

**QUESTIONS AND ANSWERS ABOUT
FULL-TIME INTER-DISTRICT PUBLIC SCHOOL OPEN ENROLLMENT
(Updated April, 2012)**

TOPICS	Page
I. <u>General Information about Open Enrollment</u>	1
II. <u>Application Procedures</u>	3
III. <u>Kindergarten, 4-Year-Old Kindergarten, Prekindergarten, Early Childhood Education and School-Operated Day Care</u>	7
IV. <u>Approval and Denial; Selection of Students</u>	9
V. <u>Space</u>	12
VI. <u>Students with Disabilities; Special Education</u>	14
VII. <u>Undue Financial Burden</u>	18
VIII. <u>Expelled Students</u>	20
IX. <u>Reapplication</u>	22
X. <u>Filing an Appeal</u>	23
XI. <u>Attending a Nonresident School District under Open Enrollment</u>	25
XII. <u>Transportation</u>	27
XIII. <u>School Board Policies</u>	29
XIV. <u>Open Enrollment Funding/Tracking Students</u>	30

I. General Information about Open Enrollment

1. What is the full-time inter-district public school open enrollment program?

Wisconsin's full-time-time inter-district public school open enrollment program allows parents to apply for their children to attend school in a school district other than the one in which they reside. [Wis. Stats. § 118.51]

2. Who may participate in public school open enrollment?

Any student in grades kindergarten to 12 may apply to attend school in any public school district in the state. Students may apply for 4-year-old kindergarten, prekindergarten, early childhood education and school-operated day care ***only if*** the student's resident school district offers the same type of program and ***only if*** the student is eligible for that program in her or his resident school district. [Wis. Stats. § 118.51 (2)]

For more information about kindergarten, prekindergarten, 4-year-old kindergarten, early childhood education and day care, please go to [Section III](#).

3. Can a student request a specific school within the nonresident school district?

A student may request assignment to a specific school in a nonresident school district. However, even if the student's application is approved, assignment to the requested school is not guaranteed. If the student's application is approved and the student is not assigned to the

requested school, the parent will have to decide whether to accept the assignment or whether to forego the open enrollment. [Wis. Stats. § 118.51 (3) (a) 1. and (10)]

4. *Can students open enroll to charter schools?*

Students apply to school districts, not to individual schools. They may request assignment to a specific school or schools, including a charter school that is established by that school board. However, assignment to the requested school is not guaranteed (see question 3 above). Students may not request open enrollment to schools that are chartered by organizations other than school districts, such as a city, university, technical college, or county.
[Wis. Stats. § 118.51 (3) (a) 1. and (10) and 118.40 (2r) (c)]

5. *Can students open enroll to virtual schools?*

A student may only open enroll to an online/virtual school if: (1) the school has been created as a virtual charter school that meets the requirements of the charter school law [Wis. Stats. 118.40 (8)]; or (2) the student is required to physically attend school in the nonresident school district every day that school is in session. Parents of students applying to attend virtual charter schools must know the name of the virtual charter school and the name of the nonresident school district in which the virtual charter school is located.
[Wis. Stats. § 118.51 (15) (a)]

6. *Can an application be denied?*

Yes. Both the resident and nonresident school districts may deny an application for reasons specified in statute. [Wis. Stats. § 118.51 (3) (a) 3.and 4.]

For information about reasons a school district may deny a student's application, please go to [Section IV](#).

7. *Can a school district refuse to participate in the open enrollment program?*

No. All school boards must adopt policies specifying criteria for approving and denying applications, must receive open enrollment applications during the application period, and must approve or deny applications in accordance with state law and the school board's policies.
[Wis. Stats. § 118.51 (4) (a), (5) (a)]

8. *Can a school board adopt policies to close the district to open enrollment?*

No. All school districts must accept nonresident students if space is available.
[Wis. Stats. § 118.51 (4) (a), (5) (a)]

9. *Does the public school open enrollment program allow students to apply to attend school in a different attendance area within the student's resident school district?*

No. The state open enrollment program is an inter-district program—that is, it applies only to transfers from one school district to another school district. Intra-district transfers—that is, transfers from one school to another school within the same school district—are a local issue. School boards may decide whether to permit students to transfer from one school to another in the school district and, if a board decides to allow such transfers, the board may establish whatever

rules, criteria, limitations and timelines it determines are appropriate. [Wis. Stats. § 118.001, 120.12 (1) and 120.13 (intro.)]

II. Application Procedures

10. How does a parent/student apply for open enrollment?

Parents may apply on-line from the Department of Public Instruction's open enrollment web site at <http://dpi.wi.gov/sms/psctoc.html> during the application period. Parents who complete the on-line application will receive a confirmation number. Once completed, on-line applications are automatically submitted to the appropriate school districts.

Although the on-line application is recommended, parents may complete paper applications instead of applying on-line. A parent who chooses to complete the paper application must submit the completed application forms to the school district the student wishes to attend (referred to as the nonresident school district) during the application period. There must be a separate application form submitted for each student and a separate application form submitted to each school district the student wishes to attend.

[Wis. Stats. § 118.51 (3) (a) 1. and Wis. Adm. Code § PI 36.03 (1) (b) 1.]

11. When may a student apply for open enrollment?

The open enrollment application period is established in state law as beginning on the first Monday in February and ending at 4:00 p.m. on the last weekday in April. The application periods for upcoming school years are as follows:

2012-13 school year:	February 6 to April 30, 2012
2013-14 school year:	February 4 to April 30, 2013
2014-15 school year:	February 3 to April 30, 2014
2015-16 school year:	February 2 to April 30, 2015
2016-17 school year:	February 8 to April 29, 2016

The application is available beginning at midnight on the first day of the application period until 4:00 p.m. on the last day of the application period. Once the on-line application is completed and the parent receives a confirmation number, the application is automatically electronically submitted to the appropriate school district(s). It is not necessary for the parent to deliver a paper copy of the application to the nonresident school district(s).

Parents who choose to complete paper applications must ensure the application is ***physically received*** in the nonresident school district by the application deadline. A post-mark is not sufficient. It is strongly recommended that parents hand-deliver the application form to the nonresident school district and that the parent request that her or his copy of the form be specifically date-stamped when the form is received.

[Wis. Stats. § 118.51 (3) (a) 1. and Wis. Adm. Code § PI 36.03 (1) (a)]

12. Are late applications accepted? Can a parent apply for open enrollment outside of the regular application period?

- Late applications may not be accepted for any reason. However, 2011 Act 114 created an exception to the regular application period for students under certain circumstances.

Parents may apply for open enrollment outside of the regular application period if any of the following apply:

- the student's resident school district has determined that the student has been a victim of a violent criminal offense;
- the student is or has been a homeless student in the current or immediately preceding school year;
- the student has been the victim of repeated bullying and harassment;
- the student and parent's residence has changed as a result of military orders;
- the student has moved into the state;
- the student's residence has changed as a result of a court order, custody agreement or foster placement; or
- the parent and the nonresident school board agree that attending the nonresident school district is in the best interests of the student.

Additional information on applying for an exception to the open enrollment application period is available on the Department of Public Instruction's web site at:

http://dpi.wi.gov/sms/oe_sb2.html. [Wis. Stats. §§ 118.51 (3) (intro), (a) 1. And (3m) and Wis. Adm. Code § PI 36.03 (1) (a) and PI 36.04 (2) (c)]

13. *What constitutes a timely application?*

An application that is submitted on-line must be completed, and a confirmation number must be received, no later than 4:00 p.m. on the last day of the application period. Applications begun on-line, but not completed by the deadline are not considered to be timely.

An application that is not submitted on-line must be physically received in the nonresident school district no sooner than the first day of the application period and no later than 4:00 p.m. on the last day of the application period. A postmark does not qualify for timely submission. School districts may accept faxed application forms, but if the fax doesn't go through before the deadline, the application is late. It is strongly recommended that parents hand-deliver the application form to the school district office of the nonresident school district. Applications delivered to the wrong school district (such as the resident school district) or to the Department of Public Instruction do not qualify as timely applications.

[Wis. Stats. § 118.51 (3) (a) 1. and Wis. Adm. Code § PI 36.03 (1) (a) and PI 36.04 (2) (c)]

14. *Does it help to apply early?*

Applications, whether on-line or paper, may not be submitted prior to the first Monday in February. If there are more applications than spaces available, approval and denial will be made on a random basis, not on a first-come, first-served basis. Thus, while it is better not to wait until the last day, chances of approval are not dependent on when during the application period the form was submitted.

[Wis. Stats. § 118.51 (3) (a) 1. and 2.]

15. *Where do parents get application forms?*

It is recommended that parents apply on-line at <http://dpi.wi.gov/sms/psctoc.html>. The on-line application is available beginning at midnight of the first day of the application period until at 4:00 p.m. on the last day of the application period.

Parents may obtain paper application forms (PI 9410) from any school district or from the Department of Public Instruction's web site at www.dpi.wi.gov/sms/psctoc.html. The forms are available beginning in January and are also available in Spanish.

