

**Wisconsin Association of School
Superintendent Assistants**

Spring Conference

OPEN ENROLLMENT IN WISCONSIN

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I. Introduction.

Since its inception, open enrollment has evolved into a very important component of school district operations. In addition, statutory changes have made the open enrollment process more complicated and subject to legal interpretation. This presentation will address the open enrollment statute and the interpretations thereof by the Department of Public Instruction (DPI) and the courts to give the superintendent's assistant a better understanding of the process, its importance, and its pitfalls.

This presentation will address the following topics:

- A. Wisconsin's open enrollment law--an overview;
- B. Substantive statutory changes to Wisconsin's open enrollment law;
- C. New open enrollment deadlines and procedures--an administrator's perspective;
- D. School district challenges and uncertainties under the new open enrollment law; and
- E. DPI and state court interpretations of Wisconsin's open enrollment law.

II. Wisconsin's Open Enrollment Law--An Overview.

A. Introduction.

Since the 1998-99 school year, Wisconsin's open enrollment law has allowed students statewide to transfer to nonresident school districts under certain conditions. The program has grown significantly since it began. In the 1998-99 school year, there were 2,464 transfers. In the 2011-12 school year, there were 37,227 transfers. When students transfer from their resident district to a nonresident school district, the nonresident school district generally receives a set amount of money for the students from the resident district. In the 1998-99 school year, \$9.6 million was transferred between districts. In the 2011-12 school year, \$217.6 million was transferred. For a complete historical list of student and money transfers, see Appendix A. For DPI's open enrollment brochure for the 2013-14 school year, see Appendix B.

B. Eligibility

Students in 5-year old kindergarten through grade 12 are eligible to participate in open enrollment. Open enrollment for prekindergarten, 4-year old kindergarten, and early childhood education is limited and depends on the school district.

C. Procedure

Parents must apply to the school board of the nonresident district to have their children attend a nonresident school district. Open enrollment applications can be submitted to up to three nonresident school districts in any school year. Parents can request a specific school within the district, but specific schools are not guaranteed. If an application is accepted, the parents do not need to reapply each year if they want their child to attend the same school district except that a nonresident school board can require the parents to reapply once when the child enters middle school, junior high school, or high school. The nonresident and resident school boards can reject an application for open enrollment. If an application is denied, parents can appeal the decision to DPI within 30 days of the denial. DPI must uphold the district's decision unless it is arbitrary and capricious. DPI's decision can be appealed to the circuit court in the county where the appellant resides within 30 days of DPI's decision.

D. Special Education Students

Nonresident school districts can deny open enrollment applications for students that have individualized education programs (IEPs) if the special education or related services are not available or if there is no space in the special education or related services programs. Nonresident school districts prepare an estimate of the costs to provide the special education and related services for the student to the resident school district. The resident school district is required to pay the special education and related services costs. Resident school districts can deny open enrollment applications if the estimate of the costs to provide special education and related services imposes an undue financial burden on the resident school district.

E. Parental Costs and Transportation Responsibilities

There are no tuition costs to parents for participation in open enrollment. Parents of open enrollment students can be charged the same fees that are charged to resident students.

Generally, parents are responsible for transporting their students to and from school. If transportation is required through a student's (IEP), then the nonresident school district must provide transportation. School districts can choose to provide transportation to open enrollment students. Low-income students can apply to DPI for reimbursement of some transportation costs.

III. Substantive Statutory Changes to Wisconsin's Open Enrollment Law.

A. Purpose of Statutory Changes to Open Enrollment Law

On February 16, 2012, 2011 Wisconsin Act 114 (“Act”) became effective. This Act introduced a number of modifications and additions to Wisconsin’s open enrollment law. When interpreting and applying the recent changes, it is important to understand the context in which these changes have taken place. Almost all of the modifications and additions to open enrollment law are designed to facilitate, rather than hinder, transfers between Wisconsin school districts in what the legislature views as appropriate circumstances. Accordingly, both substantive and procedural changes create greater flexibility and opportunities for families who wish to pursue a transfer to a nonresident school district.

