

## PUBLIC EDUCATION IN WISCONSIN

**A**rticle X, section 3 of the Wisconsin Constitution requires the legislature to provide a free uniform basic education to all children in the state. At the same time, the constitution does not prohibit the legislature from creating additional forms of publicly funded education; nor does it require the additional forms, if any, to be available to all children, to be entirely free, or to provide the same basic education as the legislature must make available to all children. This article describes first the general educational system that the legislature has established to meet its obligation under the constitution and then each of the currently existing additional forms of publicly funded education that the legislature has created. The article reflects education law as of July 1, 2022.

### **The general system**

In Wisconsin, every child resides within a school district and is entitled to a free education at a public school operated by that school district. The education provided at the public school must conform to requirements specified in state law.

Wisconsin is organized into 421 school districts. Each school district is governed by a school board whose members are elected by the residents of the district. For the purpose of operating public schools, school districts can, among other things, own and lease property; employ teachers and other personnel; and contract for the provision of services. Funding for school district operations comes primarily from state aid and property taxes levied by each district, but also from federal aid and miscellaneous fees, sales, and interest earnings. The amount of general state aid that each school district receives is based on several factors, including the number of pupils enrolled in the district's schools. State law limits the total amount of revenue that a school district can receive each year from general state aid, computer aid, and property taxes. However, a school district can exceed its revenue limit if it obtains voter approval at a referendum. School districts also receive aid for specified purposes, known as categorical aids, that are not counted toward revenue limits.

State law sets out general educational goals for children attending public schools and requires school districts to provide educational programs that will enable students to attain those goals. State law requires school districts to specify the knowledge and skills that they intend students in each grade to acquire; to maintain curriculum plans; and to define criteria for promoting students to the fifth grade and the ninth grade and for awarding high school diplomas.

It requires school districts to schedule a minimum number of hours of direct student instruction in each grade. It also requires school districts to ensure that every teacher and professional staff member holds a certificate, license, or permit to teach issued by the state Department of Public Instruction (DPI), unless that teacher is a faculty member at an institution of higher education teaching in a high school. Within these parameters, and subject to further requirements, school districts have discretion to determine the specifics of their educational programs and policies.

Additional requirements under both state and federal law apply to how school districts provide education to children with disabilities. Each school district must identify, locate, and evaluate children with disabilities who reside in the district. It must develop an individualized education program (IEP) for each child with a disability that describes the special education and related services that the child needs to make appropriate progress. As long as the child is enrolled in the district, the district must regularly reevaluate the child, review and revise the IEP, and offer the child an educational setting in which it will implement the IEP. In addition, the school district must make special education and related services available to a child with a disability beginning in the year the child turns three years old and continuing through the year in which the child turns 21.

For state oversight purposes, school districts are required to report various kinds of information to DPI and to administer annually certain standardized tests to public school students in specific grades. In addition, DPI is required to publish an annual report, called the school and school district accountability report, which evaluates the performance of every public school and school district. (The individual evaluations in the report are called school or school district “report cards.”)

## **Additional forms of publicly funded education**

### **FULL-TIME OPEN ENROLLMENT PROGRAM**

Under the Full-Time Open Enrollment Program (open enrollment), a child can attend a public school in a school district other than the one in which the child resides. For each open enrollment student, the state transfers to the nonresident school district a set amount from the state aid that is allocated for the student’s resident school district. This transfer is greater for students with disabilities and may vary based on the actual costs incurred to educate the student.

In most cases, a child must apply to participate in the open enrollment program in the school year preceding the school year for which the application is made. The nonresident school district in which the child wishes to enroll cannot

deny the application except for certain reasons, such as that the nonresident school district does not have space for additional students; that the nonresident school district does not provide the special education or related services specified in the IEP of an applicant who is a child with a disability; that the child has been habitually truant from the nonresident school district in a prior school year; or that the child has been expelled from any school district in the previous three years because of specific behaviors. Under special circumstances, a child can apply to participate in the program immediately.

