



Children with Disabilities  
Education Board

## Memorandum

To: WCCDEB Supervisors

Cc: Mark Lubberda, County Administrator

From: Tracy Moate

Date: January 13, 2022

Re: WCCDEB Meeting Agenda Items

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Wisconsin Statute 118.51 (5)(a) provides that school boards establish the school's space availability numbers relating to special education enrollment in the January meeting. This allows nonresident school districts to make space determinations for open enrollment purposes. Although we do not accept open enrollment requests directly at Lakeland School, we must be prepared to answer any requests that Walworth County School Districts may present to the CDEB. I will prepare that packet of information for the CDEB meeting.

I have included a copy of the Wisconsin Statute 118.22 that addresses the renewal of teacher contracts. I would like to continue the February sending date that was established at the January 20, 2021 CDEB meeting.

It is time to start planning ahead for the upcoming school year(s) and this starts with establishing our school calendar. I would like to bring forward proposals for the next school year and will be seeking your input and approval of this calendar. Calendar(s) will be distributed at the meeting.

Finally in Reports and Correspondence I would like to share information on our Emergency Drills, Special Olympics and update you on Covid 19 /Omicron Variant.

Thank you

# DRAFT

**Walworth County Board of Supervisors  
Children with Disabilities Education Board Meeting Minutes  
Wednesday, November 17, 2021  
Walworth County Government Center, County Board Room 114  
100 West Walworth Street, Elkhorn, Wisconsin**

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Chair David Weber called the meeting to order at 5:14 p.m.

Roll call was conducted and the following members were present, either in person or by remote attendance: Chair David Weber; Secretary Brian Holt; Supervisors Kathy Ingersoll and Kenneth Monroe. Supervisor Joseph H. Schaefer was absent. A quorum was declared.

## **Others in Attendance**

County Board Supervisors: Nancy Russell.

County Staff: Director-Special Education Tracy Moate; and Lakeland School Principal Trish McCullough.

**On motion by Supervisor Monroe, second by Secretary Holt, the agenda was approved with no withdrawals.**

**On motion by Supervisor Ingersoll, second by Secretary Holt, the September 22, 2021 Children with Disabilities Education Board meeting minutes were approved.**

## **Public Comment**

Supervisor Nancy Russell voiced her approval of the Welcome to Lakeland School Newsletter.

## **New Business**

7a. Resolution No \*\*-12/21 Accepting the Donation of \$15,000 from the DeMoon Family Fund of the KARA Foundation for Use at Lakeland School

Director-Special Education Tracy Moate stated funds will be used on technology for students who utilize unique learning devices, along with portable lifts to assist the therapy department in transporting students. **Supervisor Monroe offered a motion, second by Secretary Holt, to approve the resolution Accepting the Donation of \$15,000 from the DeMoon Family Fund of the KARA Foundation for Use at Lakeland School. Motion carried 4-0.**

7b. Ordinance \*\*-12/21 Amending Section 30-286 of the Walworth County Code of Ordinances Relative to Children with Disabilities Education Board Lunch Fees

Moate advised that lunch is a teachable moment at Lakeland School, therefore all teachers and aides have their lunch paid for. She stated this adult meal increase really applies to occasional adult visitors to the school, and was a required upgrade through the Department of Public Instruction (DPI.) **Secretary Holt offered a motion, second by Supervisor Monroe, to approve the ordinance Amending Section 30-286 of the Walworth County Code of Ordinances Relative to Children with Disabilities Education Board Lunch Fees. Motion carried 4-0.**

7c. Resolution No \*\*-12/21 Authorizing the Reclassification of a Special Education Aide Position to a Teacher Position at Lakeland School

Moate shared a new student moved into Lakeland School, and has significant needs outlined on their Individualized Education Program (IEP) for vision services. Two other students went through their IEP re-evaluation process and it was determined they had vision service needs as well. This new caseload warrants a full-time teacher position for the visually impaired. Moate stated this position is incredibly difficult to fill as it is critical the individual chosen has the proper training to administer the services. **Supervisor Ingersoll offered a motion, second by Secretary Holt, to approve the resolution Authorizing the Reclassification of a Special Education Aide Position to a Teacher Position at Lakeland School. Motion carried 4-0.**

## **Reports and Correspondence**

8a. CDEB Chair – There was none.

8b. CDEB Director

- Donation Opportunities

McCullough shared that two community members approached her stating they were fundraising and would like to donate to Lakeland School or purchase items to support the students.

- Special Edition Reveal

➤ Emergency Drill

McCullough stated Lakeland School held a fire safety day where the fire department came to the school for education, and recently the school performed a fire drill with all students and staff able to get out of the building in three minutes. She also shared there was a pool emergency drill for the crisis team; which resulted in updated safety procedures.