[Wis. Stats. § 118.51 (3) (a) 1. and Wis. Adm. Code § PI 36.03 (1), PI 36.04 (2) and PI 36.05 (1)]

16. *Is there a limit on the number of applications a student may submit?*

A student may apply to no more than three nonresident school districts in an application period. If applications for a particular student are submitted to more than three school districts, even if separate applications are submitted by each parent, all applications submitted during that application period for the student are invalid.

[Wis. Stats. § 118.51 (3) (a) 1. and Wis. Adm. Code § PI 36.03 (1) (b) 1.]

17. *Must a student apply for open enrollment every year?*

Once a student is attending a nonresident school district under open enrollment, the student may continue to attend that district without reapplication, except that the nonresident school district may require the student to reapply one time and one time only; and only when the student is entering middle school, junior high or high school. If the student wishes to attend a different nonresident school district, the student must submit a new application to the new nonresident school district. [Wis. Stats. § 118.51 (3) (c) 1.]

For more information about reapplication requirements, please go to [Section IX](#).

18. *If one or more children in a family are already open enrolled, are the students' siblings automatically entitled to attend school in the nonresident district?*

No. Any siblings must apply for open enrollment in the same manner as all other students. They are entitled to preference for any spaces that exist, or may be granted a guarantee if the nonresident school district has adopted such a policy. [Wis. Stats. § 118.51 (3) (a) 1. and 2. and Wis. Adm. Code § PI 36.03 (1) (a) and PI 36.04 (2) (c)]

For more information about criteria for approval and denial and selection of students, please go to Section IV.

19. *May a school district create its own application form and/or request supplemental information from or about the student?*

No. The only application form that may be used is the one created by the Department of Public Instruction. By submitting the on-line form, or signing the paper form, the parent grants permission for the nonresident school district to request information about whether the student has been referred for a special education evaluation and/or whether the student is a child with a disability and, if so, the student's individualized education plan (IEP). The parent's signature on the form also acknowledges that the nonresident school district may request information about whether the student has been expelled from any school district during the current or preceding

two school years. No other information may be requested by the nonresident school district as part of the application process. After notifying a parent that the open enrollment has been approved, the nonresident school district may request student records necessary to determine the school or program to which the student will be assigned.

[Wis. Stats. § 118.51 (3) (a) 1. and (15) (a) and Wis. Adm. Code § PI 36.03 (1) (e) and PI 36.04 (2) (d)]

20. *If an application form is incomplete or inaccurate, is the nonresident school district required to contact the parent to obtain the missing information?*

No. The school district *may* contact the parent to obtain missing information or correct inaccurate information, but the additional or corrected information must be received prior to the end of the application period. [Wis. Adm. Code § PI 36.03 (2) (d)]

21. *Who may sign the application form?*

The on-line application must be submitted by the student's parent or guardian. If a paper application is used, it must be signed by the student's parent or guardian. In cases of joint custody, only one parent is required to sign the application form. Students who are 18 years or older may submit their own application or sign their own paper application. [Wis. Adm. Code § PI 36.02 (1) (d) and (7) and PI 36.03 (1) (d)]

22. *May a student who is currently enrolled in a private school or in a home-based private educational program apply for open enrollment?*

Yes. A student who is currently enrolled in a private school or a home-based private educational program may apply for open enrollment using the same procedures as any other applicant. The student's application will be considered using the same criteria as for all other applicants. If the application is approved, the student must register in her or his resident school district prior to beginning open enrollment. This is necessary so the resident school district can obtain money through state aids and property taxes with which to pay for the student's open enrollment. Once the student *begins* open enrollment, the student may not simultaneously be enrolled in a private school or home-based private educational program. [Wis. Adm. Code § PI 36.03 (1) (f) and (3) (d)]

23. *Must the student live in Wisconsin in order to apply for open enrollment?*

Students who do not reside in Wisconsin and/or are not attending public school in Wisconsin may apply for open enrollment during the application period. However, the student must reside in Wisconsin, in the school district indicated as the resident district on the application form, before beginning open enrollment and no later than the third Friday in September in the school year for which the application is submitted. [Wis. Adm. Code § PI 36.03 (1) (f) and (3) (c)]

24. *How do family moves affect open enrollment?*

If a student moves to a resident school district other than the one indicated on the application form prior to the 3rd Friday in September of the first year of open enrollment, the student's open enrollment is void. Although the new resident school district may agree to allow the open enrollment, it is not obligated to do so. If a student moves to a different resident school district after the third Friday in September of the first year of open enrollment or in subsequent years, the open enrollment may continue. [Wis. Adm. Code § PI 36.03 (3) (c)]

If a family is planning to move, it is essential to contact the school district's open enrollment coordinator or the Department of Public Instruction's open enrollment consultant *prior to the move* to find out how the move will affect the student's ability to attend the district she or he wishes to attend. Additional information for homebuyers, renters and realtors may be found at http://dpi.wi.gov/sms/doc/oe_bulletin_09-10.doc.

25. *Can a student apply for open enrollment if she does not know where she will live during the next school year?*

It is very difficult to apply for open enrollment if you do not know where you will be residing in the following school year. You must indicate a resident school district on the application form and that must be the district in which you reside on the third Friday in September immediately following the open enrollment application. You may indicate only one resident school district on a form and the resident district must be the same on all forms submitted for the student. If you do not know where you will be residing, you may guess, but if that is not the district where you are residing on the following third Friday in September, the open enrollment is void. Although the actual resident school district may agree to allow the open enrollment, it is not obligated to do so. [Wis. Adm. Code § PI 36.03 (1) (f) and (3) (c)]

26. *May foster children apply for open enrollment? Do they receive sibling preference? Who must sign the form?*

Children who are in foster homes may apply for open enrollment. They are residents of the school district in which the foster home is located. The student's parent or legal guardian must sign the form. The student is not entitled to sibling preference based on a foster-relationship. [Wis. Supreme Court State ex rel. School District v. Thayer (1889) 74 Wis. 48; Wis. Adm. Code § PI 36.02 (12) and PI 36.03 (1) (d)]

III. Kindergarten, 4-Year-Old Kindergarten, Prekindergarten, Early Childhood Education and School-Operated Day Care

27. *Does open enrollment apply to kindergarten, 4-year-old kindergarten, prekindergarten, early childhood education and school-operated day care?*

A child who will be five years old by September 1 may apply for open enrollment for five-year-old kindergarten. Open enrollment applies to four-year-old kindergarten, prekindergarten, early childhood education and school-operated day care *only if* the child's resident school district offers the same type of program the child wishes to attend and *only if* the child is eligible for the program in her or his resident school district.

If either the resident or the nonresident school district is considering establishing four-year-old kindergarten program, a parent may apply for open enrollment, but approval or denial would be based on the status of the kindergarten at the time of the decision. If an application is denied because one of the school districts has not established a program at the time of the decision, and that district subsequently establishes a four-year-old kindergarten program, the denial may be reversed. [Wis. Stats. § 118.51 (2)]

28. *If a student's resident school district offers half-day five-year-old kindergarten, may the student open enroll for full-day kindergarten in the nonresident school district, and vice versa?*

Yes. In that case, the amount of the open enrollment aid transfer would be adjusted by the FTE of the program provided in the nonresident school district. The resident school district counts the student in accordance with the FTE of the program provided in the nonresident school district. [Wis. Stats. § 118.51 (2)]

29. *Is a student who attends a 4-year-old kindergarten, prekindergarten, early childhood education or school-operated day care program under open enrollment required to reapply for kindergarten in the nonresident school district?*

No. Once the student open enrolls into a nonresident school district, the student may continue to attend the nonresident school district without annual reapplication, except that the student may be required by the nonresident school district to reapply, once, and only once, when the student enters middle school, junior high, or high school. [Wis. Stats. § 118.51 (3) (c)]

For more information about reapplication requirements, please go to [Section IX](#).

30. *May a child request early admission to five-year-old kindergarten?*

A child must be five years old by September 1 to begin five-year-old kindergarten. The parent of a child who will not be five years old by this date may request that the nonresident school district evaluate the child for early admission. However, the nonresident school district is not required to evaluate the child and may deny the student's open enrollment based on the child not being old enough to attend school. If the nonresident school district does evaluate the child and, if the child is found not to be eligible for early admission to five-year-old kindergarten, the child may not be placed in four-year-old kindergarten unless the child's resident school district also offers four-year-old kindergarten and the child is eligible for four-year-old kindergarten in her or his resident school district. [Wis. Stats. § 118.14 (1) (b), 118.51 (2) and 12.12 (25)]

31. *May a child request early admission to four-year-old kindergarten?*

A child must be four years old by September 1 to begin four-year-old kindergarten. A child who will not be four years old by this date may request that both the resident school district and nonresident school district evaluate the child for early admission. The child must be found eligible by both school districts in order to open enroll, even if the criteria are different. However, the nonresident school district is not required to evaluate the child and may deny the student's open enrollment based on the child not being old enough to attend school. [Wis. Stats. § 118.14 (1) (b), 118.51 (2) and 120.12 (25)]

32. *What constitutes "the same type of program?"*

If students enrolled in both programs are eligible to be counted for state aid and revenue limit membership, the programs are the same type of program. If either or both district's programs are not eligible for equalization aid, the districts must compare the programs to determine if they are the same type of program. In comparing four-year-old kindergarten and prekindergarten programs (also sometimes referred to as "junior kindergarten"), the two school districts must examine the following: the hours of instruction; the character of the instruction; the target population; and certification of teachers. [2002 WI DPI D&O 1173]

In evaluating requests to open enroll for early childhood education (which is a special education program) the districts must examine the programs in light of the student's individualized education program (IEP).