The nonresident school district must afford an open enrollment student the same educational opportunities and programs as it affords a student who resides in the district. If the open enrollment student is a child with a disability, the nonresident school district assumes, in place of the resident school district, the duties under state and federal law that apply to the education of such children. The parent, rather than the school district, is responsible for providing transportation to and from school for an open enrollment student who is not a child with a disability. However, parents can apply to DPI for financial assistance based on need.

#### **PART-TIME OPEN ENROLLMENT PROGRAM**

The Part-Time Open Enrollment Program allows a student who is attending a public high school to take up to two courses at one time in a public school in a nonresident school district. If the student has a disability, the student's resident school district may deny the student's application if the school district determines that the course conflicts with the student's IEP. The student's resident district can also deny an application if the cost of the course the student wishes to take would impose an undue financial burden on the district. Lastly, a resident school district can reject an application for a course that does not satisfy graduation requirements in the resident school district.

In general, the resident school district pays the nonresident school district for a course that the student takes under part-time open enrollment. The amount of the payment is based on the total number of hours of instruction provided to the student in the particular course. Parents are responsible for transporting their student to and from the school in the other school district, unless a course is being taken to implement the student's IEP. Parents can apply to DPI for financial aid to offset the cost of transportation based on need.

#### **EARLY COLLEGE CREDIT PROGRAM**

The Early College Credit Program (ECCP) allows a student who is attending public or private high school to take college courses at a University of Wisconsin System institution, a tribally controlled college, or a private, nonprofit institution

of higher education in Wisconsin. A student can indicate on the application whether he or she wants to take the class for high school credit, college credit, or both. The ECCP does not include courses taken at a public or private high school for college credit, commonly known as dual enrollment.

If the course a student takes is for high school credit, and if the course is not comparable to a course offered by the school district or private school, then the student pays nothing. The Department of Workforce Development and the school district or private school split the cost. The student pays for each course that the student takes for college credit only, although this cost is reduced. The student also pays for each course that the school board or private school governing board finds to be comparable to an existing course at the student's school or that the student does not successfully complete. Parents are responsible for providing transportation to and from courses under the ECCP, but can apply to DPI for financial assistance based on need.

#### **TECHNICAL COLLEGE DUAL CREDIT**

Wisconsin allows students who are attending a public school in grade 11 or 12 to take courses at a technical college. If the course is taken for high school credit and if the course is not comparable to a course at the student's high school but is eligible for credit, then the school district will pay for the student's tuition, fees, and books. Parents are responsible for providing transportation to and from courses at the technical college, unless a course is being taken to implement a student's IEP. If a student with a disability applies to the program, he or she may be denied if the cost of their participation would impose an undue burden on the school district.

#### **CHARTER SCHOOLS**

A charter school is a type of public school that is operated by an organization that contracts with an entity that the legislature has empowered to authorize charter schools. Currently, all school districts and several other entities have this power. The contract describes the school's educational program and governance structure and specifies the facilities and funds that will be available to it. The authorizing entity can revoke a charter school contract if the charter school operator fails to comply with the terms of the contract. The authorizing entity can also revoke the contract if the children attending the charter school fail to make sufficient progress towards attaining the general educational goals set out in state law for children attending public schools. Like other public schools, charter schools are free to students.

In general, charter schools are largely exempt from state education laws that apply to other public schools. However, charter schools are not exempt from state

education laws that pertain to public health and safety or any law that explicitly applies to charter schools. In addition, all professional employees of a charter school who have direct contact with students or involvement with the instructional program must hold a license or permit to teach issued by DPI, with two exceptions: teachers at virtual charter schools and high school grade teachers who are faculty at an institution of higher learning may not need licenses.

Charter school operators must report the same kinds of information to DPI as school districts and administer the same standardized tests to their students as school districts must administer to students in other public schools. In addition, DPI must include performance evaluations of charter schools in the annual school and school district accountability report.

