

**Report From Agency**  
**FINAL REPORT**  
**CLEARINGHOUSE RULE 21-082**  
**CHAPTER PI 36**  
**PUBLIC SCHOOL INTER-DISTRICT OPEN ENROLLMENT**

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**Analysis by the Department of Public Instruction**

**Statutory authority:** s. 227.11 (2) (a) (intro.), Stats.

**Statute interpreted:** s. 118.51, Stats.

The objective of the proposed rule is to make the following updates that are necessary for improving the administration of ch. PI 36 of the Wisconsin Administrative Code:

1. Clarifying s. PI 36.04 (3) (d) and (e) to specify that, in cases where it would ordinarily be required to guarantee approval of a student’s open enrollment application, the nonresident school district is not required to do so if the special education services that student requires are not available in the nonresident school district.
  2. Clarifying s. PI 36.06 (1) (b) to specify that a parent is prohibited from submitting multiple applications to the same nonresident school district for the same school year if their initial application has been denied.
  3. Conforming s. PI 36.06 (1) (b) to recent changes in statute under 2021 Wisconsin Act 19 and specifying that applications to virtual charter schools do not count toward the 3 nonresident school district maximum.
  4. Creating s. PI 36.09 (5) to specify that school attendance enforcement responsibility goes back to the resident school district after a pupil’s open enrollment is terminated.
  5. Clarifying s. PI 36.13 (4) to specify that open enrollment transportation reimbursement claims submitted after July 15 of the school year in which transportation was provided will not be paid.
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The hearing notice was published in the October 25, 2021, edition of the Wisconsin Administrative Register. A public hearing was held on November 17, 2021.

*No persons testified at the November 17, 2021, hearing. However, the following persons submitted written testimony:*

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Marsha Meurette	Representing Self			X
Kelly Brooks	Representing Self		X	

***Summary of public comments relative to the rule and the agency’s response to those comments:***

- One respondent submitting written comment requested changes that would prevent students from seeking an open enrollment transfer to a nonresident school district for nonacademic reasons such as playing in sports. The respondent believes the current rules create a situation in which school administrators are being forced to accept open enrollment transfers because although parents claim to seek a transfer for academic reasons, there is no way to truly vet out these requests and help school districts stand firm on open enrollment denials.

***Agency Response:*** The requested change is outside the scope of the proposed rule. No changes are necessary.

- Another respondent submitting written comment questioned the provision in rule which provides that the nonresident school district is not required to guarantee approval of an open enrollment application if the special education services that student requires are not available in the nonresident school district. Rather than encourage participation in the open enrollment program, the respondent argues this change would create barriers for parents of a student with a disability that seek other educational opportunities outside of their resident school district.

**Agency Response:** Section 118.51 (5) (a) 4., Stats., provides that the school board of a nonresident school district may deny a pupil's application if the special education and related services required by a pupil's individualized education program (IEP) are not available in the nonresident school district, or there is no space in the special education program or related services required by the pupil's IEP. Section 118.51 (4) (a) 2., Stats., provides the school board's acceptance and rejection criteria must be specified in school board policy. The proposed change to rule is intended to clarify ch. PI 36 by conforming it with existing statute. The department is not permitted to promulgate rules beyond the authority that is explicitly conferred on the department in statute, so further changes to this provision are necessary.

***Changes made as a result of oral or written testimony:***

No changes were made.

***Changes to the analysis or the fiscal estimate:***

No changes were made.

***Responses to Clearinghouse Report:***

The changes to the rule's plain language analysis are accepted.