IV. Approval and Denial; Selection of Students

33. *Can a school district deny a student's application to open enroll?*

Yes. Both the resident and nonresident school districts may deny an application for reasons specified in statute. In addition, either school district may deny an application if the student is ineligible or if the application is invalid.

34. *What constitutes an "ineligible" application?*

- The application was ***late***; that is the on-line application was not completed, or a confirmation number was not received, by 4:00 p.m. on the last day of the application period. For paper applications, the application was not physically received in the nonresident school district by 4:00 p.m. on the last day of the application period. [Wis. Adm. Code § PI 360.3 (1) (a)]
- The application was ***incomplete or was deliberately falsified***. [Wis. Adm. Code § PI 36.03 (1) (c)]
- In the case of a paper application, the application form is ***not signed***. (See Question 20) [Wis. Adm. Code § PI 36.03 (1) (d)]
- The student is not eligible for open enrollment because the child's ***resident school district does not offer the same 4-year-old kindergarten, prekindergarten, early childhood education program***, or school-operated day care program that the child requests or the child is not eligible for the program in her or his resident school district. [Wis. Stats. § 118.51 (2)]
- The child does ***not meet the age requirements*** for school attendance (four-years-old by September 1 for admission to 4-year-old kindergarten or five-years-old by September 1 for admission to 5-year-old kindergarten). [Wis. Stats. § 120.12 (25)]
- The application ***did not indicate a resident school district***, or more than one resident school district was indicated on one or multiple applications. [Wis. Adm. Code § PI 36.03 (1) (b) 2.]
- Applications for the student were submitted to ***more than three nonresident school districts***. [Wis. Stats. § 118.51 (3) (a) and Wis. Adm. Code § (1) (b) 1.]

35. *When will a parent find out if the application is approved or denied?*

Nonresident school districts must mail notices of approval or denial to parents no later than the first Friday following the first Monday in June (postmark). Resident school districts must notify parents by the second Friday following the first Monday in June if the application is denied; though most resident districts notify of both approval and denial.

[Wis. Stats. § 118.51 (3) (a) 3. and 4. and Wis. Adm. Code § PI 36.04 (8) and PI 36.05 (7)]

The date on which nonresident school districts must mail (postmark) approval and denial notices in upcoming school years follows:

2012-13 school year:	June 8, 2012
2013-14 school year:	June 7, 2013
2014-15 school year:	June 6, 2014
2015-16 school year:	June 5, 2015
2016-17 school year:	June 10, 2016

36. *What must a school district include in a notice of denial?*

The school district must indicate the reason for the denial and must notify the parent that the parent may appeal the denial to the Department of Public Instruction within 30 days of the day the notice of denial is postmarked or is delivered to the parent, whichever is sooner. The resident school district may use form PI 9417 to issue its approval or denial. The nonresident school district may use form PI 9416 to issue its approval or denial. [Wis. Stats. § 118.51 (3) (a) 3. and 4. and Wis. Adm. Code § PI 36.04 (8) and (9) and PI 36.05 (7) and (8)]

37. *What are the reasons a nonresident school district may deny open enrollment?*

A nonresident school district may deny open enrollment for the following reasons:

- Space is not available in the school, program, class or grade the student would attend. [Wis. Stats. § 118.51 (5) (a) 1.]
- The student is currently expelled and the expulsion will extend into the school year for which the application is submitted. [Wis. Stats. § 120.13 (1) (f)]
- The student has been expelled during the current or preceding two school years for certain conduct specified in statute. [Wis. Stats. § 118.51 (5) (a) 2.]
- The student was habitually truant from the nonresident district during any semester in the current or previous school year. [Wis. Stats. § 118.51 (5) (a) 3.]
- The special education or related services required by the student's individualized education program (IEP) are not available in the nonresident school district or there is no space in the special education or related services required by the student's IEP. [Wis. Stats. § 118.51 (5) (a) 4.]
- The student has been referred for a special education evaluation but has not been evaluated. [Wis. Stats. § 118.51 (5) (a) 6.]

For more information about space, please go to [Section V](#).

For more information about students with disabilities, please go to [Section VI](#).

For more information about expelled students, please go to [Section VIII](#).

38. *If there are more applications than spaces, how are students selected?*

If there are more applications than spaces for a particular grade or program, the school district must first approve students who are currently attending school in the district and siblings of currently-attending students, and if the nonresident school district is a union high school district,

students who are currently attending an underlying elementary school district (referred to as “preference” students). If there are more preference students than there are spaces, the district must select among the preference students randomly. If there are still spaces after approving all preference students, the district must select the remaining students randomly. [Wis. Stats. § 118.51 (3) (a) 2. and Wis. Adm. Code § PI 36.04 (6) (a)]

If, in the random selection process, a student is selected, that student’s siblings must be granted preference to the next available spaces. If there are no spaces remaining in the sibling’s grade, the sibling must be denied. [Wis. Adm. Code § PI 36.04 (6) (b)]

39. *What are the reasons a resident school district may deny open enrollment?*

A resident school district may deny open enrollment if the cost of the student’s special education and related services in the nonresident school district imposes an undue financial burden on the resident school district. [Wis. Stats. § 118.51 (12) (b) 1.]

40. *Can a school district adopt additional criteria for approving and denying applications?*

No. A school district may deny open enrollment applications only for reasons specified in statute. [Wis. Stats. § 118.51 (5) (a)]

41. *Are students who are currently attending the nonresident district, but not through the open enrollment program, automatically approved?*

No. The open enrollment statute *permits* school districts to guarantee acceptance to currently-attending students. If the school board wishes to grant this guarantee, it must adopt a policy to do so. If the school board has not adopted a policy to guarantee acceptance to currently-attending students, it must grant preferences to spaces available, but it may not make exceptions to its space criteria. [Wis. Stats. § 118.51 (3) (a) 2. and McMorrow v. DPI, 2000 WI App 173]

42. *Are students who are currently attending a K-8 school district automatically approved to open enroll to the union high school district?*

No, however, the nonresident union high school district must grant preference to applicants who are currently attending an underlying elementary (K-8) school district. [Wis. Stats. § 118.51 (3) (a) 2. and Wis. Adm. Code § PI 36.04 (6) (a)]

43. *Are siblings automatically approved?*

No. The open enrollment statute *permits* school districts to guarantee acceptance to siblings of currently-attending students. If the school board wishes to grant this guarantee, it must adopt a policy to do so. If the school board has not adopted a policy to guarantee acceptance to siblings of currently-attending students, it must grant preferences to spaces available, but it may not make exceptions to its space criteria.
[Wis. Stats. § 118.51 (3) (a) 2. and McMorrow v. DPI, 2000 WI App 173]

44. *Who are siblings?*

Siblings are children who share one or two parents by birth or adoption. Siblings are entitled to preference whether or not they reside in the same household. For open enrollment preference, sibling also includes step-siblings who reside in the same household. It does not include other

children who reside in the same household such as cousins, uncles, aunts, foster children or children unrelated by birth, adoption or marriage.
[Wis. Adm. Code § PI 36.01 (12); 2002 WI DPI D&O 1199 and 2002 WI DPI D&O 1206]

45. *If an application is denied, does a parent have any recourse?*

A parent may appeal a school district's denial to the Department of Public Instruction within 30 days of receiving the notice of denial. The Department is required by statute to uphold the school district's decision unless it finds the district was arbitrary or unreasonable. The Department's decision may be appealed to circuit court in the county in which the appellant resides.
[Wis. Stats. § 118.51 (9) and 227.53 and Wis. Adm. Code § PI 36.10 (4) (b)]

For information on filing an appeal and the appeal process, please go to [Section X](#).

V. Space

46. *When is a school board required to determine the number of spaces available for open enrollment?*

Each school board must determine the number of regular education and special education spaces available within the school district at its January school board meeting.

