



ENGROSSED 2011 SENATE BILL 2

February 16, 2011 - Printed by direction of ASSEMBLY CHIEF CLERK.

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

Analysis by the Legislative Reference Bureau

Engrossment information:

The text of Engrossed 2011 Senate Bill 2, as passed by the senate on February 2, 2011, consists of the following documents adopted in the senate on February 2, 2011: the bill as affected by Senate Amendment 1 (as affected by the February 16, 2011, chief clerk's correction thereto); Senate Amendment 2 (as affected by Senate Amendment 2 thereto and as affected by the February 16, 2011, chief clerk's correction thereto); and Senate Amendment 3.

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Under the Open Enrollment Program (OEP), a pupil may apply to attend a public school in a school district other than the pupil's resident school district (nonresident school district) if certain conditions are met. Current law establishes a time line for filing and processing applications under the OEP. An application to attend a school in a nonresident school district is due between the first Monday in February and the third Friday following the first Monday in February. A school board that receives an application must forward a copy of the application to the pupil's resident school board by the fourth Monday in February, and may not act on the application until after the third Friday following the first Monday in February. The resident school board may, under certain conditions, deny the pupil's enrollment in the nonresident school district; the resident school board must notify the applicant that its application has been rejected by the first Friday following the first Monday in April.

The nonresident school board must notify the pupil whether it has accepted the application by the first Friday following the first Monday in April and must provide the pupil with information about the specific program or school the pupil would attend by the second Friday following the first Monday in May. The pupil must inform the nonresident school board whether he or she will attend a school in the nonresident school district by the first Friday following the first Monday in June. By June 30, the nonresident school board must report the name of each pupil accepted under the OEP to the pupil's resident school board. Current law permits a nonresident school district to deny enrollment to a pupil who has been expelled from school for certain reasons, including for engaging in conduct while at school that endangered the health safety or property of others. A resident school district must provide copies of the disciplinary records of a pupil who has applied under the OEP to a nonresident school district that makes a request for such records.

This bill changes the time line for filing and processing applications under the OEP. Under the new time line, the nonresident school district must determine the number of regular education and special education spaces available within the school district at the January meeting of the nonresident school board (and, for the 2011-12 school year, at the February meeting of the nonresident school board). An application to attend a school in a nonresident school district is due between the first Monday in February and the last weekday in April. A nonresident school board that receives an application must forward a copy of the application to the pupil's resident school district by the end of the first weekday following the last weekday in April. The nonresident school board may not act on the application before May 1. The bill requires a resident school district to provide to a nonresident school district records pertaining to disciplinary proceedings involving a pupil who has applied to the nonresident school district under the OEP by the first Friday following the first Monday in May.

The bill also requires the resident school district to forward a copy of the individualized education program (IEP) prepared for a child with a disability who applies to the nonresident district under the OEP. If the resident school district fails to comply with this requirement, the nonresident school district may charge the

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resident school district for any actual, additional costs incurred by the school district to provide the special education and related services to the child. This bill requires the nonresident school district to prepare an estimate of the costs to implement an IEP prepared for a child with a disability who has applied to attend a school or program in the nonresident school district, and to provide the resident school district with a copy of the estimate by the third Friday following the first Monday in May. If the nonresident school district fails to provide the information by the required date, the nonresident school district may not charge the resident school district for the costs to provide the special education and related services to the child with a disability. If the resident school board will deny the pupil's enrollment in the nonresident school district, the resident school board must notify the applicant that its application has been rejected on or before the second Friday following the first Monday in June.

The nonresident school board must notify the pupil whether it has accepted the application on or before the first Friday following the first Monday in June, and if the school board has accepted the application, it must provide the pupil with information about the specific program or school the pupil would attend at that time. The pupil must inform the nonresident school board whether he or she will attend a school in the nonresident school district by the last Friday in June. By July 7, the nonresident school board must report the name of each pupil accepted under the OEP to the pupil's resident school board.

The bill also creates an alternative application process, with a separate time line, under the OEP. Under the alternative process, the pupil must satisfy one of the following criteria: 1) the resident school district determines that the pupil has been the victim of a violent criminal offense, as defined by the Department of Public Instruction (DPI) by rule; 2) the pupil is or has been a homeless pupil in the current or immediately preceding school year; 3) the pupil has been the victim of repeated bullying or harassment, the parent has reported the bullying or harassment to the resident school board, and the repeated bullying or 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; 5) the pupil has moved 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; or 7) 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.

