

Residency, Open Enrollment, and Appeals
SAI Law Conference

Nicole Proesch, Legal Counsel
Iowa Department of Education
February 18, 2013

Residency & Enrollment

- Enrollment is tied to residency and not custody.
- "Residents" attend school tuition-free
- The student must be of school age and a resident.

School Age

- Iowa Code § 282.1 School Age
 - Persons between 5 and 21 years of age are of school age.
 - Includes a student who has enrolled who was twenty years of age on September 15 and turns 21 thereafter during the school year.

Verify the child's age

- Iowa Code § 282.3
 - K - A child must be five on or before 9/15 to enter K
 - 1st Grade - and must be six on or before 9/15 to enter 1st Grade.
 - Preschool – If the district gets state aid the children must be four on or before 9/15.

Verify the child's age

- NO Exceptions or WAIVERS
- Iowa Attorney General's Opinion (#79-7-3)
- Example:
 - Could enroll the child when legal to do so in Kindergarten, and – if appropriate to do so in the District's opinion and only the District's opinion – promote the child to first grade as soon as warranted.
 - Home school the child and enroll when of age
- Can enroll a child who completes K in another state.

Proof of Birthdates

- Districts may require some form of proof of birth date to ensure that child is "school age" (5 on or by 9/15 and under age 21)
- CANNOT require Birth Certificate
- Alternatives include:
 - an adoption record
 - certified statement of physician
 - or anything reasonably reliable

SSN & Addresses

- SSNs are not required.
- Do NOT accept only a post office box unless you know they reside in the district.
- Explain that Iowa Code 282.6 requires tuition for non-resident pupils.
- A district may assume non-residency until proper residency is proven.

Definition of Resident

- Iowa Code §§ 282.1 & 282.6 – "Resident"
- "Resident" means a child who is physically present in a district, whose residence has not been established in another district by operation of law, and who meets any of the following conditions:
 - 1) Is in the district for the purpose of making a home and not solely for school purposes.
 - 2) Meets the definitional requirements of the term "homeless individual" under 42 U.S.C. § 11302(a) and
 - 3) Lives in a juvenile detention center, foster care facility, or residential facility in the district.

Tuition

- Iowa Code § 282.6 Tuition –
 - Every school shall be free of tuition to all actual residents between the ages of five and twenty-one years . . .
 - Student who has already graduated high school in another state or country pays tuition.
 - A student here on a J1 Visa and part of a foreign exchange program does not pay tuition
 - A student here on a F1 Visa pays tuition

When in doubt . . .

- The Iowa Supreme Court ruled in a 1924 case that the laws on tuition-free education for actual residents must be **liberally construed** in favor of students who claim to be residents.
- ***If in Doubt – Give the benefit to the student***

Homeless Students

- Residency requirements are **NOT** to be a barrier to enrollment, attendance, or success in school of **homeless children**.
- **McKinney-Vento applies** -- See your homeless student liaison.

Open Enrollment

- **282.18 Open Enrollment**
 - Construed broadly to maximize parental choice
 - Deadline 1st -12th – **March 1st** of the proceeding year
 - Deadline for K – **September 1st** of the current school year
 - Board of the receiving district shall enroll the child if they file for OE by **March 1st**
 - After March 1st **Good Cause** is required
 - **Special Students** must get approval from the AEA special education director of the receiving district at all times.

Definition of "Good Cause"

- "Good Cause" –
 - Two main categories:
 - 1) **Change in child's residence –**
 - Family moves, parents divorce, guardianship or custody proceeding, placement in foster care, adoption, participation in foreign exchange, participation in a substance abuse or mental health treatment program
 - 2) **Change in the status of the child's current school –**
 - Removal or surrender of accreditation, closure, revocation of charter, failure to negotiate a whole-grade sharing, reorganization, dissolution, or rejection of whole-grade sharing agreement or reorganization plan.

Definition of "Good Cause"

- [Gist of "good cause" is that child has no control over the circumstances that give rise to wanting to use open enrollment.]
- **Must be actual change in residence – ex. adoption of foster child is not a change in residence**

Open Enrollment

- This table indicates which district should take action.

	Receiving District	Resident District
OE filed on or before March 1st	X	
OE filed after March 1st	X	
OE filed after March 1 st and alleges pervasive harassment		X
Regardless of when OE filed, resident district has a diversity plan		X

Board/superintendent action

- Superintendents may be given authority to approve, but not deny applications.
- "Good Cause" Application - Board must act within 30 days of receiving the request.
- The receiving district will notify the resident district and the parent within 15 days of board action to approve or deny an application.

Denial

- "Insufficient Classroom Space" - To deny OE based on class size the district must adopt an "insufficient classroom space" policy and review this policy annually.
- A district can deny an application based on insufficient classroom space, lack of appropriate program (a district does not have to hire additional staff to accommodate an OE applicant), or if a student will be under suspension or expulsion at the time of enrollment.

Rescind

- A district can rescind an application due to a *change in the student's program that cannot be accommodated* by the district without hiring additional staff or due to an increase in enrollment that exceeds a class size policy.
- An OE cannot be rescinded based on discipline or attendance.