47. *Can a school board include building capacity as part of its space criteria?*

Yes. The nonresident school board may consider space available in the schools, programs, classes and grades in the district. [Wis. Stats. § 118.51 (5) (a) 1]

48. *Is a school district required to adopt class size limits and pupil-teacher ratios as a result of the open enrollment law?*

The open enrollment law does not require a school board to adopt class size limits or pupil-teacher ratios specifically for the purpose of open enrollment. The school board must designate the number of spaces available in the district and is permitted to consider a number of factors in determining the space availability, such as, class size limits, pupil-teacher ratios, enrollment projections, tuition agreements with other school districts, and students currently attending school in the district and their siblings. The school board's space determination cannot be either arbitrary or unreasonable and must be defended to the Department of Public Instruction if a denial based on the criteria is appealed. Any criteria the school board uses must meet statutory requirements, must not be arbitrary and must have a reasonable justification for denying an application. [McMorrow v. DPI, 2000 WI App 173]

49. *If a school district does have an established class size limit, for example 25:1, must it accept open enrolled students up to the maximum class size?*

The school district is permitted to use enrollment projections in determining space availability. If the district wishes to "reserve" some spaces for school district growth, it may do so. However, it may not be arbitrary or unreasonable in setting the threshold for determining spaces and it must consistently apply whatever criteria and/or threshold it determines is appropriate in designating spaces. [Wis. Stats. § 118.51 (3) (a) 1. and McMorrow v. DPI, 2000 WI App 173]

50. *Can a school district make exceptions to its space criteria?*

The Wisconsin Appeals Court, in McMorrow v. DPI, 2000 WI App 173, found that it is arbitrary for a school board to make exceptions to its space criteria.

51. *Can a school district exclude certain grades from open enrollment?*

A school board must accept open enrollment students in all grades in which it has space. [Wis. Stats. § 118.51 (3) (a) (intro) and 1. and 2002 WI DPI D&O 1296]

52. *Can a school district set a maximum number or percent of nonresident students in the school district?*

A school district must make a determination based solely on space available in the school district. It may not make a determination based on some other factor, such as a maximum desired percent of nonresident students. [Wis. Stats. § 118.51 (3) (a) (intro) and 1.]

53. *If a nonresident school district accepts a student and later determines it does not have space, can it rescind the open enrollment?*

Generally, no. Once a student is approved for open enrollment, that student must be permitted to open enroll. However, if an open enrolled student's individualized education program (IEP) is developed or revised after the student begins attending in the nonresident district under open enrollment, the student may be required to return to the resident school district if the nonresident school district does not offer the special education or related services required in the new or revised IEP or does not have space to provide the special education or related services required in the IEP, [Wis. Stats. § 118.51 (12) (a)]

In addition, the nonresident district *may* require the student to reapply for open enrollment one time and one time only; and only when the student is entering middle school, junior high or high school. Also, if an open enrolled student wishes to attend a different nonresident school district, then the student must submit a new application to the new nonresident school district. [Wis. Stats. § 118.51 (3) (c) 1. and 2.]

For more information about reapplication requirements, please go to [Section IX](#).

54. *If a student requests a specific school or program, is the student guaranteed that program if the application is approved?*

No. A student may request a specific school or program, but assignment to that program is not guaranteed. [Wis. Stats. § 118.51 (3) (a) 1. and (10)]

55. *If a student's application for open enrollment is approved, but the student is assigned to a different school than requested, can the student appeal the school assignment?*

No. Only a denial of open enrollment to a school district may be appealed to the Department of Public Instruction. If an application is approved, but the student is not assigned to the specific school requested, the parent must decide whether to accept the alternative assignment or to forego open enrollment. [Wis. Stats. § 118.51 (9)]

56. *Can a school district give preference in assignment to specific schools to school district residents?*

Yes. [Wis. Stats. § 118.51 (10)]

57. *Can a school district establish a waiting list of students who have been denied?*

A nonresident school district is permitted to adopt a policy to establish a waiting list of students who have been denied open enrollment due to space. The district must establish the waiting list at the same time and using the same criteria it used to accept applications. The district must notify the parent in writing if the student is accepted from the list and must give the parents 10 calendar days to respond, after which the space may be offered to the next student on the list. The last day on which students may be offered space from the waiting list is the third Thursday in September, but only if the student will be in attendance on the third Friday in September. [Wis. Stats. § 118.51 (5) (d) and Wis. Adm. Code § PI 36.04 (1) (b)]

VI. Students with Disabilities; Special Education

58. *Can a nonresident school district refuse to accept a student with a disability?*

The open enrollment law allows a school district to deny open enrollment if it does not have space in the school, program, class or grade. If the student needs special education or related services in accordance with an individualized education program (IEP), the school district may deny the application if the special education or related services are not available in the school district or if there is no space in the special education or related services. However, a school board may not deny a student simply because the student has a disability and may not deny the student based on the category of the student's disability. [Wis. Stats. § 118.13 (1) and 118.51 (5) (a) 4.]

59. *Can a nonresident school district deny a student with a disability based solely on the category of the disability?*

No. [Wis. Stats. § 118.13 (1) and 118.51 (5) (a) 4. and 6. and (12) a.]

60. *How does a nonresident school district find out if an applicant is a student with a disability?*

The application form requires the parent to indicate whether the student has an individualized education program (IEP), whether the student currently receives special education services and whether the student has been referred for a special education evaluation that has not been completed. Further, by signing the application form, or submitting the on-line application, the parent grants permission for the nonresident school district to request information about the child's special education program, including a copy of the IEP. [Wis. Adm. Code § PI 36.03 (1) (e)]

61. *How does the nonresident school district find out what special education and related services are needed by a student with a disability?*

The nonresident school district may request information about the child's special education program, including a copy of the IEP, from the school the child attends. [Wis. Adm. Code § PI 36.03 (1) (e)]

62. *How is open enrollment funded for students with disabilities?*

The nonresident school district submits a bill directly to the resident school district for the cost of the special education and related services. The amount to be billed is equal to the transfer amount for regular education students plus any actual, additional, special education costs to educate the student. [Doe v. Burmaster, U.S. District Court Eastern District 03-CV-892]

63. *What are “actual, additional special education costs?”*

Actual, additional special education costs are actual costs incurred by the school district that are specific to the student and would not be incurred if the student were not attending the nonresident school district. It does not include averaged or prorated costs the school district is already paying. [Doe v. Burmaster, U.S. District Court Eastern District 03-CV-892]

64. *Can a resident school district refuse to allow a student with a disability to transfer out of the school district?*

The resident school district may deny the open enrollment if the cost of the student’s special education and related services in the nonresident school district is an “undue financial burden” to the resident school district. [Wis. Stats. § 118.51 (12) (b) 1.]

65. *What is an undue financial burden?*

The statute defines “undue financial burden” as “in light of the resident school district’s total economic circumstances, including its revenue limit ..., its ability to pay tuition costs for the pupil and the per pupil special education or related services costs for children with disabilities continuing to be served by the nonresident school district...” [Wis. Stats. § 118.51 (12) (b) 1.]

66. *Which school district is responsible for providing a free, appropriate public education (FAPE) for an open-enrolled student with a disability?*

The nonresident school district is responsible for providing a free, appropriate public education (FAPE) for an open-enrolled student with a disability. [Wis. Stats. § 115.78 (1) and (1m) (h).]

67. *If an open-enrolled student is suspected of having a disability, to which school district is the referral made?*

If an open-enrolled student is suspected of having a disability, the referral may be made to either the resident or the nonresident school district. Whichever school district receives the referral must notify the other school district. [Wis. Stats. § 115.777 (1)]

68. *Which school district is responsible for evaluating and re-evaluating an open-enrolled student with a disability?*

The nonresident school district is responsible to convene an individualized education program (IEP) team to evaluate the student. The resident school district is required to appoint a member to the IEP team. [Wis. Stats. § 115.78 (1) and (1m) (h)]

69. Which school district is responsible for developing an individual education program (IEP) and providing a placement?

The nonresident school district is responsible to develop an IEP and provide a placement. If the nonresident school district does not offer the special education or related services required in the IEP or if it does not have space in the special education or related services required in the IEP, it may notify the parent and the resident school district that the special education or related services are not available in the nonresident school district. If this notification is made, the child must be transferred to the resident school district, which must conduct an IEP team meeting to determine a placement for the child.

[Wis. Stats. § 115.78 (1) and 118.51 (12) (a)]

70. Which school district is responsible for procedural safeguards and due process?

The nonresident school district must give parents a description of the procedural safeguards available under chapter 115 when the child is initially referred for evaluation, upon each notification of an individualized education program (IEP) meeting, and upon reevaluation of the child. [Wis. Stats. §115.792 (3) (a)]

71. Are there any circumstances in which a student with a disability can be required to return to the resident school district?

If an individualized education program (IEP) is developed or revised after a child begins attending a nonresident school district under open enrollment, the student may be required to return to the resident school district if:

- The nonresident school district does not offer the special education or related services required in the new or revised IEP or does not have space to provide the special education or related services required in the IEP, [Wis. Stats. § 118.51 (12) (a)]
- or
- The resident school district determines that the cost of the special education and related services required in the IEP impose an “undue financial burden” on the resident school district. [Wis. Stats. § 118.51 (12) (b) 2.]

If either district determines the student must return to the resident school district, it must notify the parent and other school district. If this notification is made, the child must be transferred to the resident school district, which must provide a placement for the child.

