



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

School Choice: Inter-District Open Enrollment

Under Wisconsin's open enrollment law, a district-enrolled public school student may attend school in a district other than the one in which the student resides on a full-time basis through the full-time open enrollment program or on a part-time basis through Course Options.

The full-time and part-time open enrollment programs were modified by 2015 Wisconsin Act 55 (Act 55), the 2015-17 Biennial Budget Act. This Information Memorandum describes the open enrollment processes, as modified, and explains requirements related to student eligibility for open enrollment and to the transportation of open-enrolled students. It does not discuss other flexible or alternative enrollment programs such as the private school choice programs, Youth Options, whole grade sharing agreements, or work-based learning programs, and it does not include specific notification and response deadlines.

STUDENT ELIGIBILITY FOR OPEN ENROLLMENT

Wisconsin law permits only a **district-enrolled public school student** to attend school in a district other than the one in which the student resides¹ either full-time through the full-time open enrollment program or part-time through Course Options.² A home-schooled, private school, or independent charter school³ student is not enrolled in a public school district and, therefore, may not participate in open enrollment.⁴ However, a student attending a charter school authorized by a school district is enrolled in a public school district and may participate.

¹ A resident school district is the school district in which a student resides. A nonresident school district is a school district other than the one in which a student resides and in which a student attends school or seeks to enroll. [s. PI 36.02, Wis. Adm. Code.].

² Part-time inter-district open enrollment was expanded by 2013 Wisconsin Act 20 to include enrollment in courses at higher education institutions, charter schools, and nonprofit organizations in addition to enrollment in courses in nonresident school districts. The program was renamed "Course Options." Because this Information Memorandum is focused on inter-district open enrollment, the discussion of Course Options is limited to enrollment in courses in a nonresident school district.

³ An independent charter school is one established under s. 118.40 (2r) or (2x), Stats. Such charter schools are authorized and overseen by the following entities instead of a school board: the City of Milwaukee; the University of Wisconsin (UW)-Milwaukee; the UW-Parkside; the Milwaukee Area Technical College; the Gateway Technical College; Waukesha County; the college of the Menominee Nation; the Lac Courte Oreilles Ojibwa community college; or the Office of Educational Opportunity in the UW System.

⁴ An independent charter school, although a public school, is not part of a school district for state aid purposes; therefore, an independent charter school student, although a public school student, is not counted as enrolled in a

A home-schooled, private school, or independent charter school student may **apply** for open enrollment, but, if accepted, the student must enroll in the resident school district before participating. A student may not participate in open enrollment and continue to be a home-schooled, private school, or independent charter school student.⁵

Although unable to participate in open enrollment, home-schooled and private school students may enroll in some public school courses under other statutory provisions. Specifically, a home-schooled student may enroll in up to two courses per semester in any public school district if the student meets course admission requirements and there is sufficient space. [s. 118.53, Stats.] A private school student may enroll in up to two courses per semester in the student's resident school district if the student meets course admission requirements and there is sufficient space. [s. 118.145, Stats.]

FULL-TIME OPEN ENROLLMENT

Any district-enrolled public school student in grades kindergarten through 12 may apply to attend school in a nonresident public school district through the full-time open enrollment program. A student may attend four-year old kindergarten, prekindergarten, early childhood education, or school-operated day care through full-time open enrollment only if: (1) the student's resident school district offers the same type of program; and (2) the student is eligible for the program in the resident school district. [s. 118.51 (2), Stats.]

A student may not attend a private school or an independent charter school through the full-time open enrollment program. However, a student may attend a virtual charter school based in a nonresident school district through the full-time open enrollment program if the virtual charter school is authorized by a school district and meets all the statutory requirements for a charter school under s. 118.40 (8), Stats. A student may also participate in an online course program offered by a nonresident school district that does not qualify as a virtual charter school through full-time open enrollment, but the student must physically access the online courses from a school within the nonresident school district. [s. 118.51 (1) (ad) and (2), Stats.; s. PI 36.11, Wis. Adm. Code.]

Applications for full-time open enrollment must be submitted and received during the statutory open enrollment period.⁶ [s. 118.51 (3), Stats.] Alternatively, a student may apply for full-time open enrollment at any time if one of the following circumstances applies:

school district for state aid purposes and is thereby ineligible to participate in open enrollment. [s. 121.05 (1) (a) 9., Stats.]

