

Initial Procedures for Implementing 2011 Wisconsin Act 114*
Exceptions to the Public School Open Enrollment Application Period
February 16, 2012

2011 Wisconsin Act 114 has created a procedure by which parents can apply for open enrollment “in lieu of” the annual application period that occurs from February to April each year.

Act 114 creates seven criteria under which a parent may apply for open enrollment outside the regular application period, as follows:

1. The student’s resident school district has determined that the student is a victim of a violent criminal offense.

The parent must submit the application within 30 days of the finding by the resident school district and include an explanation of the circumstances leading to the request. The application must also include a copy of any finding by the resident school district or a statement by an administrator of the resident school district explaining the reason for the finding.

2. The student is or has been a homeless student (as defined in the McKinney-Vento Act) in the current or immediately preceding school year.

In submitting the application, the parent must include an explanation of the circumstances leading to the request. The application must also include a statement from the homeless liaison or an administrator in a public school district verifying that the student is or has been homeless, as defined in the federal McKinney-Vento Act, in the current or immediately preceding school year.

3. The student has been the victim of repeated bullying or harassment, the bullying and harassment has been reported to the student’s resident school district and, in spite of action taken, the repeated bullying and harassment continues.

In submitting the application, the parent must include an explanation of the circumstances leading to the request, including the date(s) on which the bullying or harassment was reported to the school district, the person(s) to whom the bullying or harassment was reported, any attempts by the student, parent and/or school district to halt the bullying or harassment, and the result of these attempts.

*2011 Wisconsin Act 114 makes significant changes to the open enrollment program. These initial procedures will continue to be reviewed and revised as necessary to implement the program efficiently and in accordance with Act 114.

4. The place of residence of the student's parent or guardian and of the student has changed as a result of military orders.

The parent must submit the application within 30 days after the military orders were issued and must include a copy of the military orders and an explanation of the circumstances that led to this request.

5. The student moved into this state.

The application must be submitted within 30 days after moving into the state and must include an explanation of the circumstances leading to the request.

6. The place of residence of the student has changed as a result of a court order or custody agreement or because the student was placed in a foster home or with a person other than the student's parent or removed from a foster home or a place other than the student's parent.

The application must be submitted within 30 days after the student's change in residence and must include an explanation of the circumstances leading to the request and a copy of any court order, custody agreement, or other document pertaining to the change in the student's residence.

7. The student's parent and the nonresident school district agree that attending the nonresident school district is in the best interests of the student.

In submitting the application, the parent must include an explanation of the circumstances leading to the request, including an explanation of why it was not possible to apply for open enrollment in the immediately preceding application period and why it is not possible to wait until the next open enrollment application period.

Application, Approval or Denial and Appeal

The parent must submit an application to the nonresident school district within the time period prescribed for each specific criterion, if any.

The nonresident school district must notify the parent, in writing and within 20 calendar days after receiving the application, whether it has approved or denied the application. If the nonresident school district has approved the application, it must identify the specific school or program the student may attend. If the nonresident school district has not approved or denied the application within 20 calendar days, it is presumed to be denied.

The nonresident school district may deny the application for the same reasons it may deny an application submitted during the regular application period, as follows:

- Space is not available in the schools, programs, classes or grades of the nonresident district.

- Whether the student has been expelled from a school district during the current or two preceding school years based on certain criteria or whether a disciplinary proceeding involving the student, based on the criteria, is pending. [See Wis. Stats. § 118.51 (5) 2 for listing of criteria]
- Whether the student was habitually-truant from the nonresident school district in the current or previous school year.
- Whether the special education or related services required in the student's individualized education program (IEP) are available in the nonresident school district or whether there is space to provide the special education and related services required in the student's IEP.
- Whether the student has been referred to his or her resident school district for an initial special education evaluation or whether the student has been identified as a student who may have a disability but has not yet been evaluated.

A nonresident school district's denial may not be appealed to the Department of Public Instruction (DPI).

The resident school district may deny the application only for the following reasons:

- If the resident school district determines that the criteria upon which the application is based do not apply to the student.
- If the resident school district determines that actual, additional cost to be charged by the nonresident school district to provide the special education or related services by the required in the student's IEP is an undue financial burden, in light of the resident school district's total economic circumstances. (The resident school district may not deny for this reason if the request is based on the resident school district's finding that the student has been the victim of a violent criminal offense.)