As public schools, charter schools are subject to federal laws pertaining to education, the education of children with disabilities, and civil rights.

**School district charter schools.** A charter school established by a school district is a public school of that school district, even though the school district does not directly operate the charter school. As a result, a school district charter school is subject to school district policies, except as otherwise negotiated in the charter contract. A student who attends a school district charter school is enrolled in the school district just the same as if the student attended a school that the school district operated directly. The school district receives the same amount of state aid or the same full-time open enrollment transfer payment for the child, and the school district has the same duties to provide special education and related services. However, a school district cannot require a student to attend a charter school and must provide other public school attendance arrangements for a student who does not wish to attend a charter school. A school district that establishes a charter school pays the charter school operator an amount negotiated in the charter contract to operate the charter school.

A school district can also establish a “virtual” charter school, where all or a portion of the instruction is provided on the Internet. A virtual charter school is considered to be located in the school district that establishes it, even if it has no physical presence there. In contrast to a bricks-and-mortar school, it is feasible under the Full-Time Open Enrollment Program for children who reside anywhere in the state to attend a virtual charter school. A teacher for a virtual charter school is not required to have a license from DPI if the teacher is licensed to teach the grade and subject they are teaching in the state from which the online course is provided.

**Independent charter schools.** Several entities other than school districts can authorize independent charter schools. This includes the chancellors of any institution in the University of Wisconsin System, the City of Milwaukee, any technical college district board, the county executive of Waukesha County, the

College of Menominee Nation, the Lac Courte Oreilles Ojibwe University, and the Office of Educational Opportunity in the University of Wisconsin System.

An independent charter school established by one of these entities is not part of any school district. Accordingly, an independent charter school is not subject to any school district's policies. If a child with a disability attends an independent charter school, the charter school operator is subject to the same federal laws pertaining to the education of such children as a school district would be and must evaluate the child, develop an IEP, offer the child an educational setting in which it will provide the special education and services specified in the IEP, and regularly reevaluate the child and revise the IEP. None of the chartering entities may establish or contract with a virtual charter school.

The state pays an independent charter school operator a set amount for each student attending the independent charter school.

### **PARENTAL CHOICE PROGRAMS**

Under a parental choice program, the state makes a payment (sometimes referred to as the “voucher amount”) that pays for a child from an eligible family to attend a private school participating in the parental choice program. There are three parental choice programs in Wisconsin: the Milwaukee Parental Choice Program, which has existed since 1989; the Racine Parental Choice Program, which was created in the 2011–13 biennial budget act; and the Statewide Parental Choice Program, which was created in the 2013–15 biennial budget act.

Each of these programs is available to children whose family income, at the time that the child first participates, is below a specified level (three times the federal poverty level for the Milwaukee and Racine programs and 2.2 times that level for the statewide program). A child must reside in the city of Milwaukee to participate in the Milwaukee program, in the Racine Unified School District to participate in the Racine program, and anywhere else in the state to participate in the statewide program. Except in certain circumstances, a child cannot participate in the Racine or statewide program if the child was attending a private school in the previous school year other than as a participant in one of those programs. In addition, a temporary limit has been imposed on the number of children from each school district who can participate in the statewide program. This limit was 7 percent of a school district's student membership in the 2022–23 school year. The limit will increase by one percentage point each school year until the 2025–26 school year and ceases to apply after that.

A private school that wishes to participate in a parental choice program must report to DPI, by the January 10 preceding each school year of participation, the number of spaces it has for choice students and pay an annual fee. Additional

requirements apply to a private school that has been in continuous operation in this state for less than 12 consecutive months or provides education to fewer than 40 students divided into two or fewer grades.

A student who wishes to participate in a parental choice program must apply to a participating private school during specific enrollment periods. The private school may reject an applicant only if the spaces it has for choice students are full. If a private school rejects an application, the applicant can transfer his or her application to another participating private school. A private school must generally accept applicants on a random basis, but may give preference to applicants who participated in a parental choice program in the previous school year, siblings of such applicants, and siblings of applicants whom the private school has accepted for the current school year on a random basis.

