

Public education in Wisconsin

2016–17 school year

The Wisconsin Constitution requires the legislature to make available to all children in the state a free uniform basic education. (Article X, section 3.) 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, or to be entirely free, or to provide the same basic education as the legislature must make available to all children. (*Davis v. Grover*, 166 Wis. 2d 501, 539, 480 N.W.2d 460, 474 (1992) and *Jackson v. Benson*, 218 Wis. 2d 835, 895, 578 N.W.2d 602, 628 (1998).) This article describes first the general educational system that the legislature has established to meet its obligation under the constitution; and thereafter each of the currently existing additional forms of publicly funded education that the legislature has also created.

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 422 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.

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 sequential 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. And it requires school districts to ensure that every teacher and professional staff member holds a certificate, license, or permit to teach issued by the state's Department of Public Instruction (DPI). 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 the education that school districts provide to children with disabilities. A 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 such child that describes the special education and related services that the child needs to make progress appropriate for the child's level of ability. It must offer the child an educational setting in which it will provide the special education and related services described in the IEP. And, 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 attains the age of three and continuing through the year in which the child attains the age of 21.

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

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 state aid that a 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 raise each year from the state aid it receives for general purposes, the state aid it receives for computers, and the property taxes it levies. However, a school district can exceed its revenue limit if it obtains voter approval at a referendum.

Additional forms of publicly funded education

OPEN ENROLLMENT PROGRAM

Under the Open Enrollment Program, a child can enroll to attend a public school in a school district other than the one in which the child resides. Open enrollment is available to any child in any grade from five-year-old

kindergarten up. It is also open to younger children, but only if a child's school district of residence provides the same type of program as the child wishes to attend in the nonresident school district and the child is eligible to attend the program in the child's school district of residence.

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. Circumstances that qualify for this purpose include that a child is or has recently been homeless; that a child has been the victim of repeated bullying or harassment; or that a child's parent, the child's resident school district, and the nonresident school district all agree that attending school in the nonresident school district is in the best interests of the child. In these cases, the resident school district can deny the application if it determines that the special circumstances asserted in the application are not present. The nonresident school district can deny the application for any of the reasons that would be permitted for an ordinary application.

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. In the case of an open enrollment student who is a child with a disability, the nonresident school district must assume, in place of the resident school district, the duties under state and federal law that apply to the education of such children.

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. In the 2016–17 school year, the general per student transfer amount was \$6,748, and the per student transfer amount for a child with a disability was \$12,000. (Prior to the 2016–17 school year, the state did not transfer state aid in the case of a child with a disability. Instead, the resident school district made an individualized tuition payment for the child to the nonresident school district.)

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. (But parents can apply to DPI for financial assistance based on need.)

YOUTH OPTIONS PROGRAM

The Youth Options Program allows a student who is attending a public school in grade 11 or 12 to take college courses at the University of Wisconsin System, the Wisconsin Technical College System, a participating private nonprofit institution of higher education in Wisconsin, or a participating tribal college in Wisconsin. In addition to the college credit that a student receives for such a course, a student can receive high school credit if the school district in which the student is enrolled determines that the course qualifies for high school credit and is not comparable to a course already offered in the school district.

The school district pays for each course that a student takes for high school credit (or for both high school and college credit) under the program, if the student successfully completes the course. The student pays for each course that the student takes for college credit only or that the student does not successfully complete. Parents are responsible for providing transportation to and from courses under the Youth Options Program, unless a course is being taken to implement the IEP of a child with a disability. (But parents can apply to DPI for financial assistance based on need.)

COURSE OPTIONS PROGRAM

The Course Options Program allows a student who is attending a public school in any grade to take up to two courses at one time at a public school in another school district, the University of Wisconsin System, the Wisconsin Technical College System, a nonprofit institution of higher education, a tribal college, a charter school, or a nonprofit organization that has been approved by DPI. The school district in which the student is enrolled may deny a student's course options application if the school district determines that the course does not satisfy a graduation requirement, does not support a student's academic and career plan, or conflicts with a student's IEP if the student is a child with a disability.

The Course Options Program includes concurrent enrollment courses (also known as "dual enrollment" and "dual credit" courses). A concurrent enrollment course is provided by an institution of higher education at a public high school under an agreement between the institution and the school

district that operates the high school. The course is taught by a school district teacher who, for the purpose of teaching the course, has been certified as an adjunct faculty member by the institution. A student receives college credit from the institution, as well as high school credit from the school district, for completing the course.

