

18. Who is responsible for FAPE?

The nonresident district has both the educational and financial responsibilities for FAPE.

19. How is the open enrollment transfer amount for pupils with disabilities recorded?

The \$12,000 open enrollment transfer amount is a Fund 10 expenditure or revenue (10 E 435000/10 R 345). Aid transfers will be made by the department and included in the June aid payment reconciliation, just as with “regular” open enrollment under current law.

20. What if the pupil’s costs of special education and related services are less than \$12,000?

The aid transfer of general school aids is \$12,000. It is not connected to the pupil’s costs of special education and related services.

21. What if the pupil’s costs are more than \$12,000?

Again, the aid transfer is \$12,000. If the pupil’s costs of special education and related services are significantly more, the nonresident district may be able to claim High Cost Special Education Aid. There is more information available on High Cost Special Education Aid at <http://dpi.wi.gov/sfs/aid/special-ed/high-cost-aid>.

22. Who receives state categorical aids? Does the nonresident district owe the resident district any transit of aid?

The nonresident district claims and retains any Special Education and School-Age Parents Aid, High Cost Special Education Aid, or Supplemental Special Education Aid for the pupil’s costs of special education and related services. The nonresident district also retains any Medicaid funds for school-based services (SBS) provided to the pupil. No transit of aid occurs.

23. Can I use my IDEA flow-through or preschool funds to pay for the \$12,000 aid transfer out for my resident pupil?

No.

24. Can I use my IDEA flow-through or preschool funds for the nonresident pupils I enroll?

Yes, for the costs of special education and related services as specified in the pupil’s IEP.

Maintenance of Effort (MOE)

25. Does the \$12,000 aid transfer out for my resident pupils count towards my IDEA Maintenance of Effort (MOE)?

The amount is a transfer of general school aids and therefore not included in the MOE calculation. However, the pupil is no longer included in the resident district's MOE child count, as they would have been under the old law. The department will apply an administrative exception if the change in the law for a district's existing resident open enrollment pupils has a negative impact on its MOE.

26. How does the nonresident pupil I enroll impact my MOE?

Any Fund 27 costs of special education and related services for the pupil, along with any state categorical aids received for those costs, become part of the nonresident district's MOE, and the pupil is included in your child count. The \$12,000 aid transfer has no impact on MOE.

27. Doesn't this mean MOE child count and membership are different?

Yes. The resident district counts the pupil for aid and revenue limit purposes, while the nonresident district counts the pupil for MOE.

Transfer of Service

28. As the nonresident district, can I request a revenue limit exemption for transfer of service?

No. 2015 Act 55 (2015-17 Budget) did not amend state law to allow a transfer of service exemption to increase a district's revenue limit authority for additional costs associated with open enrolled students.