B. Expansion of Regular Open Enrollment Application Period.

1. *Prior Law.* Under prior law, parents could apply for open enrollment in a nonresident school district between the first Monday in February and the third Friday following the first Monday in February.
2. *Current Law.* Under current law, parents can apply for open enrollment in a nonresident school district between the first Monday in February and the last weekday in April. Wis. Stat. § 118.51 (3)(a)1. This change increases the open enrollment application period from three weeks to three months. As under prior law, applications may be submitted to no more than three nonresident school boards in any school year.

C. Creation of Alternative Open Enrollment Application Procedure.

1. The Act created an alternative open enrollment application procedure. Wis. Stat. § 118.51(3m). The parent of a student that wishes to attend a public school in a nonresident district may, in lieu of applying under the regular open enrollment process, submit an alternative open enrollment application to the school board of the nonresident school district that the student wishes to attend. Applications may be submitted to no more than three nonresident school boards in any school year. The student must satisfy at least one of the following criteria to apply:
 - a. The resident school board determines that the student has been the victim of a violent criminal offense, as defined by the Department of Public Instruction (DPI) by rule. Wisconsin Administrative Code PI ch. 23 defines victim and violent criminal offense. See Appendix C for a copy of PI ch. 23. The nonresident school board must receive the application within 30 days after the resident school board’s determination for the application to be valid.

- b. The student is or has been a homeless student in the current or immediately preceding school year. Homeless student means an individual who is included in the category of homeless children and youths, as defined in 42 U.S.C. 11434a(2). See Appendix D for a copy of the statute.
 - c. The student has been the victim of repeated bullying or harassment. This criterion requires that the student's parent has reported the repeated bullying or harassment to the resident school board and, despite reporting, the repeated bullying or harassment continues.
 - d. The place of residence of the student's parent or guardian and the student has changed as a result of military orders. The nonresident school board must receive the application within 30 days after the date on which the military orders were issued for the application to be valid.
 - e. The student has moved into Wisconsin. The nonresident school board must receive the application within 30 days after the student moves into Wisconsin.
 - f. The student's place of residence has changed as a result of a court order, custody agreement, or foster care placement. The nonresident school board must receive the application within 30 days after the student's change in residence.
 - g. The parent of the student, the resident school board, and the nonresident school board agree that attending school in the nonresident school district is in the best interests of the student.
 - h. The parent of the student and the nonresident school board agree that attending school in the nonresident school district is in the best interests of the student. If the resident school board does not agree, the parent of the student may appeal the decision to DPI. DPI will make a final determination on whether the student may attend the nonresident school district.
2. If a nonresident school district receives an open enrollment application under the alternative procedures, it must immediately forward a copy of the application to the resident school board and notify the applicant in writing whether it has accepted the application no later than 20 days after receiving it. If a nonresident school board accepts the application, the student may immediately begin attending the new school in the nonresident school district and must begin attending no later than the 15th day after the parent receives the application's acceptance. If the student does not begin attending by the

15th day, the nonresident school district may notify the student's parent in writing that the student may no longer attend the school.

3. A resident school district can deny an alternative open enrollment application only for the following reasons:
 - a. the resident school district determines that the criteria relied on by the applicant does not apply to the student
 - b. the resident school district determines that the costs of the special education or related services required in the child's individualized education program (IEP) would impose on the student's resident school district an undue financial burden in light of the resident school district's total economic circumstances, including its revenue limit, ability to pay the student's tuition costs, and the per student special education or related services costs for children with disabilities that are still being served by the resident school district. The special education and related services consideration does not apply to a student that submitted an application because the student has been a victim of a violent criminal offense.