A participating private school must satisfy all state health and safety laws and codes that are applicable to public schools and federal laws prohibiting discrimination on the basis of race, color, or national origin. It must satisfy at least one of four achievement standards to continue participating in the program, and it may not require a choice student to participate in any religious activity. The private school must also provide a prescribed minimum number of hours of direct student instruction in each grade. Additionally, all of the private school's teachers and administrators must have a bachelor's or higher degree or a license issued by DPI, with some exceptions for those who teach or administer courses that train rabbinical students.

Participating private schools must report the same kinds of information to DPI as school districts must report, but only with respect to the choice students attending them. They must also administer the same standardized tests to their choice students as school districts must administer to public school students. In addition, DPI must include an evaluation of each participating private school's performance with respect to its choice students in the annual school and school district accountability report.

A private school cannot charge tuition to a choice student unless the student's family income exceeds a set percentage of the federal poverty line. A private school can charge a choice student fees related to certain expenses (such as social and extracurricular activities, musical instruments, meals, and transportation) but cannot take adverse action against a choice student or the student's family if the fees are not paid.

#### **SPECIAL NEEDS SCHOLARSHIP PROGRAM**

Under the Special Needs Scholarship Program, the state makes a payment (the scholarship) to a private school, on behalf of the parent of a child with a disability,

for the child to attend the private school. In the 2022–23 school year, the scholarship amount was \$13,076. Beginning in the 2019–20 school year, if a student has participated in the program for a year, the scholarship amount can be the actual costs incurred by the private school in the previous year, if that is greater than the standard scholarship amount. There is no limit on the amount of additional tuition or fees a private school may charge a child who receives a scholarship under the program. A child with a disability is eligible for a scholarship under the program if three conditions are met. First, the child must have an IEP or services plan in effect. (A services plan outlines the services that a school district has agreed to provide to a child with a disability whose parent has enrolled the child in a private school rather than in the school district.) Second, the child's parent or guardian must consent to make the child available for reevaluation upon request of the child's school district of residence. And third, the private school that the child wishes to attend with the scholarship must be accredited or approved as a private school by DPI and must have notified DPI of its intent to participate in the program.

A private school that wishes to participate in the program must notify DPI of the number of spaces it has available for children who receive a scholarship under the program. A participating private school must accept applications under the program on a first-come, first-served basis, but may give preference to siblings of students who are already attending the private school if it receives more applications than the number of spaces it has available.

A participating private school must implement, for each child that receives a scholarship, either 1) the IEP or services plan that the child's school district of residence developed in its most recent evaluation of the child or 2) a modified version of that IEP or services plan agreed to between the private school and the child's parent. The private school must also provide the child with any related services agreed to between the private school and the child's parent that are not included in the child's IEP or services plan. A child with a disability who attends a private school under the program is not entitled to all the special education and related services to which he or she would be entitled under state and federal law if he or she attended a public school.

A participating private school must comply with all health and safety laws that apply to public schools; must provide each child who applies for a scholarship with a profile of the private school's special education program; and must submit to DPI an annual school financial information report.

Unless it is also participating in a parental choice program, a private school participating in the Special Needs Scholarship Program is not required to report to DPI the kinds of information that school districts must report or to administer



to any of its students the standardized tests that school districts must administer to public school students, and no performance evaluation of the private school is included in the annual school and school district accountability report.

Once awarded, a scholarship continues until the child graduates from high school or until the end of the school term in which the child attains the age of 21, whichever comes first, unless, upon reevaluation by the child's school district of residence, it is determined that the child is no longer a child with a disability. In that case, the child can continue to receive a scholarship under the program, but the amount of the scholarship is reduced to the per student amount paid under the parental choice programs. **BB**