



Open Enrollment Updates

The start of the open enrollment application period is just around the corner; parents will be allowed to submit applications beginning on February 6, 2017. School districts are reminded that any changes to an open enrollment policy must be completed prior to the first day of open enrollment and must be done by “resolution,” which the Department of Public Instruction (DPI) defines as “policy.” As such, any changes to an open enrollment policy should conform to the requirements of policy changes as set forth in school board policy.

With respect to students with disabilities, if a policy still contains language related to consideration of the cost of services provided (“cost estimates” and “undue financial burden” language), that language should be eliminated since that is no longer a permissible consideration. In addition, a policy may not specify that a district cannot provide services to students with specific disabilities, but must specify the criteria the Board will consider when making its determinations. If a district does not offer or have space in the special education program or related services identified in a child’s Individualized Education Program (IEP), the district may deny the open enrollment application.

Some districts limit open enrollment based on class size or other space limitations. Unless an open enrollment policy guarantees that any student who applies will be admitted, a school board is required each January to determine how many spaces are available at each grade level (regular education) or at the program level (special education or related services) for the following year. If the board’s policy contains such limitations, the board will need to address this at its January meeting.

DPI published a draft bulletin on its website last week related to making open enrollment determinations in special education based on space limitations. School boards should refer to this guidance in determining space in special education and related services. The information can be found at: <http://dpi.wi.gov/sites/default/files/imce/open-enrollment/pdf/oe-bulletin-16-10-special-ed-space-determinations.pdf>

The bulletin reminds districts that a school board must have criteria for determining space in special education and related services and apply those criteria consistently to avoid decisions that are arbitrary or unreasonable. The criteria might include:

- Class size or pupil teacher ratios;
- Staffing capacity limits including the amount of services a student may need, the class/group size based on the intensity of student needs, and the type of staff to address various disability-related needs; and
- Projected enrollment and changes to services in students’ IEPs.

A school board’s criteria may not include limits that are based on student eligibility category labels (such as SLD, Autism, and ID), IDEA environment codes, or limitations related to transportation.

In general, a school board may not deny a student’s application for open enrollment because the student has a specific disability. Rather, the board must examine the student’s IEP to determine whether it has space in the specific education or related services required by the student’s IEP. Even if the district’s special education and related services are at capacity, the board may not deny the application without a review of the student’s IEP. Likewise, a school board may not deny an application based on a student’s eligibility for or need of a reasonable accommodation in a Section 504 plan.

DPI states that it will uphold a school board’s denial of an open enrollment application if the board’s policy and criteria are in compliance with state law and are neither arbitrary nor unreasonable, and if the board properly and consistently applied its policy and criteria and followed state law and district policies. DPI is seeing an increase in the number of open enrollment appeals and disputes and, therefore, districts should make sure their policies are up to date.

For assistance with modifications to an open enrollment policy or space determinations, please contact one of the attorneys listed below.

■ Michael J. Julka	(608) 286-7238	■ Douglas E. Witte	(608) 283-7529	■ M. Tess O’Brien-Heinzen	(608) 283-1798
■ JoAnn M. Hart	(608) 286-7162	■ Steven C. Zach	(608) 283-1736	■ Brian P. Goodman	(608) 283-1722
■ Eileen A. Brownlee	(608) 822-3251	■ Richard F. Verstegen	(608) 286-7233		

Disclaimer: Boardman & Clark LLP provides this material as information about legal issues. It does not offer legal advice with respect to particular situations and does not purport that this newsletter is a complete treatment of the legal issues surrounding any topic. Because your situation may differ from those described in this Newsletter, you should not rely solely on this information in making legal decisions. In addition, this material may quickly become outdated. Anyone referencing this material must update the information presented to ensure accuracy. The use of the materials does not establish an attorney-client relationship, and Boardman & Clark LLP recommends the use of legal counsel on specific matters.