D. Nonresident School District Acceptance and Denial Criteria.

1. The Act amended some of the criteria that nonresident school districts may use to accept or deny regular or alternative open enrollment applications. Wis. Stat. § 118.51(5).
2. Under current law nonresident school districts can use the following criteria under most circumstances to accept or deny an open enrollment application:
 - a. the availability of space in the schools, programs, classes, or grades within the nonresident school district. The nonresident school board must determine the number of regular and special education spaces within the school district at the January school board meeting. In determining the availability of space, the nonresident school board may consider criteria such as class size limits, student-teacher ratios, or enrollment projections established by the nonresident school board and may include in its count occupied spaces of all the following:
 - i. students attending the school district whose tuition is paid by the school board of the district of residence instead of the school board of the district of attendance
 - ii. students and siblings of students that have applied to transfer under the regular or alternative open enrollment process and are already attending the nonresident school district

- iii. if the nonresident school district is a union high school district, students that have applied to transfer under the regular or alternative open enrollment process and are currently attending an underlying elementary school district of the nonresident school district
- b. whether the student has been expelled from school by any school district in the current or previous two school years (or whether a disciplinary proceeding is currently pending) for:
 - i. making a bomb threat to school property
 - ii. engaging in conduct while at school or under school supervision that endangers the health, safety, or property of others
 - iii. engaging in conduct while not at school or while not under school supervision that endangers the health, safety, or property of others at school
 - iv. possessing a dangerous weapon while at school or under the supervision of a school authority
- c. whether the nonresident school board determined that the student was habitually truant from the nonresident school district during any semester of attendance at the nonresident school district in the current or previous school year
- d. whether the special education or related services in the child's IEP are available in the nonresident school district or whether there is space available to provide the special education or related services in the student's IEP, including class size limits, student-teacher ratios, or enrollment projections established by the nonresident school board
- e. whether the child has been referred to his or her resident school board under a special education referral or the child has been identified as needing special education and related services but has not yet been evaluated by an IEP team

E. Waiting Lists.

1. The Act provides new rules for waiting lists. Wis. Stat. § 118.51(5)(d).
2. Under current law, a nonresident school board may accept students from a waiting list until the third Thursday in September but only if the student will be in attendance at the school or program in the nonresident school district on the third Friday in September. If a student is accepted from a waiting list after the start of the school term, the parent must immediately notify the resident school district of the student's intent to attend school in the nonresident school district for the current school term.
3. Under current law, a student accepted from a waiting list may attend the school or program in the nonresident school district even if the student attended a school or program in the student's resident school district in the current term, but not if the student attended a school or program in a nonresident school district in the current school term.

F. Estimate of Special Education Costs.

1. The Act requires the nonresident school district to prepare an estimate of the costs to provide the special education or related services required in a student's IEP whose parent submitted an open enrollment application. Wis. Stat. § 118.51(12)(am).
2. If the nonresident school district fails to comply with this requirement by the dates specified, the nonresident school district cannot charge the resident school district for any actual, additional costs incurred by the nonresident school district to provide the special education and related services for the student.

G. School Aid.

Under the Act, the revenue limit applicable to a school district in any school year is increased by the amount of any reduction to the school district's payment from DPI in the previous year for a student that was not included in the calculation of the number of students enrolled in that school district in the previous year. Wis. Stat. § 121.91(4)(p).

IV. New Open Enrollment Deadlines and Procedures -- An Administrator's Perspective.

A. Deadlines and Procedures for Resident School Districts.

<u>Deadlines and Procedures</u>	<u>Statutory Language</u>
1. First weekday following the last weekday in April, resident district to receive copy of application	Wis. Stat. § 118.51(3)(a)1. The nonresident school board shall send a copy of the application to the student's resident school board and the department by the end of the first weekday following the last weekday in April.
2. First Friday following the first Monday in May (send copy of IEP to nonresident school district)	Wis. Stat. § 118.51(3)(a)1m. By the first Friday following the first Monday in May, the resident school board shall send to the nonresident school district a copy of the individualized education program developed under s. 115.787(2) for a child with a disability whose parent submitted an application under subd. 1.
3. By the first Friday following the first Monday in May (provide nonresident school district with any disciplinary records)	Wis. Stat. § 118.51(8). Notwithstanding s. 118.125, for an application submitted under sub. (3)(a), by the first Friday following the first Monday in May, the resident school board shall provide to the nonresident school board to which a student has applied under this section a copy of any expulsion findings 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 or the possible outcomes of the pending disciplinary proceeding.
4. Third Friday following the first Monday in May (resident school district to receive estimate of costs for child with disability)	Wis. Stat. § 118.51(12)(am)1. For an application submitted for a child with a disability, the nonresident school district shall provide a copy of the estimate of costs to the resident school district by the 3 rd Friday following the first Monday in May.

