



School Law FYI

Reminders for Open Enrollment

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The regular open enrollment application period for the 2023 – 2024 school year begins on February 6, 2023. To prepare, school boards must meet this month (January 2023) to designate regular and special education spaces for the 2023 – 2024 school year and make any desired changes to the board's open enrollment policies.

Setting Space Limits

If a school board wishes to deny an open enrollment application based on space, board policy must specify space criteria which may include class size limits, pupil-teacher ratios, or enrollment projections established by the school board. In addition, board policy must specify whether currently-attending applicants (e.g., students whose parents move out of the district and who therefore need to apply for open enrollment to stay in district schools) and/or siblings of currently-attending applicants will be granted preferences or guarantees, and whether the district will establish a waiting list. School boards **must** grant *preference* to currently-attending applicants and siblings of currently-attending applicants. School boards **may guarantee approval** to currently-attending applicants and/or siblings of currently-attending applicants. If board policy states that currently-attending applicants **shall** be guaranteed approval, all applications must be approved regardless of available space (except if the district does not have the special education or related services required by the applicant's IEP). If board policy states that the currently-attending applicants and/or their siblings **may** be guaranteed approval, the board must make a decision at the January meeting to guarantee approval. If such decision is not made, those currently-attending applicants and/or their siblings will be granted preference.

In setting space limits in special education, boards do not need to set space limits if the board contracts outside the district for special education services because the programs are not available in the district. For example, if a school board contracts with its local CESA for speech and language, the board need not set space limits for speech and language. For special education and related services in the district, a school board may

consider class size limits, pupil teacher ratios, caseload or staffing capacity limits including services needed, intensity of pupil needs, and type and number of staff needed. However, boards cannot specify space based on specific disabilities.

A school board's actions at the meeting in January must be reflected with detail in the meeting minutes. That is, the actual number of spaces in regular education by grade and by special education program or service for which a caseload or class size can be established, must be specifically stated in the minutes. The minutes may not include only a general statement that the Board set space limits for open enrollment.

Space determinations made in January are applicable for new applicants only and are good through the third Friday in September. Space limits do not apply to a continuing open enrolled student who is referred for special education or whose IEP is reviewed and revised during the student's enrollment.

Reviewing Applications

If a board has granted preference to currently-attending applicants and their siblings, the board must approve preference applications if space exists. If there are more preference applications in a grade than spaces, the board must conduct a lottery of the preference applicants. If there is no space available for a preference applicant, the application must be denied. If an applicant has been guaranteed approval, the application must be approved regardless of available space. Guaranteed applicants with IEPs may be denied only if a district does not have the special education and related services required in the applicant's IEP.

Regardless of the space determinations made in January, a district may not deny an application from a special education applicant until it reviews the IEP in its entirety to determine whether the district has space available in the student's grade and in the special education and related services required in the student's IEP, and whether the district has the special education and related services required in the student's IEP.

Alternative Applications

Between the January meeting and June 30, a nonresident school board *may not approve* an alternative application submitted for the current school year if the board set space limitations in the student's succeeding grade or special education program for the following school year.

Between July 1 and the third Friday in September, a nonresident school board *may not approve* an alternative application for the current school year if the board set space limits in the student's grade or special education program for the next school year unless the District accepted all regular open enrollment applications for that year.

After the third Friday in September and through the January meeting, a school board *may approve* an application based on space available in the applicant's grade or special

education program at the time of the application or based on the space determinations set the previous January.

Ensuring Sound Decisions

To avoid making arbitrary or unreasonable decisions, school boards should ensure their policies include relevant criteria which aligns with state law and should apply the criteria consistently. If a nonresident board's denial is appealed, the Department of Public Instruction may overturn the denial if the district denied the application for the wrong reason or misstated the reason or otherwise included incorrect information in the denial letter. Districts are advised to use the Department's template letters for acceptance and denial, which can be found on the Department's website at <https://dpi.wi.gov/open-enrollment/resources/training>, and to review each application and decision letter carefully.

Finally, school boards should contact their legal counsel with questions related to the designation of open enrollment seats.

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