⁵ See s. PI 36.09 (4), Wis. Adm. Code, stating that a student's open enrollment terminates upon the student's enrollment in a private school or a home-based private education program. See also s. 118.40 (2r) (c), Stats., stating that, unless there is a statutory exception, the only students who may attend an independent charter school are those that reside in the school district in which the school is physically located. Such an exception exists under Course Options (not full-time open enrollment), which defines "educational institution" to include charter schools, therefore allowing a district-enrolled public school student to attend courses at an independent charter school physically located within a nonresident school district.

⁶ The open enrollment period begins at midnight on the first Monday in February and ends at 4:00 p.m. on the last weekday in April. [s. 118.51 (3) (a), Stats.; s. PI 36.06 (1) (a), Wis. Adm. Code.]

- The student has been the victim of a violent criminal offense.
- The student is or has been homeless in the current or immediately preceding school year.
- The student has been the victim of repeated bullying or harassment that has continued despite a parent's report and school board action.
- The student's residence has changed due to military orders.
- The student has recently moved into the state.
- The student's residence has changed due to court order, custody agreement, or placement in or removal from either a foster home or the home of someone other than the student's parent.
- The student's parent, the resident school board, and the nonresident school board agree that it is in the student's best interest.

[s. 118.51 (3m), Stats.]

A parent may submit full-time open enrollment applications to up to three nonresident school districts during a given application period. A parent may request that a student be assigned to attend a specific school or program within the nonresident school district, but assignment decisions are entirely within the nonresident school district's discretion. A nonresident school district that receives an application must send a copy of the application to the student's resident school district and to the Department of Public Instruction (DPI). If the student requires special education services, the resident school district must send a copy of the student's individualized education program (IEP)⁷ to the nonresident school district for review. [s. 118.51, Stats.]

FULL-TIME OPEN ENROLLMENT APPLICATION REVIEW

Regular Education Students

A resident school district must accept a regular education student's application for full-time open enrollment to another district unless the student is deemed ineligible.⁸ A student is ineligible if he or she applies outside of the regular open enrollment period and none of the special statutory circumstances applies. A student is also ineligible if the application is late,

⁷ An IEP is a written education plan designed to address a student's individual learning needs by establishing education goals and identifying any supports, services, and accommodations that the student may need to receive a free and appropriate public education.

⁸ Beginning with the 1998-99 school year, and for seven school years thereafter, resident school districts were permitted to limit the number of students that transferred to a nonresident school district via the full-time open enrollment program. The cap has expired; therefore, under current law, no such limit exists. [s. 118.51 (6), Stats.] Under s. 118.51 (7), Stats., school districts that participated in the ch. 220 integration program were required to reject full-time open enrollment applications if a student transfer into or out of the district would increase the racial imbalance of the district. This provision is no longer enforced as a result of a Wisconsin Attorney General's opinion that this provision violates the Equal Protection Clause of the U.S. Constitution. [OAG 4-07.]

incomplete, deliberately falsified, unsigned, or submitted to more than three nonresident school districts.⁹ [s. PI 36.15, Wis. Adm. Code; s. 118.51 (3), Stats.]

A nonresident school district must accept a regular education student's full-time open enrollment application unless any of the following apply:

- There is insufficient space for the student in a specific school, program, class, or grade.
- The student has been expelled from another district during the current or previous two years or there is a disciplinary proceeding pending for certain violent conduct.¹⁰
- If the student has already been enrolled in the nonresident school district, the student has been identified as habitually truant by the nonresident school district in the current or previous school year.

A nonresident school district may create a waiting list of students whose applications were denied and may later accept students from the waiting list if certain conditions are met.

[s. 118.51 (5), Stats.]

Special Education Students

Act 55 modified how resident and nonresident school districts must handle open enrollment applications from special education students. As discussed above, when a special education student applies for full-time open enrollment, the resident school district must send a copy of the student's IEP to the nonresident school district.