72. What happens if a “regular education” open enrolled student is found to have a disability?

- If a student who is open enrolled is referred for a special education evaluation, the school district that receives the referral shall notify the “other” school district of the referral. [Wis. Stats. § 115.777 (1)]
- The nonresident school district must convene an individualized education program (IEP) team to evaluate the child. The resident school district must appoint a member to the IEP team. [Wis. Stats. § 115.78 (1) and 115.78 (1m) (h)]
- If the child is found to have a disability, the IEP team must develop an IEP and the nonresident school district must provide a placement for the child (except as explained below). The nonresident school district must send an estimate to the resident school

district of the actual, additional, special education costs to educate the student in the nonresident school district. [Wis. Stats. § 115.78 (1)]

- If the nonresident school district does not offer the special education or related services required in the IEP or if it does not have space in the special education or related services required in the IEP, it may notify the parent and the resident school district that the special education or related services are not available in the nonresident school district. If this notification is made, the child must be transferred to the resident school district, which must conduct an IEP team meeting to determine a placement for the child. [Wis. Stats. § 118.51 (12) (a)]
- If the resident school district determines that the cost of the special education and related services required in the IEP impose an “undue financial burden” on the resident school district, it may notify the parent and the nonresident school district that the cost is an undue financial burden. If this notification is made, the child must be transferred to the resident school district, which must provide a placement for the child. [Wis. Stats. § 118.51 (12) (b) 2.]

73. *If a nonresident school district discontinues a special education or related service in the school district, may the nonresident school district require a student with a disability to return to the resident school district?*

The nonresident school district may only require the student to return to the resident school district if the special education or related services required in the student’s individualized education program (IEP), ***developed or revised after the student begins attending school in the nonresident school district***, are not available in the nonresident school district or if there is no space in the special education or related services required in the student’s IEP. Thus, if there is no development or revision of the IEP, the nonresident school district may not require the child to return to the resident school district. However, the nonresident school district may provide a placement in any manner permitted by the special education law. [2002 WI DPI D&O 1258]

74. *If the special education or related service becomes over-crowded in a nonresident school, may the nonresident school district require a student with a disability to return to the resident school district?*

The nonresident school district may only require the student to return to the resident school district if the special education or related services required in an individualized education program (IEP) ***developed or revised after the student begins attending school in the nonresident school district*** are not available in the nonresident school district, or if there is no space in the special education or related services. Thus, if there is no development or revision of the IEP, the nonresident school district may not require the child to return to the resident school district. [2002 WI DPI D&O 1258]

75. *Who is responsible for providing transportation for open enrolled students with disabilities?*

Parents are responsible for transporting students to and from school for open enrollment. This is true for parents of student with disabilities, except that the nonresident school district must provide any transportation required in a child’s individualized education program (IEP). The nonresident school district may charge the resident school district for IEP-required transportation if it results in an actual, additional, student-specific cost to the resident school district. [Wis. Stats. § 118.51 (14) (a) 1. and 2. See also <http://dpi.wi.gov/sms/pdf/bul03-06.pdf>]

76. Which school district includes the student in its December 1 child count for IDEA?

The nonresident school district includes the student in the December 1 child count.

77. Which school district receives special education categorical aid for open enrolled students with disabilities?

The nonresident school district claims the categorical aid. If special education costs are charged to the resident school district, a portion of the categorical aid provides that a proportional share of state or federal aid received for the pupil is to be rebated to the resident school district. [Wis. Stats. § 115.88 (1m) and 121.76 (2) (c)]

78. Can a nonresident school district deny a student who needs services under Section 504?

No. A school district may deny a student who has been found to be eligible for services under Section 504 (and who is not eligible for an IEP under Wis. Stats. § 115), only for the same reasons it may deny a non-disabled student. [Wis. Stats. § 118.51 (5) (intro.)]

79. Can a nonresident school district charge the resident school district for the cost of providing services under Section 504?

No. The statutes provide for charging tuition only for students found eligible for special education or related services under Chapter 115. [Wis. Stats. § 118.51 (17)]

VII. Undue Financial Burden

80. Can a resident school district refuse to allow a student with a disability to transfer out of the school district?

The resident school district may deny the open enrollment if the cost of the student's special education and related services in the nonresident school district "as proposed to be implemented by the nonresident school district would impose upon the child's resident school district an undue financial burden..." [Wis. Stats. § 118.51 (12) (b) 1.]

81. What is undue financial burden?

The statute defines "undue financial burden" as "in light of the resident school district's total economic circumstances, including its revenue limit ..., its ability to pay tuition costs for the pupil and the per pupil special education or related services costs for children with disabilities continuing to be served by the nonresident school district..." Wis. Stats. § 118.51 (12) (b) 1.]

82. How does the resident school district find out the cost of providing the special education and related services in the nonresident school district?

In an initial open enrollment application, the resident school district must provide a copy of the student's IEP to the nonresident school district. By the first Friday following the first Monday in May, the nonresident school district must send to the resident school district an estimate of the actual, additional special education costs to educate the student. The estimate must be made using form PI 2092. See <http://dpi.wi.gov/sms/oespeced.html>.

83. *Can the nonresident school district's estimate include averaged or prorated costs associated with serving an additional student?*

No. The nonresident school district's estimate must represent the actual, additional costs the district would incur to provide the services specified in that particular student's IEP. It may not include any averaged or prorated costs including costs to increase capacity in the school district's special education program. [Doe v. Burmaster, U.S. District Court Eastern District 03-CV-892 and 2009 WI DPI D&O 2587]

84. *Is there a formula to define what constitutes an "undue financial burden?"*

There is no state-set formula for deciding what constitutes an "undue financial burden." Once the resident school district has received the nonresident school district's estimate of the actual, additional, student-specific special education costs to implement the individualized education program (IEP), the resident school district must examine its total economic circumstances and determine whether the cost is an undue financial burden. The decision may not be arbitrary or unreasonable. [Wis. Stats. § 118.51 (9) and (12) (b) 1.]

85. *What are some examples of an "arbitrary or unreasonable" decision concerning undue financial burden?*

A decision to deny a student's open enrollment due to undue financial burden is arbitrary or unreasonable if it is:

- Made without considering the estimated cost in light of the school district's economic circumstances. There must be an estimate and there must be an examination of the district's economic circumstances to determine whether the cost is an undue financial burden. [2002 WI DPI D&O 1332]
- Based solely on the assumption that the resident school district can meet the requirements of the student's IEP. [2002 WI DPI D&O 1172]
- Based solely on the assumption that the resident school district can provide the special education and related services less expensively. [2003 WI DPI D&O 1570]
- Based on the resident school district's objection to the manner in which the nonresident district plans to implement the student's IEP. [2004 WI DPI D&O 1569]
- Based on a determination that any payment for the student's special education and related services is a financial burden, without consideration of whether the financial burden is "undue." [2002 WI DPI D&O 1332]
- Based on the revenue limit when a revenue limit exemption is available. [Wis. Stats. § 121.91 (4) (a) 3. and 2000 WI DPI D&O 849]
- Based on estimated costs that do not represent actual, additional costs the nonresident district would incur to provide the services specified in that student's IEP. [Doe v. Burmaster, U.S. District Court Eastern District 03-CV-892 and 2009 WI DPI D&O 2587]
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86. *Can a resident school district deny an application solely because it can provide the special education and related services required by the individualized education program (IEP)?*

No. A resident school district may deny only if the cost of the special education and related services is an undue financial burden .

[Wis. Stats. § 118.51 (12) (b) 1. and 2002 WI DPI D&O 1172]

87. *Can a resident school district deny an application solely because it can provide the special education and related services less expensively than the nonresident school district can provide them?*

No. A resident school district may deny only if the cost of the special education and related services is an undue financial burden.

[Wis. Stats. § 118.51 (12) (b) 1. and 2003 WI DPI D&O 1570]

88. *Can a resident school district deny an application because it would implement the IEP differently than the nonresident school district?*

No. A resident school district may deny only if the cost of the special education and related services is an undue financial burden.

[Wis. Stats. § 118.51 (12) (b) 1. and 2004 WI DPI D&O 1569]

89. *Is the resident school district eligible for a transfer of service revenue limit exemption for the special education costs of open enrolled students?*

Yes, but only for increased costs for services that are transferred to it from another governmental unit. Thus, students who are new residents to a school district and for whom the resident district incurs additional costs as a result of the student's open enrollment special education costs may apply for and receive a revenue limit exemption. If a school district is eligible for a revenue limit exemption for the actual, additional special education costs of an open enrolled student, the district may not cite the revenue limits as a reason for determining those costs to be an "undue financial burden." [Wis. Stats. § 121.91 (4) (a) 3. and 2000 WI DPI D&O 849]

90. *Can a nonresident school district deny a student's application due to "undue financial burden?"*

A nonresident school district may deny the open enrollment if the special education or related services required in the student's individualized education program (IEP) are not available in the nonresident school district or if there is no space in the special education or related services. However, the nonresident school district may not deny the open enrollment due to "undue financial burden." The nonresident school district may charge the resident school district for any actual, additional special education costs to educate the student.