**Confirmation of next meeting date and time:** The next meeting was confirmed for Wednesday, December 15, 2021 at 4:30 p.m.

**Adjournment**

**On motion and second by Supervisor Monroe and Supervisor Ingersoll, Chair Weber adjourned the meeting at 5:24 p.m.**

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Submitted by Jennifer Stinnett, Administrative Assistant. Meeting minutes are not considered final until approved by the Children with Disabilities Education Board at the next regularly scheduled meeting.

## DETERMINING OPEN ENROLLMENT SPACE AVAILABILITY

In January, school boards are required by section 118.51(5)(a)1 of the state statutes to make decisions regarding the availability of space for public school open enrollment students during the next open enrollment application period. Specifically, the board must determine the number of regular education spaces, by grade, and the number of open enrollment special education spaces, by program or services, available for full-time open enrollment.

School officials should start thinking about their decision regarding open enrollment space availability right now in light of possible COVID-19-related issues (e.g., school district COVID-19 education plans, social distancing requirements, staffing issues and concerns). Keep in mind the following:

- If the district sets no space limits, the district will have to accept all full-time open enrollment applications unless they fall under one of the other reasons for rejection under state law.
- If the district's current full-time open enrollment policy states there will be no space limitations on open enrollment but the district realizes that COVID-related issues may affect the district's ability to take on an unlimited number of open enrollment students, the school board may need to review and update the district's open enrollment policy accordingly, otherwise the district must comply with the policy.

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# PUBLIC SCHOOL OPEN ENROLLMENT INFORMATIONAL BULLETIN

Bulletin 16-10

January 2017

## Special Education Space Determinations and Reasons for Denial for Open Enrollment

This bulletin covers information specific to special education space determinations for open enrollment purposes and specifically covers school board policies, criteria used to determine special education space, the actual designation of available spaces, reasons for denial, and why the criteria selected must be used consistently.

For more general information related to special education and open enrollment, please see [Bulletin-16-05-Special-Education-and-OE.pdf](#).

### Statutory Reference



Wis. Stat. § 118.51(5)(a)1. provides that a nonresident school board shall determine the number of regular education and special education spaces available within the school district in the January meeting of the school board.

Wis. Stat. § 118.51(5)(a)4. provides that a nonresident school board may consider whether the special education or related services described in the child's individualized education program under Wis. Stat. § 115.787(2) are available in the nonresident school district or whether there is space available to provide the special education or related services identified in the child's individualized education program, including any class size limits, pupil-teacher ratios or enrollment projections established by the nonresident school board.

Wis. Admin. Code § PI 36.06(5)(a) provides that at the January board meeting, the nonresident school board shall designate the number of regular education spaces, by grade, and the number of special education spaces, by program or services, in the district using the criteria specified in its policy under Wis. Admin. Code § PI 36.04(2).

### School Board Policies

If the nonresident school board wishes to consider whether it has available space in the special education or related services required in the Individualized Education Program (IEP) of pupils seeking to open enroll into the district, the board must specify this in its open enrollment policy as well as the criteria it will consider when making its determinations. The policy may not specify that it cannot provide services to pupils with a specific disability. The policy can only consider the availability of space in special education and/or related services.

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125 S. Webster Street, P.O. Box 7841  
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School Management Services  
Tricia Collins, Director  
(608) 266-7475  
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### Criteria for Determining Available Space in Special Education or Related Services

The school board must have criteria for determining whether it has space in any special education or related service. Specific criteria must be applied consistently to ensure decisions about special education space are not arbitrary or unreasonable. Criteria may include:

- Class size limits or pupil-teacher ratios
- Staffing capacity limit, including:
  - The amount of services pupils may need (e.g., minutes/hours, days per week)
  - Class/group size based on intensity of pupil needs (e.g., 1:1, small group, crisis intervention)
  - The type of staff to address various disability-related needs (e.g., special education teacher, pupil services staff, related services, paraprofessional, etc.)
- Projected pupil enrollment and changes to services in pupils' IEPs
- Other considerations concerning availability of space in the special education or related services

Neither state nor federal special education law contain requirements for minimum or maximum space/staffing capacity to provide special education and/or related services. Local school districts are responsible for determining policies and criteria related to space/staff capacity to provide special education services.

The school board's criteria may not include:

- Limits that are based on pupil eligibility category labels (e.g., SLD, Autism, ID)
- Limits that are based on IDEA environment codes (e.g. amount of time in general education classroom, IDEA Env. Code B)
- Limitations related to transportation

### Designation of Space

School boards are required to designate the number of regular education and special education spaces available for the next school year. The number of regular education spaces is designated by grade. The number of special education spaces is designated by available special education and related services. Space determinations must only be made and approved by the school board at its January board meeting.