A resident school district's denial may be appealed to the DPI within 30 days of receiving the notice of denial from the resident school district.

- If the denial was based on the undue financial burden of special education costs, the DPI must affirm the school district's decision unless it finds that the decision was arbitrary or unreasonable. The DPI's decision may be appealed to circuit court.
- If the denial was based on the resident school district's determination that the criteria upon which the application was based do not apply to the student, the DPI must affirm the school district's decision unless it finds that the decision was arbitrary or unreasonable. The DPI's decision may be appealed to circuit court.
- If the denial was based on the resident school district's disagreement that the transfer is in the best interests of the student, the DPI must review the parent's explanation as to why the transfer is in the best interests of the student and the resident school district's explanation as to why the transfer is not in the best interests of the student. If the DPI determines that resident school district's denial is not in the best interests of the student, the DPI must notify the parent and the resident school district that the student may attend the nonresident school district. The DPI's decision is final.

There is no statutory date by which the resident school district must notify a parent if a student's application has been approved or denied. However, if the resident school district determines that the criteria upon which the application is based does not apply to the student, it should notify the parent within 5 days of making that determination, or as soon as possible.

If the resident school district determines that the cost to be charged by the nonresident school district is an undue financial burden, it should notify the parent within 5 days of receiving the estimate of costs from the nonresident school district, or as soon as possible.

If a resident school district denies an application after a student has already begun attending the nonresident school district and the parent does not file an appeal, the student is required to return to the resident school district. If the parent files an appeal of a resident school district's determination that a transfer is not in the best interests of the student, the student may remain in the nonresident school district pending the outcome of the appeal. If the parent files an appeal of a resident school district's denial based on "undue financial burden," the student may remain in the nonresident school district pending the outcome of the appeal if the resident and nonresident school districts agree to allow the student to do so.

Student's Attendance

If the nonresident school district has approved the application, the student may immediately begin attending the nonresident school district and must begin attending the nonresident school district no later than the 15th day following receipt of the notice of approval. If the student has not enrolled in or attended the nonresident school district by the 15th day after receiving the notice of approval, the nonresident school district may notify the parent that the student may not attend the nonresident school district.

Application Procedures

A parent who wishes to apply for one of the exceptions to the application criteria must submit an application to the nonresident school district using a form provided by the DPI. There are both paper and online versions of the form. If the parent submits a paper application, the parent must include any required supporting documentation. If the parent submits the application online, the parent must then mail, fax or email the supporting documentation to the nonresident school district. It is recommended for the parent to also send the supporting documentation to the resident school district; this may speed processing of the application.

The parent is required to specify the criteria (one or more) upon which the request is based and provide an explanation of the circumstances leading to the request. In some cases, the parent may be required to submit additional documents.

NOTE: Although not required, it is strongly recommended that parents contact the nonresident school district in advance of submitting the application.

For example, if the nonresident school district does not have space or does not agree the transfer is in the best interests of the student, time will not then be wasted processing an

application that is going to be denied. Further, there are some timelines involved: certain applications must be submitted within 30 calendar days of the qualifying event, the nonresident school district must respond within 20 calendar days and the student must attend within 15 calendar days. Contacting the nonresident school district before submitting the application can ensure that it is not submitted too soon so that the student will not be able to attend by the 15th day after approval.

The nonresident school district is required to immediately send a copy of the application to the resident school district.

- If the parent submitted the application online, both the nonresident and resident school districts will receive an email notifying them that the application has been submitted.
- If the application was submitted via paper, the nonresident school district will enter it into OPAL (the open enrollment online tracking system) which will generate an email to the resident school district providing notification that an application has been submitted. The nonresident school district must then fax or email the supporting documents to the resident school district.
- If OPAL is not yet set up for entering online applications, the nonresident district must send a copy of the application and supporting documents to the resident school district and a copy of the application to the DPI (supporting documents do not need to be sent to DPI).