A nonresident school district that receives an application under the alternative time line must immediately forward a copy to the resident school board and must notify the applicant, in writing, whether it has accepted the application no later than 20 days after receiving it. The resident school district may notify an applicant that the pupil may not attend a school or program in the nonresident school district only if it determines that the criterion relied on by the applicant does not apply to the pupil or determines that the costs of special education or related services would impose an undue financial burden on the child's resident school district.

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Current law limits the increase in the total amount of revenue per pupil that a school district may receive from general school aids and property taxes to the amount of revenue increase allowed per pupil in the previous school year increased by the percentage change in the Consumer Price Index. Several adjustments to the revenue limits are permitted. This bill permits a school district to increase the revenue limit applicable to the school by the amount of any reduction to the school district's payment from DPI in the previous year for a pupil who was not included in the calculation of the number of pupils enrolled in that school district in the previous year.

Current law requires DPI to annually report to the governor and the appropriate committees of the legislature on the number of pupils who applied to attend school in a nonresident school district under the OEP, the number of applications denied, and the bases for the denials, and the number of pupils attending public school in a nonresident school district under the OEP. This bill requires DPI to provide more detailed information about participation in the OEP, including information about whether pupils were accepted under the regular or alternative application process and, if the latter, which criterion the applicant applied under.

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

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

2 118.51 (3) (intro.) Except as provided under sub. (3m), the following procedures
3 govern pupil applications to attend a public school in a nonresident school district
4 under this section:

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

6 118.51 (3) (a) 1. The parent of a pupil who wishes to attend a public school in
7 a nonresident school district under this section shall submit an application, on a form
8 provided by the department under sub. (15) (a), to the school board of the nonresident
9 school district that the pupil wishes to attend, not earlier than the first Monday in
10 February and not later than the ~~3rd Friday following the first Monday in February~~
11 last weekday in April of the school year immediately preceding the school year in
12 which the pupil wishes to attend. Applications may be submitted to no more than

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1 3 nonresident school boards in any school year. ~~On the 4th Monday in February the~~
2 The nonresident school board shall send a copy of the application to the pupil's
3 resident school board and the department by the end of the first weekday following
4 the last weekday in April. The application may include a request to attend a specific
5 school or program offered by the nonresident school district.

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

7 118.51 (3) (a) 1m. By the first Friday following the first Monday in May, the
8 resident school board shall send to the nonresident school district a copy of the
9 individualized education program developed under s. 115.787 (2) for a child with a
10 disability whose parent submitted an application under subd. 1.

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

12 118.51 (3) (a) 2. A nonresident school board may not act on any application
13 received under subd. 1. ~~until after the 3rd Friday following the first Monday in~~
14 ~~February~~ before May 1. If a nonresident school board receives more applications for
15 a particular grade or program than there are spaces available in the grade or
16 program, the nonresident school board shall determine which pupils to accept,
17 including pupils accepted from a waiting list under sub. (5) (d), on a random basis,
18 after giving preference to pupils and to siblings of pupils who are already attending
19 the nonresident school district and, if the nonresident school district is a union high
20 school district, to pupils who are attending an underlying elementary school district
21 of the nonresident school district under this section. If a nonresident school board
22 determines that space is not otherwise available for open enrollment pupils in the
23 grade or program to which an individual has applied, the school board may
24 nevertheless accept a pupil or the sibling of a pupil who is already attending the
25 nonresident school district and, if the nonresident school district is a union high

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1 school district, a pupil who is attending an underlying elementary school district of
2 the nonresident school district under this section.

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

10 4. On or before the ~~first~~ 2nd Friday following the first Monday in ~~April~~ June
11 following receipt of a copy of the application, if a resident school board denies a pupil's
12 enrollment in a nonresident school district under sub. (6), (7) or (12) (b) 1., the
13 resident school board shall notify the applicant and the nonresident school board, in
14 writing, that the application has been denied and include in the notice the reason for
15 the denial.

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

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

18 118.51 (3) (a) 6. If Except as provided in sub. (5) (d) 2., if an application is
19 accepted, on or before the ~~first~~ last Friday ~~following the first Monday in June~~
20 following receipt of a notice of acceptance, or within 10 days of receiving a notice of
21 acceptance if a pupil is selected from a waiting list under sub. (5) (d) or s. 118.40 (8)
22 (h) 5., the pupil's parent shall notify the nonresident school board of the pupil's intent
23 to attend school in that school district in the following school year.

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

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1 118.51 (3) (a) 7. If the department has not notified a virtual charter school of
2 the pupils who may attend the school under s. 118.40 (8) (h) by the deadline for
3 informing applicants under subd. 3. ~~or 5.~~, the nonresident school district shall specify
4 in its notices under subd. 3. ~~or 5.~~ that the school district's acceptance is conditional.