Prior Law

Prior law provides that the nonresident school district was required to determine whether it had the capacity to provide the student with the IEP-required services and was required to submit an estimate of the actual, additional special education costs to the resident school district. In addition to the grounds for denial applicable to regular education students, a resident school district was permitted to deny a special education student's full-time open enrollment application if it determined that the cost of providing the special education and related services, as proposed by the nonresident school district, would impose an undue financial burden on the resident school district, as discussed below. [s. 118.51 (12), 2013-14 Stats.]

⁹ A student is also ineligible if he or she does not meet the age requirements for admission to kindergarten or if the student's resident school district does not offer the same four-year old kindergarten, prekindergarten, or early childhood education program that the student seeks to attend in a nonresident school district. [s. 118.51 (2), Stats.]

¹⁰ A resident school district is required to provide the nonresident school district with the following records: (1) a copy of any expulsion findings and orders pertaining to the student; (2) a copy of any records of pending disciplinary proceeding involving the student; (3) a written record of the reasons for the expulsion or pending disciplinary proceeding; and (4) the length of the term of the expulsion or the possible outcomes of the pending disciplinary proceeding. [s. 118.51 (8), Stats.]

Current Law

Current law states that resident school districts are still required to send a copy of a special education student's IEP to a nonresident school district after a special education student applies for open enrollment. The nonresident school district must determine whether it has the space and resources to provide the student with IEP-required services, but it is not required to submit a cost estimate to the resident school district. Resident school districts are no longer permitted to deny a special education student's open enrollment application on the basis of undue financial burden. Rather, they must accept a special education student's open enrollment application unless the student is deemed ineligible based on the same criteria applicable to regular education students, as discussed above.

Nonresident school districts, however, may deny a special education student's open enrollment application for either of the following reasons, in addition to the reasons applicable to regular education students:

- The IEP-required special education or related services are unavailable or there is insufficient space to accommodate the student (space includes consideration of class size limits, student-teacher ratios, and enrollment projections).
- The student has been identified as possibly having one or more disabilities but has not yet been evaluated by an IEP team to determine service needs.

[s. 118.51 (5), Stats.]

FULL-TIME OPEN ENROLLMENT POST-APPLICATION PROCEDURE

If a resident school district denies a full-time open enrollment application, it must notify the student. If the resident school district does not notify the student of a denial, then the application is considered approved by the resident school district. [s. PI 36.06 (4) (b), Wis. Adm. Code.]

If a nonresident school district denies a full-time open enrollment application, it must provide written notice to the student. The notice must include the reason for rejection. If the nonresident school district does not notify the student, then an application submitted during the statutory open enrollment period is considered approved by the nonresident school district. However, if a nonresident school district fails to notify a student who applied during an alternative time period, as discussed above, then the application is considered denied by the nonresident school district. [s. PI 36.06 (4) (a), Wis. Adm. Code.]

If a nonresident school district accepts an application, the student's parent must notify the nonresident school district whether the student will attend school in the nonresident school district the following school year. The nonresident school district must notify the student's resident school district of the student's acceptance. Once accepted, a student may generally continue to attend school in a nonresident school district via the full-time open enrollment program without reapplying. However, a nonresident school district may require a student to reapply one time during the student's attendance period within the nonresident district. Reapplication may only be required when the student enters middle school, junior high school, or high school. The nonresident school district must choose at which one of the three transition points it will require a student to reapply. If the student wishes to attend a different

nonresident school district, he or she must comply with the application procedures. [s. 118.51 (3) (a) to (c), Stats.]

If a nonresident school district receives more applications than there are spaces available, it must use a random selection process to determine which students to enroll. Students with disabilities must be included in the random selection process before any consideration is given to their potential needs, thus discouraging nonresident school districts from favoring the selection of regular education students over special education students. [s. PI 36.04 (4), Wis. Adm. Code.] However, a nonresident school district may give preference to students, and to siblings of students, who are already attending the nonresident school district. Upon random selection, the nonresident school district may then consider the previously mentioned denial criteria when determining whether to accept a particular applicant. [s. 118.51 (3), Stats.]

A parent may appeal a denial by a resident or nonresident school district to DPI, but DPI must uphold the district's decision unless it finds that the decision was arbitrary or unreasonable. [s. 118.51 (9), Stats.]

