

State of Wisconsin



2011 Senate Bill 2

Date of enactment: **February 1, 2012**
Date of publication*: **February 15, 2012**

2011 WISCONSIN ACT 114

AN ACT *to repeal* 118.51 (3) (a) 5.; *to renumber and amend* 118.51 (5) (d) and 118.51 (15) (c); *to amend* 118.22 (2), 118.51 (3) (a) 1., 118.51 (3) (a) 2., 3. and 4., 118.51 (3) (a) 6., 118.51 (3) (a) 7., 118.51 (3) (b), 118.51 (5) (a) (intro.), 118.51 (5) (a) 1. (intro.), 118.51 (5) (a) 1. b., 118.51 (5) (a) 1. c., 118.51 (8), 118.51 (9), 118.51 (12) (b) 1. and 118.51 (15) (a); and *to create* 118.51 (3) (intro.), 118.51 (3) (a) 1m., 118.51 (3m), 118.51 (5) (d) 2., 118.51 (12) (am), 118.51 (15) (c) 2. and 121.91 (4) (p) of the statutes; **relating to**: the deadline for renewal of teacher contracts, changing timing of application process under the open enrollment program, and permitting certain pupils to submit open enrollment applications outside of the regular application period.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1b. 118.22 (2) of the statutes is amended to read:

118.22 (2) On or before ~~March~~ May 15 of the school year during which a teacher holds a contract, the board by which the teacher is employed or an employee at the direction of the board shall give the teacher written notice of renewal or refusal to renew the teacher's contract for the ensuing school year. If no such notice is given on or before ~~March~~ May 15, the contract then in force shall continue for the ensuing school year. A teacher who receives a notice of renewal of contract for the ensuing school year, or a teacher who does not receive a notice of renewal or refusal to renew the teacher's contract for the ensuing school year on or before ~~March~~ May 15, shall accept or reject in writing such contract not later than the following ~~April~~ June 15. No teacher may be employed or dismissed except by a majority vote of the full membership of the board. Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the board. No such board

may enter into a contract of employment with a teacher for any period of time as to which the teacher is then under a contract of employment with another board.

SECTION 1d. 118.51 (3) (intro.) of the statutes is created to read:

118.51 (3) (intro.) Except as provided under sub. (3m), the following procedures govern pupil applications to attend a public school in a nonresident school district under this section:

SECTION 1e. 118.51 (3) (a) 1. of the statutes is amended to read:

118.51 (3) (a) 1. The parent of a pupil 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 under sub. (15) (a), to the school board of the nonresident school district that the pupil wishes to attend, not earlier than the first Monday in February and not later than the ~~3rd Friday following the first Monday in February~~ last weekday in April of the school year immediately preceding the school year in which the pupil wishes to attend. Applications may be submitted to no more than 3 nonresident school boards in any school year. ~~On the 4th Monday in February the~~ The

* Section 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

nonresident school board shall send a copy of the application to the pupil's resident school board and the department by the end of the first weekday following the last weekday in April. The application may include a request to attend a specific school or program offered by the nonresident school district.

SECTION 1m. 118.51 (3) (a) 1m. of the statutes is created to read:

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.

SECTION 1s. 118.51 (3) (a) 2., 3. and 4. of the statutes are amended to read:

118.51 (3) (a) 2. A nonresident school board may not act on any application received under subd. 1. ~~until after the 3rd Friday following the first Monday in February before May 1.~~ If a nonresident school board receives more applications for a particular grade or program than there are spaces available in the grade or program, the nonresident school board shall determine which pupils to accept, including pupils accepted from a waiting list under sub. (5) (d), on a random basis, after giving preference to pupils and to siblings of pupils who are already attending the nonresident school district and, if the nonresident school district is a union high school district, to pupils who are attending an underlying elementary school district of the nonresident school district under this section. If a nonresident school board determines that space is not otherwise available for open enrollment pupils in the grade or program to which an individual has applied, the school board may nevertheless accept a pupil or the sibling of a pupil who is already attending the nonresident school district and, if the nonresident school district is a union high school district, a pupil who is attending an underlying elementary school district of the nonresident school district under this section.

3. ~~On~~ Except as provided under sub. (5) (d) 1., on or before the first Friday following the first Monday in April June following receipt of the application, the nonresident school board shall notify the applicant, in writing, whether it has accepted the application. If the nonresident school board has accepted the applicant, the school board shall identify the specific school or program that the applicant may attend in the following school year. If the nonresident school board rejects an application, it shall include in the notice the reason for the rejection.