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

6 118.51 (3) (b) *Notice to resident school district.* Annually by ~~June 30~~ July 7,
7 each nonresident school board that has accepted a pupil under this section for
8 attendance in the following school year shall report the name of the pupil to the
9 pupil's resident school board. If a pupil is selected from a waiting list under s. 118.40
10 (8) (h) 5., the nonresident school board shall report the name of the pupil to the pupil's
11 resident school board within 10 days of receiving notice of the pupil's selection from
12 the department.

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

14 118.51 (3m) ALTERNATIVE APPLICATION PROCEDURES UNDER CERTAIN
15 CIRCUMSTANCES. (a) Notwithstanding sub. (3), the parent of a pupil who wishes to
16 attend a public school in a nonresident school district under this section may, in lieu
17 of applying under sub. (3), submit an application under this subsection, on a form
18 provided by the department under sub. (15) (a), to the school board of the nonresident
19 school district that the pupil wants to attend if the pupil satisfies at least one of the
20 criteria under par. (b). Applications may be submitted to no more than 3 nonresident
21 school boards in any school year.

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

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1 1. The resident school board determines that the pupil has been the victim of
2 a violent criminal offense, as defined by the department by rule. An application
3 made on the basis of this criteria is not valid unless the nonresident school board
4 receives the application within 30 days after the determination of the resident school
5 board.

6 2. The pupil is or has been a homeless pupil in the current or immediately
7 preceding school year. In this subdivision, "homeless pupil" means an individual who
8 is included in the category of homeless children and youths, as defined in 42 USC
9 11434a (2).

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

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

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

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

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

24 6. The place of residence of the pupil has changed as a result of a court order
25 or custody agreement or because the pupil was placed in a foster home or with a

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1 person other than the pupil's parent, or removed from a foster home or from the home
2 of a person other than the pupil's parent. An application made on the basis of this
3 criteria is not valid unless the nonresident school board receives the application no
4 later than 30 days after the pupil's change in residence.

5 7. The parent of the pupil and the nonresident school board agree that
6 attending school in the nonresident school district is in the best interests of the pupil.

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

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

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

18 2. a. Except as provided in subd. 2. b., the resident school district determines
19 that the costs of the special education or related services required in the
20 individualized education program under s. 115.787 (2) for a child with a disability
21 whose parent has submitted an application under par. (a), as proposed to be
22 implemented by the nonresident school district, would impose upon the child's
23 resident school district an undue financial burden in light of the resident school
24 district's total economic circumstances, including its revenue limit under subch. VII
25 of ch. 121, its ability to pay tuition costs for the pupil, and the per pupil special

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1 education or related services costs for children with disabilities continuing to be
2 served by the resident school district.

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

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

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

14 118.51 (5) (a) *Permissible criteria.* (intro.) Except as provided in sub. (3) (a)
15 2., the criteria for accepting and rejecting applications from nonresident pupils
16 under ~~sub.~~ subs. (3) (a) and (3m) (a) may include only the following:

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

18 118.51 (5) (a) 1. (intro.) The availability of space in the schools, programs,
19 classes, or grades within the nonresident school district. The nonresident school
20 board shall determine the number of regular education and special education spaces
21 available within the school district in the January meeting of the school board, except
22 that for the 2011-12 school year the board shall determine the number of regular
23 education and special education spaces available within the school district in the
24 February meeting of the school board. In determining the availability of space, the
25 nonresident school board may consider criteria such as class size limits,

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1 pupil-teacher ratios, or enrollment projections established by the nonresident school
2 board and may include in its count of occupied spaces all of the following:

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

4 118.51 (5) (a) 1. b. Pupils and siblings of pupils who have applied under sub.
5 (3) (a) or (3m) (a) and are already attending the nonresident school district.

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

7 118.51 (5) (a) 1. c. If the nonresident school district is a union high school
8 district, pupils who have applied under sub. (3) (a) or (3m) (a) and are currently
9 attending an underlying elementary school district of the nonresident school district
10 under this section.

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

13 118.51 (5) (d) 1. The school board of a nonresident school district may create
14 a waiting list of pupils whose applications were rejected under sub. (3) (a) 3. The
15 nonresident school board may accept pupils from a waiting list created under this
16 paragraph until the 3rd Thursday in September but only if the pupil will be in
17 attendance at the school or program in the nonresident school district on the 3rd
18 Friday in September. Notwithstanding sub. (3) (a) 6., if a pupil is accepted from a
19 waiting list created under this paragraph after the start of the school term, the
20 parent shall immediately notify the resident school district of the pupil's intent to
21 attend school in the nonresident school district for the current school term.