In general, the school district in which a student is enrolled pays for a course that the student takes under the Course Options Program. The amount of the payment is equal to the cost of providing the course to the student, as determined by DPI. The entity that provides the course cannot charge a student or the student's school district any more than the amount determined by DPI, unless the entity is an institution of higher education and the student will receive college credit for the course. Parents are responsible for providing transportation to and from courses under the Course Options Program, unless a course is being taken to implement the IEP of a child with a disability. (But parents can apply to DPI for financial assistance based on need.)

CHARTER SCHOOLS

A charter school is a type of public school that is largely exempt from state education laws that apply to other public schools. A charter school is operated by a person identified in a contract that establishes the school, and is subject to the terms of the contract. The contract describes the school's educational program and governance structure and specifies the facilities and funds that will be available to it. The contract is negotiated between and agreed to by the person who will operate the charter school and an entity that has the power to authorize a charter school. Currently, all school districts and nine other entities, discussed below, have this power. 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.

Charter schools are not exempt from state education laws that pertain to public health and safety. 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.

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 not exempt from federal laws pertaining to regular education, the education of children with disabilities, or 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 child who attends a school district charter school is enrolled in the school district just the same as if the child attended a school that the school district operated directly. The school district receives the same amount of state aid or the same open enrollment transfer payment for the child, and the school district has the same duties if the child is a child with a disability. However, a school district cannot require a child to attend a charter school and must provide other public school attendance arrangements for a child who does not wish to attend a charter school.

A school district can establish a “virtual” charter school, which is a kind of charter school at which 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 the situation with a bricks-and-mortar school, it is feasible under the Open Enrollment Program for children who reside anywhere in the state to attend a virtual 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.

Independent charter schools. Prior to 2015, four entities other than school districts could authorize charter schools: the City of Milwaukee, the University of Wisconsin-Milwaukee, the University of Wisconsin-Parkside, and the Milwaukee Area Technical College District. Five more entities were granted this power in 2015: the Gateway Technical College District, Waukesha County, the College of Menominee Nation, the Lac Courte Oreilles Ojibwa Community College, and the Office of Educational Opportunity in the University of Wisconsin System.

The power of these entities to authorize charter schools is limited in various ways. For example, the Gateway Technical College District cannot authorize a charter school unless the charter school 1) operates only high school grades, 2) provides a curriculum focused on science, technology, engineering, and

mathematics or on occupational education and training, and 3) is located in the Gateway Technical College District. In addition, none of these entities can authorize a virtual charter school.

A charter school established by one of these entities (an independent charter school) 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.

The state pays an independent charter school operator a set amount for each student attending the independent charter school. In the 2016–17 school year, the per student amount was \$8,188 for most of the independent charter schools. For an independent charter school authorized by the College of Menominee Nation or the Lac Courte Oreilles Ojibwa Community College, however, the per student amount in each school year is set to equal the per student amount in the previous school year of a type of federal aid provided to tribal schools.

PARENTAL CHOICE PROGRAMS

Under a parental choice program (sometimes called a “voucher” program), the state makes a payment to a private school, on behalf of a student's parent, for the student to attend the private school. There are three parental choice programs in Wisconsin: the Milwaukee Parental Choice Program, which has been in existence 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 1.85 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 programs if the child was attending a private school in the previous school year other than as a participant in 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 1 percent of a school district's student membership in the 2016–17 school year. The limit increases 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 February 1 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.

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 child with a disability who participates in a parental choice program is not entitled to 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.

In the 2016–17 school year, the state paid \$7,323 to a participating private school for each choice student attending the school in grades kindergarten to eight and \$7,969 for each choice student attending in grades 9 to 12. A private school cannot charge tuition to a choice student unless the student’s family income exceeds 220 percent 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. The program was created in the 2015–17 biennial budget act, and scholarships were first available for the 2016–17 school year. A study of the program will be conducted by the Legislative Audit Bureau and submitted to the legislature by January 9, 2019.

A child with a disability is eligible for a scholarship under the program if five conditions are met. The child must have been enrolled in a public school for the entire school year immediately preceding the first school year for which the child will receive a scholarship. The child must have applied under the Open Enrollment Program to attend public school in one or more non-resident school districts, and every such application must have been denied. 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.) 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 the private school that the child wishes to attend with the scholarship must be accredited 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 reevaluation 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 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.

A child with a disability who attends a private school under the program is not entitled to 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.

In the 2016–17 school year, the scholarship amount under the Special Needs Scholarship Program was \$12,000. There is no limit on the amount of additional tuition or fees that a private school may charge a child who receives a scholarship under the program. 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**