[Wis. Stats. § 118.51 (12) (a) and (b) and (17) and Doe v. Burmaster, U.S. District Court Eastern District 03-CV-892]

VIII. Expelled Students

91. *Can expelled students participate in open enrollment?*

A student who has been expelled may apply for open enrollment and may participate if approved. However a nonresident school district may deny the student's application if:

- The student is serving an expulsion that will extend into the school year for which open enrollment is requested (regardless of the reason for expulsion);
[Wis. Stats. § 120.13 (1) (f)] and/or
- The student has been expelled at any time during the current or preceding two school years if the expulsion was for any of the following reasons:
 - Conveying or causing to convey any threat, false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives.
 - Engaging in conduct while at school or while under the supervision of a school authority that endangered the health, safety, or property of others.
 - Engaging in conduct while not at school or while not under the supervision of a school authority that endangered the health, safety, or property of others at school or under the supervision of a school authority or of any employee of the school district or member of the school board.
 - Possessing a dangerous weapon, as defined in Wis. Stats. § 939.22 (1) while at school or while under the supervision of a school authority.
 [Wis. Stats. § 118.51 (5) (a) 2 a. to d.]

In addition, a nonresident school district may deny a student who is the subject of a pending disciplinary proceeding if the disciplinary proceeding is based on any of the above reasons.
[Wis. Stats. § 118.51 (5) (a) 2.]

Further, a nonresident school district may rescind an approval if, prior to the beginning of the school year the student will first attend the district, the student is expelled or is the subject of a pending disciplinary proceeding as described above. [Wis. Stats. § 118.51 (5) (b)]

92. *How does a nonresident school district find out if the student has been expelled or is the subject of a pending disciplinary proceeding?*

The nonresident school district is permitted to request this information from the student's resident school district. [Wis. Stats. § 118.51 (8)]

93. *If a student begins open enrollment and is expelled by the nonresident school district, may the student continue open enrollment once the term of expulsion is ended?*

If a student is expelled by a nonresident school district, the district may notify the student that the open enrollment is terminated. The student may apply for open enrollment during the next application period, subject to approval or denial as described in question 98.
[Wis. Adm. Code § 36.04 (13) (e)]

94. *If a student is expelled by a nonresident school district, must the resident school district permit the student to re-enroll?*

During the term of the student's expulsion, the resident school district may refuse to allow the student to attend. Once the expulsion period has ended, the resident school district must allow the student to enroll. [Wis. Stats. § 120.13 (1) (f)]

- 95. *Can a nonresident school district deny open enrollment to a student who has been suspended or who has been a repeated disciplinary problem?***

No. The district may only deny a student who has actually been expelled or who is the subject of a pending disciplinary proceeding based on the behavior described in question 98.
[Wis. Stats. § 118.51 (5) (a) (intro.) and 2.]

- 96. *Can a nonresident school district rescind open enrollment as a disciplinary measure?***

No. A nonresident school district may discipline the student in the same manner it disciplines resident students. However, open enrollment may not be rescinded unless the student is expelled.
[Wis. Stats. § 118.51 (3) (c) 1., (5) (b) and (13) and Wis. Adm. Code § 34.04 (13) (e)]

IX. Reapplication

- 97. *Does a student need to reapply for open enrollment every year?***

No. Once a student begins open enrollment, she or he may be required by the nonresident school district to reapply one time, and one time only, at the beginning of middle school, junior high school or high school. The nonresident school board must specify its reapplication requirements, if any, in its open enrollment policy. [Wis. Stats. § 118.51 (3) (c) 1., and (4) (a) 1.]

- 98. *How does a student know if she or he is required to reapply?***

The nonresident school district is required to notify each student who will be required to reapply, no later than the first day of the application period. [Wis. Adm. Code § 36.04 (2) (b)]

- 99. *What if the student wishes to attend a different nonresident school district?***

The student must submit a new application form to the new nonresident school district during the February application period. [Wis. Stats. 118.51 (3) (c) 2.]

- 100. *If a student is required by the nonresident school district to reapply, can the resident school district deny the application?***

No. The resident district does not act on reapplications required by nonresident school districts.
[Wis. Adm. Code § PI 36.05 (5) (b)]

- 101. *Can a nonresident school district have several different reapplication requirements? For example, can it require a student who originally enrolled in third grade to reapply for seventh grade, while requiring a student who originally enrolled in seventh grade to reapply in ninth grade?***

Yes, as long as no student is required to reapply more than one time. The school board must clearly specify its reapplication requirements in its school board policies. [Wis. Stats. § 118.51 (3) (c) 1. and (4) (a) 1.]

- 102. *For high school reapplication, can a district that includes ninth grade in junior high require reapplication for tenth grade rather than ninth grade?***

Yes. [Wis. Stats. § 115.01 (2) and 118.51 (3) (c)]

X. Filing an Appeal

103. Can a parent appeal a school board's open enrollment denial?

A parent may file an appeal of a school board's denial of open enrollment with the Department of Public Instruction within 30 days of the day the notice is postmarked or is delivered to the parent, whichever occurs first. [Wis. Stats. § 118.51 (9) and Wis. Adm. Code § PI 36.10 (2) (a)]

104. When does the 30-day appeal period begin?

The 30 days begins on the day the notice of denial is postmarked or is delivered to the parent, which occurs first.

[Wis. Adm. Code § PI 36.10 (2) (a)]

105. Will the Department accept a late appeal?

No. Wis. Adm. Code § PI 36.10 (2) (d) denies jurisdiction to the Department in the case of a late-filed appeal.

106. How does a parent file an appeal?

The appeal may be filed on form PI 9418 or may be filed in the form of a letter or legal brief. It must state the decision being appealed (i.e. the denial of the ABC School Board of open enrollment for Jane Doe) and the specific reasons for the appeal, which includes why the appellant believes the decision was arbitrary or unreasonable. It must be signed by the appellant or the representative of the appellant. If the appellant is represented by legal counsel, it must include a notice of representation. The appellant must enclose a copy of the notice of denial. If the appellant alleges that the denial was not timely, a copy of the postmarked envelope in which the denial was received must be included. [Wis. Adm. Code § PI 36.10 (2) (b) and (c)]

If the appellant does not explain why the denial was arbitrary or unreasonable, as it relates to the reason for the denial, the Department may refuse to accept the appeal.

[2004 WI DPI D&O 1656]

107. How long does it take to decide an appeal?

The length of time it takes to decide an appeal depends on when the appeal was received, how long it takes to compile the record of the decision, whether the parties file briefs and responses, how many appeals the department receives, and how complicated the issues are in the appeal. Most decisions are made and orders mailed during the month of August.

108. Under what circumstances will the Department overturn the school board's decision?

The Department is required to uphold the school board's decision unless the department finds that the decision was "arbitrary or unreasonable." [Wis. Stats. § 118.51 (9)]

Some examples of actions that have been found to be arbitrary or unreasonable follow:

- The school board did not follow the open enrollment law; [2001 WI DPI D&O 957]
- The school board did not have the required policy upon which the decision was made; [2002 WI DPI D&O 1248]
- The school board used criteria that were arbitrary or unreasonable;

[2001 WI DPI D&O 1028]

- The school board did not follow its policy, was inconsistent in following its policy or made arbitrary or unreasonable exceptions to its policy.
[2001 WI DPI D&O 949; and 2001 WI DPI D&O 961]

The appellant has the burden of proving that the decision was arbitrary or unreasonable. This means that there must be evidence to support the allegation that the decision was arbitrary or unreasonable. Further, if the school board's decision is reasonable, the decision must be upheld even if the appellant's argument is as reasonable or is more reasonable.

[Wis. Stats. § 118.51 (9) and Wis. Adm. Code § PI 36.10 (3) (b) and 2001 WI DPI D&O 1131]

109. *Will the Department consider the parent's reasons for wanting open enrollment?*

The parents' reasons for desiring the transfer, while of utmost concern to the parents and pupil, are not relevant to an appeal under open enrollment and are not permitted to be considered by a school district in acting on an application. Except for a preference given to pupils currently attending school in the nonresident school district and their siblings, the statute is neutral on the reasons for applying for open enrollment. The assumption is that every parent has a valid reason for applying for open enrollment and the application will be approved unless there is a reason to deny under state statutes and school board policy.

[Wis. Stats. § 118.51 (9) and 2000 WI DPI D&O 822]

110. *Will the Department consider whether the resident school district is properly providing special education or related services to a student with a disability?*

In an open enrollment appeal, the Department is permitted to consider only whether the school board's decision was arbitrary or unreasonable with respect to the reason for denial of open enrollment. It is not permitted to consider the individual circumstances of the student, including whether the parent believes the school board properly followed special education law, whether the parent believes the individualized education program (IEP) is appropriate, or whether the parent believes the school district is meeting the requirements of the IEP.

[2001 WI DPI D&O 1087]

If the parent believes the school board has violated state requirements under Chapter 115, Wis. Stats., or PI 11 Wis. Admin. Code, or federal requirements under the Individuals with Disabilities Education Act (IDEA) the parent may file a complaint with the special education team at the Department of Public Instruction. Information about filing a special education complaint may be obtained by calling (608) 266-1781 or may be viewed on the internet at <http://dpi.wi.gov/sped/complain.html>. [2002 WI DPI D&O 1265]

111. *What is a brief?*

A brief is a party's argument in the case. It states the facts and points of law as the party wishes to present them to the deciding authority. It may be a formal document or an informal letter, but it should clearly explain the facts of the case and explain why the party believes the decision should be overturned (appellant parent) or upheld (respondent school district).