PART-TIME OPEN ENROLLMENT: COURSE OPTIONS

Under the Course Options program, district-enrolled public school students, in four-year old kindergarten through grade 12, may take up to two courses at a time offered by an educational institution.¹¹ An educational institution includes “a public school in a nonresident school district.” “Educational institution” does not include a private school unless the private school is a nonprofit institution of higher education or a nonprofit organization approved by DPI. Therefore, a student generally may not attend courses in a K-12 private school under Course Options. However, “educational institution” does include charter schools, so a student may attend courses in an independent charter school and may take courses online through a virtual charter school¹² under Course Options.¹³ [s. 118.52 (1) (am), Stats.] Because this Information Memorandum focuses on inter-district open enrollment, however, the term “nonresident school district” will be used instead of “educational institution.”

A student who is enrolled in a nonresident school district under the full-time open enrollment program may also participate in Course Options. In these situations, generally, the district of attendance (the nonresident school district) functions as the resident school district for purposes of Course Options enrollment and funding.

In order for a student to participate in Course Options, a parent must submit an application to the desired nonresident school district no later than six weeks before the course is scheduled to begin. The nonresident school district must send a copy of the application to the student's resident school district. As with full-time open enrollment, both the resident and nonresident school districts must approve a student's Course Options application. [s. 118.52, Stats.]

¹¹ A student may attend two different educational institutions at the same time as long as the student is enrolled in no more than two courses at a time.

¹² A student may take online courses through any qualifying educational institution as long as the course meets all of the Course Options criteria.

¹³ An educational institution also includes the UW System, technical colleges, and tribal colleges. [s. 118.52 (1) (am), Stats.]

COURSE OPTIONS APPLICATION REVIEW

Regular Education Students

Generally, a resident school district must accept a student's Course Options application. A resident school district may deny an application only if one of the following applies:

- The course does not satisfy a high school graduation requirement.
- The course does not conform to or support the student's academic and career plan created under s. 115.28 (59) (a), Stats., if the student has one.¹⁴

[s. 118.52 (6) (c), Stats.]

School districts generally establish student eligibility policies and criteria for admission to courses. Nonresident school districts must apply the established admission criteria and eligibility policies uniformly to resident students and to nonresident students seeking admission through Course Options. A nonresident school district must accept a student's Course Options application if the student satisfies the course admission criteria and there is sufficient space in the course after eligible resident students have been given attendance preference. [s. 118.52 (5), Stats.]

Special Education Students

In addition to the criteria applied to regular education students, a resident school district **must deny** a special education student's Course Options application if the course conflicts with the student's IEP. [s. 118.52 (6) (a), Stats.]

A nonresident school district **must accept** a special education student's Course Options application if the student satisfies the course admission criteria and there is sufficient space in the course after eligible resident students have been given attendance preference.

COURSE OPTIONS POST-APPLICATION PROCEDURE

If a nonresident school district receives more applications for a course than there are spaces available, after giving attendance preference to its own eligible resident students, the district must select Course Options students on a random basis using a method approved by its school board. [s. 118.55 (3) (b), Stats; s. PI 36.16 (6), Wis. Adm. Code.]

The nonresident school district must notify the student and the resident school district in writing whether an application has been accepted or denied. If denied, the notification must include the reason for denial. Likewise, the resident school district must notify the student and the nonresident school district in writing whether the application has been accepted or denied and, if denied, must include the reason for denial. Upon acceptance of an application by both school districts, the student's parent must notify both the resident and nonresident school districts whether the student will attend the course or courses in the nonresident school district. [s. 118.52 (3), Stats.]

¹⁴ Beginning with the 2017-18 school year, every school board must provide its students in grades six through 12 with academic and career planning services.

A parent may appeal a denial by a resident or nonresident school district to DPI, but DPI must uphold the district's decision unless it finds that the decision was arbitrary or unreasonable. [s. 118.52 (8), Stats.]

OPEN ENROLLMENT FUNDING

FULL-TIME OPEN ENROLLMENT FUNDING

Under the school funding formula, each school district may annually raise a specific amount of revenue per student through a combination of state aid and local property taxes. The permitted per-student amount includes fixed costs that do not change with the addition or loss of a student, as well as student-specific costs which do change with the addition or loss of a student. Students who attend school in nonresident school districts via the full-time open enrollment program are counted as part of their resident school districts for funding calculation purposes. However, as discussed below, certain funds are transferred from the resident school district to the nonresident school district.