Within 10 days of receiving a copy of the application, the resident school district must provide the following to the nonresident school district:

- A copy of any expulsion finding and orders pertaining to the student, a copy of records of any pending disciplinary proceeding involving the student, a written explanation of the reasons for the expulsion or pending disciplinary proceeding and the length of the term of the expulsion of the possible outcomes of the pending disciplinary proceeding.
- For a student with a disability, a copy of the student's IEP.

If the student is not attending the resident school district but is attending public school in another Wisconsin or out-of-state school district, the nonresident school district should request special education and expulsion records from the public school district the student is attending.

Within 10 days of receiving a copy of the student's IEP, the nonresident school district must provide to the resident school district an estimate of any actual, additional costs incurred by the resident school district to provide the special education or related services to a student with a disability.

Tracking/Funding for Students Who Transfer Under the Exceptional Application Procedure

Students who transfer as exceptions to the regular application period will be tracked in OPAL. [The tracking functions will not be immediately available when the statute is in effect; we will keep you posted on its progress.]

Payments for regular education transfers will be equal to the open enrollment transfer amount

prorated at the daily rate (OE amt / 180) and will be paid as an aid adjustment in the same manner as current open enrollment is paid.

Payments for special education transfers will be paid in the same manner as current open enrollment is paid. The nonresident school district will bill the resident school district for the prorated open enrollment transfer amount plus any actual, additional special education cost to provide the special education and related services required in the student's IEP.

If the student was not included in the resident school district's revenue limit calculation (i.e. was not counted by the resident school district on the 3rd Friday in September), the resident school district will receive a revenue limit exemption in the following school year equal to the amount of the open enrollment payment. For example, a student who is open enrolled for the last 60 days of the school year will generate a payment, based on the 2011-12 estimate, of \$2,316 ($\$6,948 / 180 \times 60$). If the student had transferred from out of state and was not included in the resident school district's 3rd Friday in September membership, the resident school district will receive a revenue limit exemption in the 2012-13 school year of \$2,316. Resident school districts will be required to indicate in OPAL whether the student was included in the 3rd Friday membership. The amount of the revenue limit exemption, if any, will be calculated by DPI open enrollment staff and provided to the state aids team.

Questions and Answers

Applying for Exceptions to the Open Enrollment Application Period

1. What does "in lieu of" mean?

It means that a parent's first obligation is to apply for open enrollment during the regular application period, if possible. If the parent was unable to apply during the regular application period for the current school year, the parent may use the exception procedure "in lieu of" applying during the regular application period.

2. Can a parent apply for an exception to the application period that would apply to a following school year?

No. The parent must apply for a following school year during the regular application period. The parent may apply for an exception for a current school year if the parent was unable to apply for open enrollment during the regular application period.

3. Can a parent submit an application during the application period and also an application for an exception to the application period at the same time?

Yes, but not for the same school year. An exception to the application period is for the current school year, a regular application is for the next school year. Thus, if a student submits both a regular application and an exceptional application in February 2012, the exceptional application is for the 2011-12 school year and the regular application is for the 2012-13 school year.

If the exceptional application for the current school year is approved, the student may then attend the following and succeeding school years without reapplication.

4. How many school districts can a parent apply to?

Applications may be submitted to up to three nonresident school districts for a student in the same school year.

5. Can a parent apply for three nonresident school districts during the regular application period and an additional three nonresident school districts as an exception to the application period?

Not in the same school year. A parent who applies under both the regular and exceptional procedures during the same school year can only apply to a total of three nonresident school districts, even though the applications may be for different school years.

The parent could wait until the following school year and apply to a different three districts under the exceptions and the regular application period or both, but is again limited to a total of three school districts within a school year (July 1-June 30), even though the applications may be for different school years.

6. If an application for an exception is approved and the student begins attending the nonresident school district in the current school year, does the student have to reapply for open enrollment in the following school year?

No. Once a student is open enrolled, the student may continue to attend the nonresident school district without annual reapplication. The only time a student needs to apply for the following school year is if the student is entering middle school, junior high or high school and the nonresident school district requires reapplication at those grade levels.

7. Can the nonresident school district require the student to reapply for the following school year?

Not unless the student is entering middle school, junior high or high school and the nonresident school district has a policy that requires students to reapply at those grade levels.

8. If a parent applies for open enrollment during the February-April application period and is denied, can the parent immediately submit an application for an exception?