**If the nonresident school district fails to comply with this requirement by the 3rd Friday following*

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the first Monday in May, the nonresident school district may not charge the resident school district for any actual, additional costs incurred by the resident school district to provide the special education and related services for the child with a disability.

5. On or before the 2nd Friday following the first Monday in June (notify nonresident school board if denial of enrollment in nonresident school district)

Wis. Stat. § 118.51(3)(a)4. On or before the 2nd Friday following the first Monday in June following receipt of a copy of the application, if a resident school board denies a student's enrollment in a nonresident school district under sub. (6), (7), or (12)(b)1., the resident school board shall notify the applicant and the nonresident school board, in writing, that the application has been denied and include in the notice the reason for denial.

6. By the 2nd Friday following the first Monday in June (notify parent and nonresident school board if child's open enrollment would cause an undue financial burden)

Wis. Stat. § 181.51(12)(b)1. If the estimate of the costs of the special education or related services required in the individualized education program under s. 115.787(2) for a child with a disability whose parent has submitted an application under sub. (3)(a), would impose upon the child's resident school district an undue financial burden in light of the resident school district's total economic circumstances... the child's resident school board may notify the child's parent and the nonresident school board by the 2nd Friday following the first Monday in June that the student may not attend the nonresident school district to which the child has applied.

7. July 7 (resident district to receive notification that students were accepted by nonresident district)

Wis. Stat. § 118.51(3)(b). Annually by July 7, each nonresident school board that has accepted a student under this section for attendance in the following school year shall report the name of the student to the student's resident school board.

8. Until 3rd Thursday in September (nonresident school district may accept students until this date).

Wis. Stat. § 118.51(5)(d)1. The nonresident school board may accept students from a waiting list created under this paragraph until the 3rd Thursday in September but only if the student

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will be in attendance at the school or program in the nonresident school district on the 3rd Friday in September.

B. Deadlines and Procedures for Nonresident School Districts.

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1. January Board Meeting (determine number of regular and special education spaces available)

Wis. Stat. § 118.51(5)(a)1. The nonresident school board shall determine the number of regular education and special education spaces available within the school district in the January meeting of the school board.

2. Not earlier than the first Monday in February and no later than the last weekday in April (nonresident school district to accept applications)

Wis. Stat. § 118.51(3)(a)1. The parent of a student who wishes to attend a public school in a nonresident school district under this section shall submit an application, on a form provided by the department to the school board of the nonresident school district that the student wishes to attend, not earlier than the first Monday in February and not later than the last weekday in April of the school year immediately preceding the school year in which the student wishes to attend.

3. First weekday following the last weekday in April (send copy of student's application to resident school board)

Wis. Stat. § 118.51(3)(a)1. The nonresident school board shall send a copy of the application to the student's resident school board and the department by the end of the first weekday following the last weekday in April.

4. May 1 (begin acting on applications)

Wis. Stat. § 118.51(3)(a)2. A nonresident school board may not act on any application received under subd. 1 before May 1.

5. First Friday following the first Monday in May (nonresident district to receive IEP)

Wis. Stat. § 118.51(3)(a)1m. By the first Friday following the first Monday in May, the resident school board shall send to the nonresident school district a copy of the individualized education program developed under s. 115.787(2) for a child with a disability whose parent submitted an application under subd. 1.

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6. By the first Friday following the first Monday in May (nonresident district to receive copy of disciplinary records)

Wis. Stat. § 118.51(8). Notwithstanding s. 118.125, for an application submitted under sub. (3)(a), by the first Friday following the first Monday in May, the resident school board shall provide to the nonresident school board to which a student has applied under this section a copy of any expulsion findings 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 or the possible outcomes of the pending disciplinary proceeding.