112. *Is it necessary to hire an attorney to file an appeal (parent) or defend an appeal (school district)?*

It is not necessary to hire an attorney to file or defend an open enrollment appeal. Briefs are permitted, but not required, and a plain language explanation or argument in any legible format is

acceptable. The open enrollment consultant will explain the appeal procedure to either party. However, the open enrollment consultant is not permitted to discuss the merits of the case with either party unless the other party is present; and is not permitted to give legal advice to either party. If the appellant believes that legal advice is needed, consultation with an attorney is recommended. [Wis. Stats. § 227.50]

113. *Is the Department's decision final?*

The Department's decision may be appealed to the circuit court in which the appellant resides by filing a petition for review within 30 days of service of the state superintendent's decision. [Wis. Stats. § 227.53 and Wis. Adm. Code § PI 36.10 (4) (b)]

XI. Attending a Nonresident School District under Open Enrollment

114. *What rights and responsibilities does an open enrolled student have in the nonresident school district?*

A student attending a nonresident school district under open enrollment has all of the rights and privileges of students residing in that school district and is subject to the same rules and regulations as students residing in that school district. [Wis. Stats. § 118.51 (13) and (13m)]

115. *Can an open enrolled student participate in inter-scholastic athletics in the nonresident school district?*

Participation in inter-scholastic athletics is governed by policies of the Wisconsin Interscholastic Athletic Association (WIAA). Questions should be directed to the school district's athletic director or to WIAA at 715-344-8580, www.wiaawi.org.

116. *Can an open enrolled student participate in gifted and talented programs, youth apprenticeship programs, advanced placement classes and other special opportunities in the nonresident school district?*

Yes, subject to the same conditions as resident students. However, this only applies once a student begins attending the nonresident school district. No school district is required to evaluate any open enrollment applicant for eligibility for special programs or to try out for any sports or activities. [Wis. Stats. § 118.51 (13)]

117. *Can an open enrolled student be valedictorian and receive the state's academic scholarship for the school?*

Yes, subject to the same conditions as resident students. [Wis. Stats. § 118.51 (13)]

118. *Can a student participate in both the full-time open enrollment program and the part-time open enrollment program?*

No. A student may participate in either full-time open enrollment or part-time open enrollment, but not both. [Wis. Stats. § 118.52 (2)]

119. *Can an open enrolled student participate in the youth options program? Who pays?*

An open enrolled student may participate in the youth options program. Payment is made by the nonresident school district.

[Wis. Stats. § 118.55 (2) (a) and (5). See also <http://dpi.wi.gov/youthoptions/>]

120. *If an open enrolled student is placed in the youth challenge academy, which school district is responsible for payment?*

If a student is placed in the youth challenge academy, the open enrollment ceases. The student's resident school district is responsible for payment for the challenge academy.

[See also <http://dpi.wi.gov/sfs/youthchall.html>]

121. *Can a school district rescind a student's open enrollment as a disciplinary measure?*

A nonresident school district may discipline the student in the same manner it disciplines resident students. However, open enrollment may not be rescinded unless the student is expelled.

[Wis. Stats. § 118.51 (3) (c) 1., (5) (b) and (13) and Wis. Adm. Code § 34.04 (13) (e)]

122. *Can a school district rescind a student's open enrollment if the student is habitually truant?*

Yes. If the nonresident school district determines that an open enrolled student is habitually truant from the nonresident district during either semester in the current school year, the district may prohibit the student from attending the nonresident district in the succeeding semester or school year. [Wis. Stats. § 118.51 (11)]

123. *If an open enrolled student attends a high school equivalency diploma program, which school district pays for the program?*

If the student enrolls in the high school equivalency diploma program through the nonresident school district, the nonresident district pays for the program.

[Wis. Stats. § 118.15 (1) (c) and 118.51 (13)]

124. *Can an open enrolled student take courses in her/his resident school district?*

Open enrollment is a full-time program in which the student ceases to attend the resident school district and attends the nonresident school district on a full-time basis. Thus, there is no obligation on the part of the resident school district to allow an open enrolled student to take any courses, although there is no statute that prohibits the resident school district from permitting the student to take such courses.

125. *Can an open enrolled student participate in extra-curricular activities in her/his resident school district?*

Open enrollment is a full-time program in which the student ceases to attend the resident school district and attends the nonresident school district on a full-time basis. Thus, there is no obligation on the part of the resident school district to allow an open enrolled student to participate in any extra-curricular activities, although there is no statute that prohibits the resident school district from permitting the student to participate in such activities.

126. *Can an open enrolled student also be enrolled in a private school or a home-based private educational program?*

No. If an open enrolled student enrolls in a private school or a home-based private educational program, the open enrollment ceases. [Wis. Adm. Code § 36.03 (3) (d)]

127. *Which school district reports an open enrolled student's scores on the Wisconsin State Assessment System?*

The nonresident school district reports an open enrolled student's scores on the Wisconsin State Assessment System.

128. *Which school district reports an open enrolled student on the December 1 federal child count?*

The nonresident school district reports an open enrolled student on the December 1 federal child count.

129. *Which school district reports the student's aggregate days of attendance?*

The nonresident school district reports the aggregate days of attendance for open enrolled students.

XII. Transportation

130. *Who is responsible for transportation?*

Parents are responsible for transportation to and from school in the nonresident school district. The only exception to this requirement applies when the individualized education program (IEP) for a disabled student requires transportation. In this case, the nonresident school district is responsible for providing the transportation. [Wis. Stats. § 118.51 (14) (a)]

131. *Are school districts permitted to provide transportation to open enrolled students?*

Either the nonresident or resident school district *may* provide transportation to open enrolled students. However, the nonresident school district is prohibited from picking up a nonresident student within the boundaries of the student's resident school district without the permission of the school board of the resident school district. This prohibition applies even if the nonresident school bus passes right by the student's home. Each school board is required to specify in its policies whether it will provide transportation for some or all of its resident students transferring out and/or nonresident students transferring in; and the means by which it will provide the transportation.

[Wis. Stats. § 118.51 (4) (a) 6. and (14) (a) and 121.54 (10)]

132. *Is there any transportation assistance for low-income parents?*

Low-income parents may apply to the Department of Public Instruction for reimbursement of transportation costs for open enrollment. Low-income means the family meets the income-eligibility guidelines for free or reduced price meals under the federal school lunch guidelines. The parent may indicate intent to apply for reimbursement by checking the appropriate space on the open enrollment application form (or may call the Department for information). The Department will then contact the parent to provide an estimate of reimbursement and instructions

for submitting a claim. To receive reimbursement, the parent must submit a claim for actual transportation provided. Claims are submitted at the end of the school year. [Wis. Stats. § 118.51 (14) (b) and Wis. Adm. Code § 36.03 (2). Additional information about submitting a claim form is available on the Department’s web site at <http://dpi.wi.gov/sms/psctoc.html>.

133. *What is the responsibility of a school district to provide transportation for low-income parents?*

School districts have no responsibility to provide any transportation to any student, except students with disabilities whose individualized education programs (IEPs) require transportation. School districts should refer low-income parents to the Department of Public Instruction for information about reimbursement of transportation costs. [Wis. Stats. § 118.51 (14) (a)]

Either the resident or nonresident school district is permitted to provide transportation, except the nonresident school district may not pick up or drop off any open enrolled student within the boundaries of the student’s resident school district unless the school board of the resident school district approves. [Wis. Stats. § 121.54 (10)]

134. *Is state transportation categorical aid available to school districts that provide transportation to open enrolled students?*

Only the nonresident school district may be paid categorical aid for transportation provided to open enrolled students, and only if the nonresident school district does not charge the parent for the transportation. [Wis. Stats. § 121.58 (2) (a)]

135. *Can the school district charge the parents for transportation?*

Yes. If the parent is low-income, the parent may apply to the Department of Public Instruction for reimbursement of the cost. [Wis. Stats. § 118.51 (14) (b) and 121.545 (1)]

136. *Can a school district and parent contract to provide the transportation?*

Yes. This may work one of two ways. The school district may choose to provide transportation, and may do so with a “parent contract.” That is, the parent would provide the transportation and the district would reimburse the parent. Conversely, the parent may request the school district to provide the transportation and the school district may charge the parent. In either case, a nonresident school district may not provide any transportation that picks up the student within the boundaries of the student’s resident school district unless permission to do so has been granted by the resident school district—regardless of who pays. [Wis. Stats. § 121.54 (10), 121.545 (1) and 121.55]

137. *Who is responsible for providing transportation for open-enrolled students with disabilities?*

Transportation must be provided for students with disabilities only if the student’s individualized education program (IEP) requires transportation. In that case, the nonresident school district is required to provide the transportation. [Wis. Stats. § 118.51 (14) (a) and (b)]

138. *How much reimbursement are low-income parents eligible to receive?*

The parent will receive reimbursement of transportation costs up to a state-set maximum. The maximum reimbursement per student is three-times the state average cost per student for

transportation. The reimbursement is paid from a state appropriation. Since the 2002-03 school year, claims have exceeded the appropriation and payments to parents have been prorated. The Legislature reduced the appropriation from \$482,500 to \$434,200 beginning in 2011-12. [Wis. Stats. § 20.255 (2) (cy) and 118.51 (14) (b)]

Parents are paid a per-mile amount for private vehicle transportation or are reimbursed for the actual amount for public transportation expenses or contracted transportation. Following is information concerning the per mile reimbursement, maximum reimbursement per student and proration factor:

	2010-11	2011-12
Reimbursement per mile	36.5¢	35.2¢
Maximum reimbursement per student	\$1,129.62*	\$1,133.43*
Proration factor	36.4%	Unknown
* before proration		

The deadline for submission of reimbursement claims is July 16. It is essential that claims be filed by the deadline, because once timely claims are paid, there will be no money remaining in the appropriation for the payment of late claims.