4. On or before the first 2nd Friday following the first Monday in ~~April~~ June following receipt of a copy of the application, if a resident school board denies a pupil'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 the denial.

SECTION 2. 118.51 (3) (a) 5. of the statutes is repealed.

SECTION 3. 118.51 (3) (a) 6. of the statutes is amended to read:

118.51 (3) (a) 6. ~~If~~ Except as provided in sub. (5) (d) 2., if an application is accepted, on or before the first last Friday following the first Monday in June following receipt of a notice of acceptance, or within 10 days of receiving a notice of acceptance if a pupil is selected from a waiting list under sub. (5) (d) or s. 118.40 (8) (h) 5., the pupil's parent shall notify the nonresident school board of the pupil's intent to attend school in that school district in the following school year.

SECTION 4. 118.51 (3) (a) 7. of the statutes is amended to read:

118.51 (3) (a) 7. If the department has not notified a virtual charter school of the pupils who may attend the school under s. 118.40 (8) (h) by the deadline for informing applicants under subd. 3. ~~or 5.,~~ the nonresident school district shall specify in its notices under subd. 3. ~~or 5.~~ that the school district's acceptance is conditional.

SECTION 5. 118.51 (3) (b) of the statutes is amended to read:

118.51 (3) (b) *Notice to resident school district.* Annually by ~~June 30~~ July 7, each nonresident school board that has accepted a pupil under this section for attendance in the following school year shall report the name of the pupil to the pupil's resident school board. If a pupil is selected from a waiting list under s. 118.40 (8) (h) 5., the nonresident school board shall report the name of the pupil to the pupil's resident school board within 10 days of receiving notice of the pupil's selection from the department.

SECTION 5g. 118.51 (3m) of the statutes is created to read:

118.51 (3m) ALTERNATIVE APPLICATION PROCEDURES UNDER CERTAIN CIRCUMSTANCES. (a) Notwithstanding sub. (3), the parent of a pupil who wishes to attend a public school in a nonresident school district under this section may, in lieu of applying under sub. (3), submit an application under this subsection, on a form provided by the department under sub. (15) (a), to the school board of the nonresident school district that the pupil wants to attend if the pupil satisfies at least one of the criteria under par. (b). Applications may be submitted to no more than 3 nonresident school boards in any school year.

(b) The parent of a pupil may apply under this subsection only if the pupil meets one of the following criteria, and shall describe the criteria that the pupil meets in the application:

1. The resident school board determines that the pupil has been the victim of a violent criminal offense, as defined by the department by rule. An application made

on the basis of this criteria is not valid unless the nonresident school board receives the application within 30 days after the determination of the resident school board.

2. The pupil is or has been a homeless pupil in the current or immediately preceding school year. In this subdivision, "homeless pupil" means an individual who is included in the category of homeless children and youths, as defined in [42 USC 11434a \(2\)](#).

3. The pupil has been the victim of repeated bullying or harassment and all of the following apply:

a. The pupil's parent has reported the bullying or harassment to the resident school board.

b. Despite action taken under subd. 3. a., the repeated bullying and harassment continues.

4. The place of residence of the pupil's parent or guardian and of the pupil has changed as a result of military orders. An application made on the basis of this criteria is not valid unless the nonresident school board receives the application no later than 30 days after the date on which the military orders changing the place of residence were issued.

5. The pupil moved into this state. An application made on the basis of this criteria is not valid unless the nonresident school board receives the application no later than 30 days after moving into this state.

6. The place of residence of the pupil has changed as a result of a court order or custody agreement or because the pupil was placed in a foster home or with a person other than the pupil's parent, or removed from a foster home or from the home of a person other than the pupil's parent. An application made on the basis of this criteria is not valid unless the nonresident school board receives the application no later than 30 days after the pupil's change in residence.

7. The parent of the pupil, 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 pupil.

8. The parent of the pupil and the nonresident school board agree that attending school in the nonresident school district is in the best interests of the pupil. If the resident school board notifies the parent of the pupil who applies under this subdivision that the pupil may not attend the nonresident school district, the parent may appeal the resident school district's decision to the department and must explain in the appeal why the pupil applied to attend school in the nonresident school district. The resident school district must respond to the appeal and provide an explanation for rejecting the pupil's transfer into the nonresident school district. If the department determines that the resident school district's decision to deny the pupil's transfer into the nonresident school district is not in the best interests of the pupil, the department shall notify the resident and nonresident school districts and the pupil's parent that the pupil may attend the non-

resident school district. The department's determination under this subdivision is final.