7. 3rd Friday following the first Monday in May (provide estimate of costs to resident district for child with disability)

Wis. Stat. § 118.51(12)(am)1. For an application submitted for a child with a disability, the nonresident school district shall provide a copy of the estimate of costs to the resident school district by the 3rd Friday following the first Monday in May.

**If the nonresident school district fails to comply with this requirement by the 3rd Friday following the first Monday in May, the nonresident school district may not charge the resident school district for any actual, additional costs incurred by the resident school district to provide the special education and related services for the child with a disability.*

8. On or before the first Friday following the first Monday in June (notify applicants of acceptance or denial of applications).

Wis. Stat. § 118.51(3)(a)3. Except as provided under sub. (5)(d)1. (waiting list), on or before the first Friday following the first Monday in June following the receipt of the application, the nonresident school board shall notify the applicant, in writing, whether it has accepted the application.

9. On or before the 2nd Friday following the first Monday in June (nonresident school district to receive notification if resident school district

Wis. Stat. § 118.51(3)4. On or before the 2nd Friday following the first Monday in June following receipt of a copy of the application, if a resident school board denies a student's

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denies enrollment in nonresident school district)

enrollment in a nonresident school district under sub. (6), (7), or (12)(b)1., the resident school board shall notify the applicant and the nonresident school board, in writing, that the application has been denied and include in the notice the reason for denial.

10. By the 2nd Friday following the first Monday in June (nonresident school district to receive notification if resident school district denies enrollment due to undue financial burden)

Wis. Stat. § 181.51(12)(b)1. If the estimate of the costs of the special education or related services required in the individualized education program under s. 115.787(2) for a child with a disability whose parent has submitted an application under sub. (3)(a), would impose upon the child's resident school district an undue financial burden in light of the resident school district's total economic circumstances... the child's resident school board may notify the child's parent and the nonresident school board by the 2nd Friday following the first Monday in June that the student may not attend the nonresident school district to which the child has applied.

11. On or before the last Friday in June (nonresident school district to receive notification from parents)

Wis. Stat. § 118.51(3)(a)6. Except as provided in sub. (5)(d)2. (student accepted from waiting list), if an application is accepted, on or before the last Friday in June following receipt of notice of acceptance, the student's parent shall notify the nonresident school board of the student's intent to attend school in that school district in the following year.

12. July 7 (report names of accepted students to resident school boards)

Wis. Stat. § 118.51(3)(b). Annually by July 7, each nonresident school board that has accepted a student under this section for attendance in the following school year shall report the name of the student to the student's resident school board.

13. Until 3rd Thursday in September (may accept students on waiting list until this date)

Wis. Stat. § 118.51(5)(d)1. The nonresident school board may accept students from a waiting list created under this paragraph until the 3rd Thursday in September but only if the student will be in attendance at the school or program in the nonresident school district on the 3rd Friday

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14. Within 10 days of receiving a notice of acceptance from a waiting list (student's parent must notify nonresident school district of student's intent to attend school in that district)

15. Immediately after student's acceptance from a waiting list after the start of the school term (student's parent must notify resident school district of student's intent to attend school in nonresident district)

in September.

Wis. Stat. § 118.51(3)(a)6. Within 10 days of receiving a notice of acceptance if a student is selected from a waiting list under sub. (5)(d), the student's parent shall notify the nonresident school board of the student's intent to attend school in that school district in the following school year.

Wis. Stat. § 118,51(5)(d)1. Notwithstanding sub. (3)(a)6., if a student is accepted from a waiting list created under this paragraph after the start of the school term, the parent shall immediately notify the resident school district of the student's intent to attend school in the nonresident school district for the current school term.