Regular Education Students

DPI administers the funding for the full-time open enrollment of regular education students by transferring a portion of the per-student revenue from the resident school district to the nonresident school district for each student participating in the program. The per-student transfer amount is equal to the prior year state average of student-specific costs only.¹⁵ Resident school districts retain the revenue raised to cover fixed costs. [s. 118.51 (16), Stats.]

Special Education Students

If a nonresident school district accepts a special education student, it must provide that student with services in compliance with the student's IEP. Act 55 modified how full-time open enrollment for special education students is funded, as discussed below.

Prior Law

Under **prior law**, the nonresident school district submitted a bill directly to the resident school district, which was required to pay the transfer amount required for regular education students, described above, plus reimbursement for any actual, additional special education costs¹⁶ for services provided by the nonresident school district to the student.¹⁷ [s. 118.51 (17), 2013-14 Stats.]

¹⁵ From 1998-99 to 2012-13, the transfer amount was equal to the prior year state average per-student cost for regular instruction, student services, instructional support services, and co-curricular activities. For 2013-14 and 2014-15, the set amount was equal to the prior year plus \$150. The 2014-15 set amount was \$6,635 per open-enrolled student. Beginning in the 2015-16 school year, the transfer amount is equal to the prior year plus the per-student revenue limit adjustment for the current school year, if positive, and the change in the amount of statewide categorical aid per student between the previous school year and the current school year, if positive. [s. 118.51 (16) (a), Stats.]

¹⁶ DPI defined special education cost according to *Doe v. Burmaster*, 03-CV-892 (E.D. Wis. 2004). Among other things, permissible costs included the cost of a one-on-one aide hired specifically to serve only the open-enrolled student or the additional costs incurred to provide transportation as a related service.

If a student's IEP needed revision after he or she was enrolled with the nonresident school district, resulting in actual additional special education cost changes, the nonresident school district was required to determine whether it was capable of providing the necessary services under the revised IEP. The nonresident school district was also required to notify the resident school district of the proposed cost changes, giving the resident school district the opportunity to re-evaluate its financial situation. If the nonresident school district could provide the necessary services and the resident school board determined that the costs did not impose an undue financial burden upon it, the student was permitted to remain enrolled with the nonresident school district, and the resident school district was billed accordingly. However, if the resident school district determined that the new costs would impose an undue financial burden, the resident school district could require the student to transfer back to the resident school district. [s. 118.51 (12) (b) 2., 2013-14 Stats.]

Current Law

Under **current law**, as affected by Act 55, for the 2015-16 school year, a resident school district must pay tuition for each full-time, open enrolled special education student to the applicable nonresident school district. Tuition must be calculated by dividing the "annual tuition rate" by the number of school days in a session, pursuant to s. 121.83, Stats., or must be an amount agreed upon by the school boards of both the resident and nonresident school district. [s. 118.51 (17) (a), Stats.]

Beginning in the 2016-17 school year, the funding structure for the full-time open enrollment of special education students is much like that applied to regular education students. DPI must transfer a statutorily defined per-student amount from resident school districts to nonresident school districts. In the 2016-17 school year, DPI must transfer \$12,000 per full-time open enrolled special education student from the resident school district to the nonresident school district. Each year thereafter, DPI must transfer an amount equal to the amount from the prior year plus the amount of the per-student revenue limit adjustment for the current school year, if positive, and the change in the amount of per-student statewide categorical aid between the previous school year and the current school year, if positive.¹⁸ [s. 118.51 (17) (b) and (c), Stats.]

If a special education student's IEP is revised after he or she is enrolled in a nonresident school district, the nonresident school district may re-evaluate whether it is capable of providing the

¹⁷ A resident school district was required to pay the special education tuition amount (calculated according to s. 121.83, Stats.), or an amount agreed upon by both districts, to the nonresident school district for each open enrollment student receiving special education and related services.

