



Buelow Vetter

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Open Enrollment Policies Should be Reviewed Before January Board Meeting

As the February-April 2016 regular open enrollment application period approaches, school districts should review their open enrollment policies to confirm that they are in compliance with the open enrollment statute (Wis. Stat. § 118.51) and DPI regulations (Wis. Admin. Code Chapter PI 36), both of which have undergone recent changes. Any policy revisions should be made before the January school board meeting at which the board will designate the number of regular education and special education spaces available in the district.

Beginning with the 2016-17 school year, 2015 WI Act 55 (the state budget bill) modified the open enrollment program for students with disabilities. The budget bill created a new transfer amount of \$12,000 for open enrolled students with disabilities. DPI will make the aid transfer payments for open enrolled students with disabilities in the same manner as for open enrolled students without disabilities. As a result of this change, the nonresident school district will no longer be required to send an estimate of the costs of educating a student with a disability to the resident school district. In addition, the nonresident school district will no longer bill the resident school district for these costs. Any policy provisions requiring the nonresident district to send a cost estimate to the resident school district should be removed, as well as any policy provisions requiring the resident school district to pay tuition to the nonresident school district.

Because the resident school district will no longer be required to pay the cost of educating students with disabilities who have open enrolled in a nonresident school district, the budget bill also eliminated school districts' authority to deny resident students' open enrollment applications based on undue financial burden. Accordingly, any policy provisions authorizing the resident district to do so should be removed.

In addition to making the above revisions, school districts should confirm that their open enrollment policies contain all of the provisions required by the open enrollment statute and DPI regulations. The DPI regulations underwent major revisions in the summer of 2014, and the new regulations went into effect September 1, 2014. If your district's open enrollment policy has not been reviewed since then, significant revisions will likely be necessary.

The open enrollment statute and DPI regulations require open enrollment policies to include the following provisions, at a minimum:

- A procedure to receive and date applications received during the regular application period;
- The school board's acceptance and rejection criteria for open enrollment applications that are submitted by nonresident students who wish to attend school in the district;

- The criteria/method for determining the number of regular and special education open enrollment spaces available in each grade in the district;
- A statement that currently-attending students and their siblings are entitled to a preference (but may instead be guaranteed space—see next bullet point) in the selection of applicants when the number of nonresident applicants exceeds the number of available spaces;
- A statement of which pupils, if any, will be guaranteed approval;
- The method of random selection used to determine which applications will be approved when the number of nonresident applicants exceeds the number of available spaces;
- If the school board establishes a waiting list, the procedures for creating and accepting students from the waiting list;
- The school board’s reapplication requirements, if any;
- Whether the Board will provide transportation to any open enrollment students under Wis. Stat. § 121.54(10) and the means, under Wis. Stat. § 121.55, by which it will provide such transportation; and
- If the policy provides that open enrollment may be denied or terminated on the basis of habitual truancy, then the policy must include:
 - The definitions of “excused absences,” “unexcused absences,” “tardiness,” “part of a school day,” “truancy,” “habitual truancy,” and any other term or concept that will be used for the purposes of denying or terminating open enrollment (these definitions should be consistent with the district’s truancy and attendance policy);
 - The criteria that will be used to terminate open enrollment, including the number of unexcused absences that may result in termination of the pupil’s open enrollment; and
 - A process for the parent or student to follow if they believe the student was erroneously marked truant.

If you would like assistance reviewing your open enrollment policy or have any questions about this legal update, please contact Alana Leffler at aleffler@buelowvetter.com or 262-364-0267, or your Buelow Vetter attorney.