V. School District Challenges and Uncertainties Under the New Open Enrollment Law.

A. What is in the Best Interests of the Child?

1. As discussed above, a student must satisfy at least one of the specified criteria to apply for open enrollment under the alternative procedures. Two of the criteria provide for a transfer if certain parties agree that it is in the best interests of the student. However, what constitutes the “best interests” of the child is not defined under the new law.
2. DPI starts with the presumption that parents know what is in the best interests of the child. Generally, the onus is, therefore, on a district to rebut that presumption. In some school districts, school boards make these determinations and in other school districts, the administrators make this determination. DPI accepts either approach, but notes that it is important to document the reasons why the school district believes a certain course of action is in the best interests of the child.

B. Space Availability Appeals.

As discussed above, under current law, nonresident school districts can use the availability of space in the schools, programs, classes, or grades within the nonresident school as a criterion for denying an open enrollment application. In November 2012, DPI created a new form for nonresident school districts whose denial of an open enrollment application based on space availability is appealed to DPI. See Appendix E for a copy of the form.

C. How Does One Determine What Constitutes an “Undue Financial Burden”?

1. One of the reasons a resident school district may deny an open enrollment application under the alternative procedures is if the resident school district determines that the costs of the special education or related services required in the child’s IEP would impose on the student’s resident school district an undue financial burden in light of the resident school district’s total economic circumstances, including its revenue limit, ability to pay the student’s tuition costs, and the per student special education or related services costs for children with disabilities that are still being served by the resident school district.
2. DPI has overturned school board decisions on this issue more frequently than on any other issue.
3. In November 2012, DPI created a new form for nonresident school districts whose denial of an open enrollment application based on an undue financial burden is appealed to DPI. See Appendix F for a copy of the form.

D. Special Education Costs.

1. As noted above, the Act requires the nonresident school district to prepare an estimate of the costs to provide the special education or related services required in a student's IEP whose parent submitted an open enrollment application. If the nonresident school district fails to comply with this requirement by the dates specified, the nonresident school district cannot charge the resident school district for any actual, additional costs incurred by the nonresident school district to provide the special education and related services for the student.
2. School districts must determine what are "actual additional costs." School districts may not allocate overhead, but may consider full time employees (FTE's) for staff. An order from the United States District Court for the Eastern District of Wisconsin describes how to calculate actual, additional costs.

VI. DPI and State Court Interpretations of Wisconsin's Open Enrollment Law.

A. DPI Cases

1. Decision and Order No. 2874 (12-OEX-1). In this case, a student applied to transfer school districts under the open enrollment alternative application procedure. The basis for the application was that the student was the victim of repeated bullying or harassment and that despite the resident school district's actions, the bullying or harassment was continuing. The resident school district initially denied the application claiming that the student was not a victim of bullying or harassment, but later stated that it was willing to approve the application based on the best interests of the student standard. DPI ordered that the student be allowed to transfer. It noted that although the application did not specifically cite the best interests of the student, the fact that the parent submitted an application implies that the parent believes the transfer was in the student's best interest.
2. Decision and Order No. 2875 (12-OEX-2). In this case, a student applied to transfer school districts under the open enrollment alternative application procedure. The basis for the application was that the transfer was in the best interests of the student. The student's parents stated that the student suffered from a particular disease and submitted a letter from a doctor stating that the child would benefit from programs such as an online high school program. The District denied the application. In denying the application it noted that students that transfer schools between the 8th and 12th grades are twice as likely not to graduate, that the student would lose credits by transferring, and that the online courses were available in the district. DPI overturned the school district's decision. It

noted that by the time the application was denied, the student had already enrolled in the virtual school and that a medical provider supported the transfer request. It held that the transfer was in the best interests of the student.