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

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

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1 118.51 (5) (d) 2. A pupil accepted from a waiting list created under this
2 paragraph may attend the school or program in the nonresident school district even
3 if the pupil has attended a school or program in the pupil's resident school district
4 in the current school term, but not if the pupil has attended a school or program in
5 a nonresident school district in the current school term.

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

7 118.51 (8) DISCIPLINARY RECORDS. Notwithstanding s. 118.125, for an
8 application submitted under sub. (3) (a), by the first Friday following the first
9 Monday in May, and within 10 days of receiving a copy of an application under sub.
10 (3m) (c), the resident school board shall provide to the nonresident school board to
11 which a pupil has applied under this section, ~~upon request by that school board,~~ a
12 copy of any expulsion findings and orders pertaining to the pupil, a copy of records
13 of any pending disciplinary proceeding involving the pupil, a written explanation of
14 the reasons for the expulsion or pending disciplinary proceeding and the length of
15 the term of the expulsion or the possible outcomes of the pending disciplinary
16 proceeding.

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

18 118.51 (9) APPEAL OF REJECTION. If the nonresident school board rejects an
19 application under sub. (3) (a) or (7), the resident school board prohibits a pupil from
20 attending public school in a nonresident school district under sub. (3m) (d), (6), (7)
21 or (12) (b) 1., or the nonresident school board prohibits a pupil from attending public
22 school in the nonresident school district under sub. (11), the pupil's parent may
23 appeal the decision to the department within 30 days after the decision. If the
24 nonresident school board provides notice that the special education or related service
25 is not available under sub. (12) (a), the pupil's parent may appeal the required

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1 transfer to the department within 30 days after receipt of the notice. If the resident
2 school board provides notice of transfer under sub. (12) (b) 2., the pupil's parent may
3 appeal the required transfer to the department within 30 days after receipt of the
4 notice. The department shall affirm the school board's decision unless the
5 department finds that the decision was arbitrary or unreasonable.

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

7 118.51 (12) (am) *Estimate of costs.* 1. The nonresident school district shall
8 prepare an estimate of the costs to provide the special education or related services
9 required in the individualized education program developed under s. 115.787 (2) for
10 a child with a disability whose parent has submitted an application under this
11 section. For an application submitted for a child with a disability under sub. (3) (a),
12 the nonresident school district shall provide a copy of the estimate of costs to the
13 resident school district by the 3rd Friday following the first Monday in May. For an
14 application submitted for a child with a disability under sub. (3m) (a), the
15 nonresident school district shall provide a copy of the estimate of costs to the resident
16 school district within 10 days after receiving or developing the individualized
17 education program for the applicant.

18 2. Except as provided in subd. 3., if the nonresident school district fails to
19 comply with the requirement under this section by the date specified, the
20 nonresident school district may not charge the resident school district for any actual,
21 additional costs incurred by the nonresident school district to provide the special
22 education and related services for the child with a disability.

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

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

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1 118.51 (12) (b) 1. If the estimate of the costs of the special education or related
2 services required in the individualized education program under s. 115.787 (2) for a
3 child with a disability whose parent has submitted an application under sub. (3) (a),
4 as proposed to be implemented by the nonresident school district and as provided to
5 the resident school district as required under par. (am), would impose upon the
6 child's resident school district an undue financial burden in light of the resident
7 school district's total economic circumstances, including its revenue limit under
8 subch. VII of ch. 121, its ability to pay tuition costs for the pupil, and the per pupil
9 special education or related services costs for children with disabilities continuing
10 to be served by the resident school district, the child's resident school board may
11 notify the child's parent and the nonresident school board by the ~~first~~ 2nd Friday
12 following the first Monday in ~~April~~ June that the pupil may not attend the
13 nonresident school district to which the child has applied.

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

15 118.51 (15) (a) *Application form.* Prepare, distribute to school districts, and
16 make available to parents an application form to be used by parents under sub. (3)
17 (a) and an application form to be used by parents under sub. (3m) (a). The form shall
18 include provisions that permit a parent to apply for transportation reimbursement
19 under sub. (14) (b). The form shall require an applicant who is applying to attend
20 a virtual charter school to indicate that he or she is applying to attend a virtual
21 charter school, the number of virtual charter schools to which he or she is applying,
22 and whether he or she is a sibling of a pupil currently enrolled in a virtual charter
23 school through the open enrollment program.

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