While theoretically possible, as a practical matter this would be difficult, because under the exceptional application procedure, the student must attend within 15 days if the application is approved. Given the time frame in which school districts must approve or deny the regular applications (May 1 to June 8) and the time necessary to submit and process exceptions (1-20 days), there may not be enough days left in the current school year for the student to attend.

9. Can a parent submit an application before a “qualifying event” has occurred, i.e. a parent planning to move into the state, or a planned foster care placement, or with expected or recently issued military orders?

Such parents should contact the nonresident school district as soon as they have enough information to know they will need to request an exception to the application period. Working together, the nonresident school district and the parent should be able to figure out the optimal time to submit the application.

10. Can a nonresident school district approve students who apply for exceptions even if denies students who apply during the regular application period?

The statute allows exceptions to the application period. It does not allow a school district to grant exceptions to its space criteria, which would result in arbitrarily approving applications for some students and denying them for others. If a school district denies open enrollment to students during the regular application period and is appealed, the district will be required to provide information about any exceptional applications it received and the action it took. If the department finds that the school district was arbitrary or unreasonable in acting on applications, its decisions made during the regular application period will be overturned on appeal.

11. The nonresident school district must notify the parent of approval or denial within 20 calendar days. Can the nonresident school district notify the parent earlier than that?

Yes. However, once the application is approved, it is approved. If the nonresident school district approves the application before receiving special education and/or expulsion records, the nonresident school district may not be able to then deny the student.

12. If the nonresident school district approves the application immediately and the student begins attending the nonresident school district immediately, can the resident school district still deny the application?

Yes. The resident school district can deny the application for reasons permitted in the statute. Given the timing of the application procedures, it is very possible that students may begin attending the nonresident school district before the resident school district has acted on the application.

If the resident school district later denies the application, the student may no longer attend the nonresident school district, unless the parent files an appeal. If the resident school district denied the application because it does not believe the transfer is in the best interests of the student, the student may continue to attend the nonresident school district pending the outcome of the appeal. If the resident school district denied the application due to undue financial burden of special education costs or because the basis on which the application was submitted does not apply to the student, the student may only stay in the nonresident school district pending appeal if both the resident and nonresident school districts agree to allow the student to do so.

13. There are no dates by which a resident school district must deny a student's application. Does this give the resident school district unlimited time to deny it?

No. A resident school district's denial may not be arbitrary or unreasonable. If the district has the information to make a decision and unreasonably delays making it, the decision may be overturned by the DPI. The resident school district should make its decision as soon as possible. It is recommended that the district notify the parent of denial within 5 days of receiving an estimate of special education costs or within 5 days of making a determination that the criteria upon which the application was based do not apply to the student.

14. What if the parent submits the application late? For example, a parent must apply within 30 days of moving into the state. If the parent submits an application after that time, may it be approved?

The parent may apply based on the best interests of the student and must explain why the transfer is in the best interests of the student. If the nonresident school district agrees and the resident school district does not disagree that the transfer is in the best interests of the student, the application may be approved.

15. If the application is approved, the student must begin attending the nonresident school district within 15 calendar days. Can the nonresident school district allow the student to start later than that?

Yes. The statute provides that if the student does not begin attending within 15 days, the nonresident school district "may" notify the parent that the student is no longer approved to attend.

The student remains subject to compulsory school attendance laws. If the student is not attending the resident or nonresident school district, the student must be attending another public, private or home-based private educational program, or must have an excused absence.

16. A parent may apply for an exception to the application period if the resident school district has determined that the student is the victim of a violent crime. Can a parent apply on this basis if the student claims to be a victim, but the resident school district has not made the finding? Must the student have reported the incident to the police?

This provision requires that the resident school district must have made a finding that the student was the victim of a violent crime. If that finding has not been made, the parent may apply based on the best interests of the student and must explain why the transfer is in the best interests of the student. If the nonresident school district agrees and the resident school district does not disagree that the transfer is in the best interests of the student, the application may be approved.

17. A parent may request an exception to the application period if the student is or has been homeless during the current or preceding school year. Doesn't McKinney-Vento

allow the student to continue to attend the school of origin?