(c) If a nonresident school board receives an application under par. (a), the nonresident school board shall immediately forward a copy of the application to the resident school board, and shall notify the applicant, in writing, whether it has accepted the application no later than 20 days after receiving the application. If the nonresident school board has accepted the application, the nonresident school board shall identify the specific school or program that the pupil may attend.

(d) A resident school district may notify an applicant under par. (a) that the pupil may not attend a school or program in the nonresident school district only for the following reasons:

1. The resident school district determines that the criteria relied on by the applicant under par. (b) does not apply to the pupil.

2. a. Except as provided in subd. 2. b., the resident school district determines that 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 par. (a), as proposed to be implemented by the nonresident school district, would impose upon the child's resident school district an undue financial burden in light of the resident school district's total economic circumstances, including its revenue limit under subch. VII of ch. 121, 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 resident school district.

b. Subdivision 2. a. does not apply to a pupil who submits an application under par. (a) if the pupil relied upon the criteria set forth in par. (b) 1.

(e) If an application is accepted by the nonresident school board under par. (c), the pupil may immediately begin attending the school or program in the nonresident school district and shall begin attending the school or program no later than the 15th day following receipt by the parent of the pupil of the notice of acceptance under par. (c). If the pupil has not enrolled in or attended school in the nonresident school district by the day specified in this paragraph, the nonresident school district may notify the pupil's parent, in writing, that the pupil is no longer authorized to attend the school or program in the nonresident school district.

SECTION 5r. 118.51 (5) (a) (intro.) of the statutes is amended to read:

118.51 (5) (a) *Permissible criteria.* (intro.) Except as provided in sub. (3) (a) 2., the criteria for accepting and rejecting applications from nonresident pupils under ~~sub. (3) (a)~~ sub. (3) (a) and (3m) (a) may include only the following:

SECTION 6. 118.51 (5) (a) 1. (intro.) of the statutes is amended to read:

118.51 (5) (a) 1. (intro.) The availability of space in the schools, programs, classes, or grades within the non-resident school district. 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, except that for the 2011-12 school year the board shall determine the number of regular education and special education spaces available within the school district in the February meeting of the school board. In determining the availability of space, the nonresident school board may consider criteria such as class size limits, pupil-teacher ratios, or enrollment projections established by the non-resident school board and may include in its count of occupied spaces all of the following:

SECTION 6g. 118.51 (5) (a) 1. b. of the statutes is amended to read:

118.51 (5) (a) 1. b. Pupils and siblings of pupils who have applied under sub. (3) (a) or (3m) (a) and are already attending the nonresident school district.

SECTION 6r. 118.51 (5) (a) 1. c. of the statutes is amended to read:

118.51 (5) (a) 1. c. If the nonresident school district is a union high school district, pupils who have applied under sub. (3) (a) or (3m) (a) and are currently attending an underlying elementary school district of the nonresident school district under this section.

SECTION 7. 118.51 (5) (d) of the statutes is renumbered 118.51 (5) (d) 1. and amended to read:

118.51 (5) (d) 1. The school board of a nonresident school district may create a waiting list of pupils whose applications were rejected under sub. (3) (a) 3. The nonresident school board may accept pupils from a waiting list created under this paragraph until the 3rd Thursday in September but only if the pupil will be in attendance at the school or program in the nonresident school district on the 3rd Friday in September. Notwithstanding sub. (3) (a) 6., if a pupil 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 pupil's intent to attend school in the nonresident school district for the current school term.

3. The department shall promulgate rules to implement and administer this paragraph.

SECTION 8. 118.51 (5) (d) 2. of the statutes is created to read:

118.51 (5) (d) 2. A pupil accepted from a waiting list created under this paragraph may attend the school or program in the nonresident school district even if the pupil has attended a school or program in the pupil's resident school district in the current school term, but not if the pupil has attended a school or program in a nonresident school district in the current school term.

SECTION 9. 118.51 (8) of the statutes is amended to read:

118.51 (8) DISCIPLINARY RECORDS. Notwithstanding s. 118.125, for an application submitted under sub. (3) (a), by the first Friday following the first Monday in May, and within 10 days of receiving a copy of an application under sub. (3m) (c), the resident school board shall provide to the nonresident school board to which a pupil has applied under this section, ~~upon request by that school board,~~ a copy of any expulsion findings and orders pertaining to the pupil, a copy of records of any pending disciplinary proceeding involving the pupil, 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.