Further information on filing a claim is located at http://dpi.wi.gov/sms/doc/oe_transreimb_2011-12.doc.

XIII. School Board Policies

139. What policies are school boards required to adopt?

Each school board is required to adopt policies specifying:

- Its reapplication requirements, if any. (for more information please go to [Section IX](#))
- Its acceptance and rejection criteria. (for more information please go to [Section IV](#))
- A statement of required preferences. (for more information, please go to [Section IV](#))
- Whether it will provide any transportation to open enrolled students and, if so, the means by which it will provide transportation. (for more information, please go to [Section XII](#))

[Wis. Stats. § 118.51 (4)]

140. When must school boards adopt their policies?

School boards were initially required to adopt their policies by February 1, 1998. School boards may revise their policies, but any revision must be made prior to the first application period to which the revised policy applies. [Wis. Stats. § 118.51 (4) (a) and (b) and Wis. Adm. Code § PI 36.04 (1) (a)]

141. Can school boards adopt policies to close the district to open enrollment?

No. School districts must accept nonresident students for whom they have space. [Wis. Stats. § 118.51 (3) (a) 1. and 2. and WI DPI D&O 1296, July 30, 2002]

142. *Can school boards amend their policies?*

School boards may revise their policies, but any revision must be made prior to the first application period to which the revised policy applies.

[Wis. Adm. Code § PI 36.04 (1) (a)]

XIV. Open Enrollment Funding/Tracking Students

143. *Who pays for open enrollment?*

For regular education, open enrollment is funded by a transfer of state aids from the student's resident school district to the nonresident school district. [Wis. Stats. § 118.51 (16)]

For special education, the resident school district pays the nonresident school district directly. [Wis. Stats. § 118.51 (17) and [Doe v. Burmaster, U.S. District Court Eastern District 03-CV-892]

144. *How is the open enrollment transfer amount calculated?*

The open enrollment transfer amount is equal to the statewide average per pupil school district cost for regular instruction, co-curricular activities, instructional support services and pupil support services in the previous school year.

[Wis. Stats. § 118.51 (16) (a)]

Following is the open enrollment transfer amount for each year since the beginning of the open enrollment program:

1998-99	\$4,543
1999-00	\$4,703
2000-01	\$4,828
2001-02	\$5,059
2002-03	\$5,241
2003-04	\$5,446
2004-05	\$5,496
2005-06	\$5,682
2006-07	\$5,845
2007-08	\$6,007
2008-09	\$6,225
2009-10	\$6,498
2010-11	\$6,665
2011-12	\$6,867

145. *When are the aid transfers made?*

The transfers are made with the final June state aid payment made to school districts.

146. *What state aid payments are reduced to make the transfer to the nonresident school district?*

A school district's equalization aid payment is reduced to make the aid transfer. However, if the school district's equalization aid payment is insufficient to cover the reduction in state aids, the school district's other state aids are reduced.

[Wis. Stats. § 118.51 (16) (a) 2.]

147. *Why doesn't the nonresident school district receive its full cost per member for an open-enrolled student?*

The open enrollment program is funded on an approximation of "marginal cost." That is, when a school district admits a student for an otherwise vacant space in a classroom, the school district does not incur its full per pupil cost to educate the student. The district's fixed costs, such as debt service, building maintenance, business administration, and school and district administration do not usually increase as students are added to available spaces in classrooms. The open enrollment transfer amount is made up of costs that are most likely to increase or decrease with the number of students educated.

148. *Why doesn't the resident school district lose all of its per pupil revenue when an open enrolled student transfers?*

The open enrollment program is funded on an approximation of "marginal cost." That is, when a student transfers out of a school district, the fixed costs of the student's resident school district are unlikely to change. Fixed costs such as debt service, building maintenance, business administration, and school and district administration do not usually decrease when students transfer out. The open enrollment transfer amount is made up of costs that are most likely to increase or decrease with the number of students educated.

149. *What happens if a student returns to school in his/her resident school district during the school year?*

The open enrollment ceases if a student returns to her resident school district. If this happens during the school year, the open enrollment transfer amount is prorated according to the number of days the student was enrolled in the nonresident district under open enrollment.

[Wis. Stats. § 118.51 (16) (c) and Wis. Admin. Code § 36.03 (3) (b)]

150. *What happens if a student moves into the nonresident school district?*

The open enrollment ceases if a student moves into the nonresident school district. If this happens during the school year, the open enrollment transfer amount is prorated according to the number of days the student was enrolled in the nonresident district under open enrollment.

[Wis. Stats. § 118.51 (16) (c) and Wis. Admin. Code § 36.04 (13) (a) 1.]

151. *What happens if a student withdraws from the nonresident school district?*

The open enrollment ceases if a student withdraws from school in the nonresident school district. If this happens during the school year, the open enrollment transfer amount is prorated according to the number of days the student was enrolled in the nonresident district under open enrollment.

[Wis. Stats. § 118.51 (16) (c)]

152. *What happens if a student has not attended the nonresident school district by the third Friday in September?*

If a student has not attended the nonresident school district by the third Friday in September, the open enrollment is void for that school year. If the student wishes to attend the nonresident school district in the following school year, the student must submit a new application. [Wis. Adm. Code § PI 36.03 (3) (d)]

153. *How is open enrollment funded for students with disabilities?*

The nonresident school district submits a bill directly to the resident school district for the cost of the special education and related services. The amount to be billed is equal to the transfer amount for regular education students plus any actual, additional, special education costs to educate the student. [Doe v. Burmaster, U.S. District Court Eastern District 03-CV-892]

154. *What are “actual, additional special education costs?”*

Actual, additional special education costs are actual costs incurred by the school district that are specific to the student and would not be incurred if the student were not attending the nonresident school district. It does not include averaged or prorated costs the school district is already paying. [Doe v. Burmaster, U.S. District Court Eastern District 03-CV-892]

155. *Who counts the open-enrolled student for membership?*

The resident school district counts the open enrolled student in membership for state aid and revenue limit purposes. [Wis. Stats. §121.05 (1) (a) 11.]

156. *How does open enrollment affect a school district’s revenue limit?*

The nonresident school district is not required to reduce its levy by the amount of the positive state aid adjustment. The resident school district is not permitted to increase its levy by the amount of the negative state aid adjustment. [Wis. Stats. § 118.51 (16) (d)]

157. *How does open enrollment affect a school district’s equalization aid?*

A school district’s equalization aid is calculated using the school district’s membership, shared cost per member and equalized valuation per member. The resident school district counts the student in membership. The aid transfers are made *after* the calculation of the school district’s equalization aid and do not affect the school district’s eligibility for state aid. [Wis. Stats. § 118.51 (16) (d), 121.05 (1) (a) 11. and 121.08]

158. *Can a school district count nonresident open enrollment students in its membership?*

No. The resident school district counts open enrolled students for membership purposes. [Wis. Stats. §121.05 (1) (a) 11.]

- 159. *If a student open enrolls for a kindergarten program that has a different FTE than the program offered in the resident school district, which FTE membership should the resident school district report?***

The resident school district should report the FTE of the program the student attends in the nonresident school district.

- 160. *How are open enrollment payments accounted for in the school district accounting system?***

Open enrollment aid transfers are accounted for as an expenditure of the resident school district and as a revenue of the nonresident school district, as follows:

Regular education expenditure: Fund 10, Function 435 000, Object 382
Special education expenditure: Fund 27, Function 437 000, Object 382

Regular education revenue: Fund 10, Revenue Source 345
Special education revenue: Fund 27, Revenue Source 347

- 161. *Will a nonresident school district receive additional state aid or membership for summer school open enrollment?***

No. Although the statute permits open enrollment for summer school, there is no provision for any additional payment for open enrolled students who attend summer school.

Information about open enrollment may be obtained from:

Department of Public Instruction/Open Enrollment
P.O. Box 7841
Madison, WI 53707-7841
Web site: <http://dpi.wi.gov/sms/psctoc.html>
Toll-free phone number: 888-245-2732
Email: maryjo.cleaver@dpi.wi.gov
Jennifer.danfield@dpi.wi.gov