3. Decision and Order No. 2876 (12-OEX-4). In this case a student applied to transfer school districts under the open enrollment alternative application procedure. The basis for the application was that the transfer was in the best interests of the student. During the student's 6th grade year, the student had problems at school in the District and his parent moved to another school district where he was more successful in those schools. The student's family later moved back into the District and the student agreed to try the District again. After 4 days, the student was having problems again and his parent applied for a transfer to another school district. The District denied the application. In denying the application the school district cited negative effects from student mobility, denied that the student had had problems in the school district, argued that the student had only been in the school for 4 days, and asserted that the medical documentation from the student's pediatrician was highly suspect. DPI overturned the school district's decision. It noted that by the time the application was denied, the student had already enrolled in the other school district, that the student had previously attended and left the district because of problems, and that DPI would not ignore the recommendations of a student's doctor.
4. Decision and Order No. 2877 (12 OE-24). In this case a student applied to transfer school districts under the open enrollment alternative application procedure. The basis for the application was that the transfer was in the best interests of the student. The District denied the application stating that the District "will deny your request based on the current operating legislation for open enrollment for the 2011-12 school year." DPI overturned the school district's decision. It noted that current law only allows a resident school board to deny open enrollment if it determines that the criteria relied upon in the application do not apply to the student or if the cost to provide any special education or related services is an undue financial burden. Since the school district did not cite either of the reasons permitted in state law, its decision was arbitrary and capricious.
5. Decision and Order No. 1200 (02-OE-116). In this case a student applied to transfer school districts under the general open enrollment procedures. The student was involved in a pending hearing in front of his resident school district that could have resulted in his removal from school. Without discussing the circumstances of the student's case, the nonresident school district denied the open enrollment application citing state law and its own policy that the student was involved in a disciplinary proceeding. After the denial of the application, the student was found to be in good

standing and was not expelled from his resident school. The student requested that the initial application denial be rescinded since the cause of denial no longer existed, but the nonresident school district denied the request. DPI overturned the nonresident school district's decision. It noted that school districts are allowed to deny a student that is the subject of a pending disciplinary proceeding if the proceeding is for one of the four reasons specified in the statute. The nonresident school district only knew that the student was involved in a disciplinary proceeding that could result in his removal, but the nonresident school district did not discuss the circumstances surrounding the disciplinary proceeding. Since the board failed to consider the reasons for the pending disciplinary proceeding, DPI found that the decision to deny the open enrollment application was arbitrary.

B. State Court Cases

1. *School District of Stockbridge v. Evers*, 2010 WI App 144, 330 Wis. 2d 80, 792 N.W.2d 615. In this case, Stockbridge School District argued that it could limit the number of students that could transfer under open enrollment after 2006. It also argued that it could limit the number of students that could transfer based on the financial hardship of the Stockbridge School District. The court of appeals ruled that Wisconsin law did allow limits on the number of students that could transfer between 1998 and 2006, but that no limits were allowed after the 2005-06 school year. The court further ruled that the Stockbridge School District's denial of the resident transfer applications based on the undue financial burden was contrary to law and, therefore, unreasonable.
2. *McMorrow v. Dep't of Pub. Instruction*, 2000 WI App 173, 238 Wis. 2d 329, 617 N.W.2d 247. In this case, a school had admitted three students under the open enrollment procedure but denied McMorrow's application. The school district had relied on its requirements for average class sizes in denying McMorrow. However, in accepting the three other students, the school district had already violated its requirements for average class sizes. The court held that it was arbitrary and capricious for a school district to make exceptions to its space criteria when making open enrollment decisions.

VII. Conclusion.

After school district officials have gained a thorough understanding of the new law, it is important to monitor DPI's continuing decisions and administration of the open enrollment law. In this regard, DPI has offered continuing workshops and training opportunities which often address the more challenging aspects of Wisconsin's open enrollment program. Be certain to identify one or more individuals from your school district to remain abreast of such workshops and training opportunities in order to help ensure a smooth administration of open enrollment within your school district.

APPENDIX A	Public School Open Enrollment by the Numbers
APPENDIX B	DPI Open Enrollment Brochure for the 2013-14 School Year
APPENDIX C	Wisconsin Administrative Code Public Instruction Chapter 23
APPENDIX D	42 U.S.C. 11434a(2).
APPENDIX E	DPI Record of Decision in Appeal of Open Enrollment Denial Due to Space
APPENDIX F	DPI Submission of Record of Decision in Appeal of Denial Due to Undue Financial Burden