



School Law FYI

DECEMBER 2017

Open Enrollment Update: Full-Time and Part-Time

FULL-TIME OPEN ENROLLMENT

On February 5, 2018, parents will begin applying for full-time open enrollment into Wisconsin school districts. In accordance with Wisconsin law, school boards are reminded to determine the number of regular education and special education spaces available within the school district for purposes of full-time open enrollment at their January school board meetings. The Department of Public Instruction (“DPI”) published guidance last year to assist districts in making space determinations for special education, which can be found at: <https://dpi.wi.gov/sites/default/files/imce/open-enrollment/pdf/oe-bulletin-16-10-special-ed-space-determinations.pdf>. The guidance reminds districts that school boards must have criteria for determining space in special education and related services and apply those criteria consistently just as they do with respect to regular education. If the nonresident school board rejects a regular open enrollment application or the resident school board prohibits a pupil applying during the regular open enrollment period from attending public school in a nonresident school district, the pupil’s parent may appeal the decision to DPI. DPI shall affirm the school board’s decision unless it finds that the decision was arbitrary or unreasonable. A student applying during the alternative application period has separate appeal rights.

Districts that educate open-enrolled special education students should also be aware that 2017 Act 59 (the 2017-19 budget bill) increased the \$12,000 per year, per-pupil payment for open-enrolled special education students effective in the 2018-19 school year. In fiscal year 2018, the transfer amount for open-enrolled special education students will be \$12,207 and in fiscal year 2019, it is estimated that it will be \$12,424. Beginning in fiscal year 2020, for special education students open enrolled in a nonresident district for a second or subsequent year, the per-pupil payment will be *either the statutory amount or the actual costs to the nonresident district, up to \$30,000*, if the nonresident school district submitted a financial statement to DPI the prior year showing the actual costs to the district of providing education to the special education student the previous year. For the full text of the statutory provisions, see Wis. Stat. §§ 118.51(12), (16) and (17).

PART-TIME OPEN ENROLLMENT

New this year, students will also be seeking part-time open enrollment in districts for the 2018-19 school year. The part-time open enrollment program is a replacement for the “course options” program which was eliminated by Act 59 and which allowed high school students to enroll in up to two courses in educational institutions including public school districts, colleges, technical colleges, and nonprofit organizations approved by DPI. While the two programs are similar, one notable change is that the part-time open enrollment program only applies to students in public high schools seeking to take courses in other public high schools. The program does not apply to enrollment in college or technical college courses or courses in private schools; these programs are addressed under different statutory provisions.

Effective in the 2018-19 school year, under the part-time open enrollment statute, a high school student enrolled in a public school may attend school in a nonresident public school district for the purpose of taking up to two courses at any time. The resident school district must pay the nonresident district an amount equal to the cost of providing the course(s), calculated in the manner determined by DPI.

Students must submit an application to the nonresident school board no later than six weeks prior to the date on which the course is scheduled to begin and the nonresident school board must send a copy of a student's application to the resident school board. No later than one week before the course is scheduled to begin, the nonresident school board must notify the applicant whether the application has been accepted. The school board must adopt by resolution (which DPI defines as a "policy") the policies and criteria for accepting and rejecting applications. The policies and criteria must be the same as those for entry into the course that apply to students who reside in the school district, except that the school board may give preference to residents of the district. If the school board receives more applications for a particular course than there are spaces available, the board must determine which pupils to accept on a random basis. If the nonresident school board rejects the application, it must include the reason for the rejection in the rejection letter.

A *resident* school board *must* reject a part-time open enrollment application if the school board determines that the course conflicts with the resident special education student's individualized education program, or IEP. A new provision in the statute also provides that the resident school board *may* reject a student's application to attend a nonresident district if the cost of the course (as determined by DPI) would impose upon the resident district an undue financial burden in light of the resident district's total economic circumstances, including its revenue limit, its ability to pay tuition costs for the student, and the per pupil cost for children continuing to be served by the resident school district. If the resident district rejects the application, the resident school board must notify the student no later than one week prior to the date on which the course is scheduled to begin.

Unlike the course options program, the resident district may not reject a part-time open enrollment application on the basis that it does not satisfy high school graduation requirements, although the resident district must notify the student in writing if this is the case.

If a student's application for part-time open enrollment is rejected by the nonresident district or if the student is prohibited from attending the nonresident district by the resident district, the student's parent may appeal to DPI. DPI will affirm a school board's rejection of part-time open enrollment unless it is arbitrary or unreasonable. For a full text of the part-time open enrollment law, see Wis. Stat. § 118.52.

CONCLUSION

As the time for open enrollment approaches, school boards are advised to make full-time open enrollment space determinations for regular and special education at their January board meetings. In addition, boards should revise their course options policies to comply with the part-time open enrollment statute.

Come See Us At The Convention

In addition to Doug Witte of our firm serving as parliamentarian and legal counsel at the Convention's Delegate Assembly and related activities, multiple members of our School Law Practice Group will be on hand at the Wisconsin State Education Convention in Milwaukee on January 17 and January 18, 2018. Please come to see us at Booth 838 during exhibit hours. We look forward to seeing you there!

M. TESS O'BRIEN-HEINZEN	(608) 283-1798	EILEEN A. BROWNLEE	(608) 822-3251	RICHARD F. VERSTEGEN	(608) 286-7233
DOUGLAS E. WITTE	(608) 283-7529	JOANN M. HART	(608) 286-7162	BRIAN P. GOODMAN	(608) 283-1722
MICHAEL J. JULKA	(608) 286-7238	FRANK C. SUTHERLAND	(608) 286-7243		
JAMES K. RUHLY	(608) 283-1738	STEVEN C. ZACH	(608) 283-1736		

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