Late filed applications

- The receiving district must deny late filed applications unless there is good cause.
- The resident district does not have authority to act on late-filed application unless there is harassment or severe health need.

District Appeal Process

- Appeal - Resident District may appeal to the director an approval of a late-filed open enrollment if the district believes there the request lacked good cause.
- Within 15 days after the board action by the receiving district.

District Appeal Process

- Process:
 - 1) Submit Appeal to Director
 - 2) Attempt to mediate/resolve
 - 3) Hearing
 - 4) Decision within 10 days
 - 5) Appeal to State Board within 5 days

Open Enrollment to Online Schools

- **Cam or Clayton Ridge**
 - Students can OE to Cam or Clayton Ridge
 - Must meet residency and age requirements, not be under suspension, expulsion, and not have a high school diploma or GED.
 - Must file an application for OE
 - Must meet OE deadline of March 1st unless Good Cause, harassment, or severe medical condition.
 - 1% Cap on students being sent – both the sending and the receiving districts are responsible to know the cap.

Harassment etc.

- **Harassment/Severe Health Need/Diversity Plan** – In the case of applicants that claim harassment or severe health need, the resident district has the authority to approve or deny the application.

Harassment etc.

- **Appeal to the State Board** - A decision by either board denying a late-filed open enrollment application that is based on "repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address" is subject to appeal to the State Board under Iowa Code section 290.1. Iowa Code § 282.18(5) (2013).

Harassment etc.

- **Appeal Process**
 - Parent or guardian must appeal the local board decision within **30 days** to the Director
 - Director appoints designee – ALJ
 - Hearing - Parties present evidence and testimony
 - Proposed decision is drafted
 - Presented to the State Board at the next meeting
 - If the State Board approves decision – final action
 - Parties may appeal to district court

Harassment etc.

- The State Board applies established criteria when reviewing an open enrollment decision involving a claim of repeated acts of harassment.
- **All** of the following criteria must be met for the State Board to reverse a local decision and grant such a request:

Harassment etc.

1. The harassment must have occurred after March 1 or the student or parent demonstrates that the extent of the harassment could not have been known until after March 1.

Harassment etc.

2. The harassment must be specific electronic, written, verbal, or physical acts or conduct toward the student which created an objectively hostile school environment that meets one or more of the following conditions:

- a) Places the student in reasonable fear of harm to the student's person or property.
- b) Has a substantially detrimental effect on the student's physical or mental health.
- c) Has the effect of substantially interfering with a student's academic performance.
- d) Has the effect of substantially interfering with the student's ability to participate in or benefit from the services, activities, or privileges provided by a school.

Harassment etc.

3. The evidence must show that the harassment is likely to continue despite the efforts of school officials to resolve the situation.

4. Changing the student's school district will alleviate the situation.

Iowa Code § 280.28(2)(b) (2013); *In re: Open Enrollment of Jill F.*, 26 D.o.E. App. Dec. 177, 180 (2012); *In re: Hannah T.*, 25 D.o.E. 26, 31 (2007) (emphasis added).

Case examples:

- *In re: Open Enrollment of Samantha H.*, 26 D.o.E. App. Dec. 373 (2013).
 - Severe Health Condition - Depression
 - Resident district would have approved
 - Receiving district denied
 - State board found that the district was on notice of a serious medical condition - even before diagnosis.
 - Reversed
 - Limited ruling

Case examples:

- *In re: Open Enrollment of Kali B.*, 26 D.o.E. App. Dec. 383 (2014).
 - Repeated acts of harassment of by teachers
 - Resident district denied
 - State board found there was not pervasive harassment
 - **Affirmed**

Case examples:

- *In re: Open Enrollment of Annaliese Z.*, 26 D.o.E. App. Dec. 467 (2014).
 - Repeated acts of harassment of by students
 - Resident district denied
 - State board found there was not pervasive harassment
 - State board found that the district could serve the student in another attendance center
 - **Dismissed** due to lack of jurisdiction

Case examples:

- *In re: Open Enrollment of T.D.*, 26 D.o.E. App. Dec. 473 (2013).
 - Repeated acts of harassment of by students
 - Resident district denied
 - State board found harassment
 - State board found that the district could serve the student in another attendance center due to whole-grade sharing agreement
 - **Affirmed**

Open Enrollment & Nonpublic

- Children who are presently in a nonpublic school but who will attend a public school next year (2014-15) have the open enrollment option available to them, but must comply with open enrollment deadlines.
- Parents/Guardians must file a request of OE in **both** the district of residence and the receiving district by **March 1st**.

Resources

- Open Enrollment Resources
 - <https://www.educateiowa.gov/pk-12/options-educational-choice/open-enrollment>
 - Open Enrollment Handbook - <https://www.educateiowa.gov/sites/files/ed/documents/2013-2014OpenEnrollmentHandbook.pdf>

Department of Education Contacts

- State Legal Counsel
 - Nicole Proesch – (515) 281 -8661;
Nicole.Proesch@iowa.gov