Yes it does. The student is not required to apply for either open enrollment or a tuition waiver if the student is eligible under McKinney-Vento.

However, once the student has permanent housing, McKinney-Vento only allows the student to finish the current school year in the school district of origin. If the student has found permanent housing outside the school district of origin, the student must apply for open enrollment to continue to attend beyond the student's eligibility under McKinney-Vento and may not have been able to apply during the application period. It could also be the case that the student moved to a different area of the state altogether and is not able to find housing in the desired school district.

18. A parent may request an exception to the application period if the student has been the victim of repeated bullying or harassment, if the bullying or harassment has been reported to the school district and, in spite of action taken, the bullying or harassment continues. What does "action taken" mean?

It means action taken in an attempt to resolve the issue. If the school district does not take any action, or if the school district and/or parent and/or student take action that does not resolve the issue, the parent may submit an application under this provision.

19. If a student has withdrawn to private school or home-schooling as a result of bullying or harassment, may the parent still apply under this provision?

Only if there was not a regular application period between the date of reporting the bullying to the school district and the date on which the parent wants to apply for the exception to the application period. That is, the parent must apply during the regular application period if the parent is able to do so.

20. A parent may request an exception to the application period if the student's and parent's residence have changed as a result of military orders. The application must be submitted within 30 days of the date on which the military orders changing the place of residence were issued. Do the military orders have to explicitly state the change in residence?

No. If the result of the orders is that the student's and parent's residence has changed, the parent may apply.

21. Do the student's and parent's residence have to be the same?

No. If the changes in residence are the result of military orders, the parent may apply, even if the student's residence and the parent's residence end up being different. For example, a parent may be deployed and the student may move in with the other parent or relatives or friends.

22. A parent may request an exception to the application period if the student’s residence has changed as a result of a court order or custody agreement or because the student was placed in a foster home or with a person other than the student’s parent or removed from a foster home or a from the home of a person other than the student’s parent. When referring to a person “other than the student’s parent,” would this exception apply if the parent sent the student to live with someone else?

No. The provision appears to mean a placement by a court or other authority.

If the parent sends the student to live with another person, a school district must determine whether the student is a resident for school purposes.

23. Does this exception apply to informal changes in a student’s placement between parents?

It applies only if the change is provided for in a court order or custody agreement. However, if the parents agree that it is in the best interests of the student to live with other parent and there is no legal barrier to the student doing so, the parents could then submit an exception to the application period based on the best interests of the student and must explain why the transfer is in the best interests of the student. If the nonresident school district agrees and the resident school district does not disagree that the transfer is in the best interests of the student, the application may be approved.

24. What is meant by “best interests of the student?”

A transfer is in the best interests of the student if the parent and nonresident school district agree and the resident school district does not disagree that the transfer is in the student’s best interest.

25. What if the parent believes the transfer is in the best interests of the student, but the nonresident school district does not agree?

The nonresident school district will notify the parent that the student may not attend.

26. Can the parent appeal the nonresident school district’s decision that the transfer is not in the best interests of the student?

No. Decisions by the nonresident school district concerning an exceptional application request may not be appealed to the DPI.

27. What if the resident school district does not believe the transfer is in the best interests of the student?

The resident school district must notify the parent in writing that the student may not transfer to the nonresident school district and explain why the resident school district believes the transfer is not in the best interests of the student.

The parent may file an appeal with the DPI within 30 calendar days of the date on which the notice was mailed. If the parent does not file an appeal, the student may no longer attend the nonresident school district. If the parent files an appeal, the student may attend or continue to attend the nonresident school district pending the outcome of the appeal.

The parent must explain to the DPI why the parent believes the transfer is in best interests of the student. The resident school district must explain why it believes the transfer is not in the best interests of the student. If the DPI determines that the resident school district's decision to deny the transfer is not in the best interests of the student, the DPI must notify the parent and the resident and nonresident school districts that the student may attend the nonresident school district.

28. How will DPI make this decision?

DPI will review the facts and arguments submitted by the parents and the resident school district and make a decision about whether the transfer is in the best interests of the student.

The DPI will not consider any factors that are not related to the best interests of the student. That is, DPI will not consider the financial effect on the resident school district or any other factors, except as they relate to the best interests of the student.

The DPI's decision is final.

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