¹⁸ Under prior law, a school district's per-student revenue limit was increased by a "per-student revenue limit adjustment" amount, generally to account for inflation. This adjustment amount has been set at a certain percentage or at a certain dollar amount for different school years. The per-student revenue limit adjustment for the 2014-15 school year was \$75. Under Act 55, the per-student revenue limit adjustment for the 2015-16 school year and each school year thereafter is zero. Categorical aid is a category of state aid not subject to revenue limits. According to the January 2015 Legislative Fiscal Bureau Informational Paper #24, there are generally two types of categorical aids: (1) school districts may receive categorical aid, calculated according to a formula, to be spent for a particular purpose; or (2) categorical aid may be distributed to school districts in the form of a grant if a school district submits a grant application to DPI.

necessary services under the revised IEP. If the nonresident school district is not able to provide the necessary services, then the special education student may be transferred back to the resident school district. [s. 118.51 (12), Stats.] However, a resident school district may not evaluate whether the revised IEP imposes an undue financial burden and has no authority to require that the special education student be transferred back to the resident school district on that basis.

COURSE OPTIONS FUNDING

The resident school district (or district of attendance for full-time open enrollment students), must pay the nonresident school district the cost of providing each course to a student enrolled under Course Options, calculated as DPI determines. [s. 118.52 (12) (a), Stats.] Under its current policy, DPI requires resident school districts to pay one-seventh of the full-time open enrollment transfer amount per credit taken. Recognizing that some school districts offer half-credit courses, DPI requires a resident school district to pay 50% of the one-seventh transfer amount for each half-credit course.¹⁹

The resident school district must ensure that a special education student receives all IEP-required supports and services. The resident school district may coordinate with the nonresident school district to provide the services, but remains responsible for the costs unless an alternative arrangement is made.

TRANSPORTATION FOR OPEN-ENROLLED STUDENTS

FULL-TIME OPEN ENROLLMENT TRANSPORTATION

A school district **may** transport open-enrolled students, either from within its boundaries to a school in another district or from another district to attend its schools. However, before a school district may pick up or drop off open-enrolled students in another district, it must have approval from the school board of the other district. [ss. 118.51 (4) (a) 2. and 121.54 (10), Stats.] A school district may either charge an open-enrolled student's parent a fee for the cost of providing transportation or may apply for state funding to cover the transportation costs, but not both. [ss. 121.545 (1) and 121.58 (2), Stats.]

If a school district chooses not to provide transportation for open-enrolled students, the student's parent is responsible for providing transportation to and from the nonresident school district. The parent of a student who is eligible for free or reduced-price lunch under federal law may apply to DPI for reimbursement of transportation costs. DPI determines the reimbursement amount, which may not exceed the lesser of actual costs incurred or three times the state average per student transportation costs. [s. 118.51 (14), Stats.]

¹⁹ The Course Options funding structure varies depending upon the type of educational institution a student attends. For additional information, see the Course Options Cost Table available at: http://dpi.wi.gov/sites/default/files/imce/cte/pdf/course_options_cost_table_2015_16_v1.2.pdf. Under prior law, DPI required resident school districts to pay the lesser of the full course cost, as calculated according to s. PI 36.18, Wis. Adm. Code., or one-seventh of the full-time open enrollment transfer amount per credit taken. Because s. PI 36.18, Wis. Adm. Code, was promulgated as a funding structure for the part-time enrollment program, not Course Options, DPI is not currently enforcing the calculation formula. Until DPI can promulgate a new calculation formula specifically for Course Options, DPI will require resident school districts to pay the one-seventh amount discussed above.

Special Education Students

The nonresident school district must provide transportation to a full-time, open enrolled special education student at no cost if transportation is required by the student's IEP or if DPI approves a request for transportation, based on whether the student can walk to school with safety and comfort. [ss. 118.51 (14) (a) 2. and 121.54 (3), Stats.]

COURSE OPTIONS TRANSPORTATION

Parents are responsible for transporting students to and from nonresident school districts in order for them to participate in Course Options, although a school district may choose to provide such transportation. A parent may apply to DPI for reimbursement of transportation costs if he or she is unable to pay them. DPI determines the reimbursement amount but must give preference to the parents of students who are eligible for free or reduced-price lunch under federal law. [s. 118.52 (11), Stats.]

Special Education Students

A resident school district (or district of attendance for full-time open enrollment students) must provide transportation for a special education student to participate in Course Options if transportation is required by the student's IEP or if DPI approves a request for transportation, based on whether the student can walk to school with safety and comfort. [s. 121.54 (3), Stats.]

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Rachel E. Snyder, Staff Attorney, on September 9, 2016.

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