SECTION 9m. 118.51 (9) of the statutes is amended to read:

118.51 (9) APPEAL OF REJECTION. If the nonresident school board rejects an application under sub. (3) (a) or (7), the resident school board prohibits a pupil from attending public school in a nonresident school district under sub. (3m) (d), (6), (7) or (12) (b) 1., or the nonresident school board prohibits a pupil from attending public school in the nonresident school district under sub. (11), the pupil's parent may appeal the decision to the department within 30 days after the decision. If the nonresident school board provides notice that the special education or related service is not available under sub. (12) (a), the pupil's parent may appeal the required transfer to the department within 30 days after receipt of the notice. If the resident school board provides notice of transfer under sub. (12) (b) 2., the pupil's parent may appeal the required transfer to the department within 30 days after receipt of the notice. The department shall affirm the school board's decision unless the department finds that the decision was arbitrary or unreasonable.

SECTION 10. 118.51 (12) (am) of the statutes is created to read:

118.51 (12) (am) *Estimate of costs.* 1. The nonresident school district shall prepare an estimate of the costs to provide the special education or related services required in the individualized education program developed under s. 115.787 (2) for a child with a disability whose parent has submitted an application under this section. For an application submitted for a child with a disability under sub. (3) (a), 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. For an application submitted for a child with a disability under sub. (3m) (a), the nonresident school district shall provide a copy of the estimate of costs to the resident school district within 10 days after receiving or developing the individualized education program for the applicant.

2. Except as provided in subd. 3., if the nonresident school district fails to comply with the requirement under

this section by the date specified, the nonresident school district may not 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 child with a disability.

3. Subdivision 2. does not apply if the resident school district fails to comply with the requirements under sub. (3) (a) 1m.

SECTION 11. 118.51 (12) (b) 1. of the statutes is amended to read:

118.51 (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), as proposed to be implemented by the nonresident school district and as provided to the resident school district as required under par. (am), would impose upon the child's resident school district an undue financial burden in light of the resident school district's total economic circumstances, including its revenue limit under subch. VII of ch. 121, 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 resident school district, the child's resident school board may notify the child's parent and the nonresident school board by the first 2nd Friday following the first Monday in April June that the pupil may not attend the nonresident school district to which the child has applied.

SECTION 11g. 118.51 (15) (a) of the statutes is amended to read:

118.51 (15) (a) *Application form.* Prepare, distribute to school districts, and make available to parents an application form to be used by parents under sub. (3) (a) and an application form to be used by parents under sub. (3m) (a). The form shall include provisions that permit a parent to apply for transportation reimbursement under sub. (14) (b). The form shall require an applicant who is applying to attend a virtual charter school to indicate that he or she is applying to attend a virtual charter school, the

number of virtual charter schools to which he or she is applying, and whether he or she is a sibling of a pupil currently enrolled in a virtual charter school through the open enrollment program.

SECTION 11k. 118.51 (15) (c) of the statutes is renumbered 118.51 (15) (c) (intro.) and amended to read:

118.51 (15) (c) *Annual report.* (intro.) Annually submit a report to the governor, and to the appropriate standing committees of the legislature under s. 13.172 (3), ~~on the~~. The report under this paragraph shall include all of the following information:

1. The number of pupils who applied to attend public school in a nonresident school district under this section, ~~the~~

3. The number of applications denied and the bases for the denials, ~~and the~~

4. The number of pupils attending public school in a nonresident school district under this section. The department shall specify, separately, the number of pupils attending public school in a nonresident school district whose applications were accepted under subs. (3) (a) 3, and (3m) (c), and, for the applications accepted under sub. (3m) (c), the number of pupils attending under each of the criteria listed in sub. (3m) (b).

SECTION 11n. 118.51 (15) (c) 2. of the statutes is created to read:

118.51 (15) (c) 2. The number of applications received under subs. (3) (a) and (3m) (a) and, for the applications received under sub. (3m) (a), the number of applications received under each of the criteria listed in sub. (3m) (b).

SECTION 11r. 121.91 (4) (p) of the statutes is created to read:

121.91 (4) (p) The limit otherwise applicable to a school district under sub. (2m) in any school year is increased by the amount of any reduction to that school district's state aid payment made under s. 118.51 (16) (b) 2. and (c) in the previous school year for a pupil who was not included in the calculation of the number of pupils enrolled in that school district in the previous school year.