If the board does not intend to deny applicants due to space, it may make that determination and document it in its January board meeting minutes.

### Reasons for Denial for Open Enrollment Applicants with IEPs

Both state and federal laws prohibit discrimination against a pupil based on the pupil's physical, mental, emotional, or learning disability. The board also may not deny open enrollment based on the pupil's eligibility for or need of a reasonable accommodation in a Section 504 plan. An application may only be denied if there is no space in the special education or related services required in the pupil's IEP or if the special education or related services are not available in the nonresident district.

The nonresident school board may not deny a pupil's open enrollment because the pupil has a specific disability. The board must examine the pupil's IEP to determine whether it has space in the specific special education or related services required by the pupil's IEP. The board may not make any assumptions about the special education or related services the pupil needs based on the identified disability. The board must review each applicant's IEP and individually consider whether space is available in the specific special education and related services required by the pupil's IEP.

Even if the district's special education and related services are at capacity, the school board may not deny a pupil's open enrollment without a specific review of the pupil's IEP. The board must provide the special education and related services required in the pupil's IEP in its entirety. If the board cannot do so, it may deny the application.

In addition, the school board cannot deny an application on the basis that transportation is required in the pupil's IEP. Wis. Stat. § 118.51(14)(a)2. states that if a pupil with a disability has transportation required in their IEP, the nonresident district must provide such transportation.

Under Wis. Stat. § 118.51(5)(a)6, a nonresident school board may, but is not required to, deny an application for a child that has been referred for an initial special education evaluation that has not been completed. If the nonresident school board approves the open enrollment application, the nonresident district should complete the evaluation, and if the pupil is found eligible, develop an initial IEP and determine if it has available the special education and related services to provide a placement. If the nonresident district does not have available the special education and related services, it may terminate the open enrollment. The resident district would then be responsible for adopting or revising the IEP and offering a placement to implement the IEP.

If a pupil has been found sometime in the past to have a disability, but does not have a current IEP, the nonresident school board's decision must be based on the availability of special education and related services required by the most recent IEP. If the IEP cannot be obtained for the pupil, the nonresident school board must review the most recent evaluation for the pupil and, based upon that review, develop an IEP and determine whether it has available the special education and related services to provide a placement. If neither an IEP nor an evaluation is available, the pupil should be considered a nondisabled pupil and the pupil's application must be considered using the criteria for nondisabled pupils.

If a pupil has an IEP developed or revised after attending the nonresident school district, the nonresident district may consider whether it has available the special education and related services required by the pupil's revised IEP. If it does, the nonresident district must implement the pupil's IEP as written. If it does not, the nonresident district may, but is not required to, notify the parent and resident district that the open enrollment will be terminated and the pupil must return to the resident district.

Pupils who were evaluated and found eligible for special education but whose parents either did not provide consent for initial special education placement, or revoked consent for continuing special education placement, are NOT considered pupils with disabilities for the purpose of open enrollment. Under these circumstances, pupils' open enrollment applications must be considered using the space criteria for nondisabled pupils.

### **Criteria Must Be Followed Consistently**

It is important for a school board to make sure that its criteria is included in its open enrollment policy and to ensure that the criteria is followed exactly and consistently. On appeal, the Department is required to affirm a school board's decision unless the Department finds that the decision was arbitrary or unreasonable. This means that the Department will most likely uphold a decision if both of the following are true:

- The school board's policy and criteria are in compliance with state law and are neither arbitrary nor unreasonable.
- The school board properly and consistently applied its policy and criteria, and followed state law and its policies in determining which applications will be approved and denied.

Some examples of actions that have been found to be arbitrary or unreasonable include:

- The school board did not follow the open enrollment law.
- The school board did not have the required policy upon which the decision was made.
- The school board used criteria that were arbitrary or unreasonable.

- The school board did not follow its policy, was inconsistent in following its policy, or made arbitrary or unreasonable exceptions to its policy.
- The school board did not establish the number of special education spaces available in the district. Instead, the board limited the number of pupils it would accept based on the pupils' identified disability.



### 118.22 Renewal of teacher contracts.

(1) In this section:

- (a) "Board" means a school board, technical college district board, board of control of a cooperative educational service agency or county children with disabilities education board, but does not include any board of school directors in a city of the 1st class.
- (b) "Teacher" means any person who holds a teacher's certificate or license issued by the state superintendent or a classification status under the technical college system board and whose legal employment requires such certificate, license or classification status, but does not include part-time teachers or teachers employed by any board of school directors in a city of the 1st class.

(2) On or before May 15 of the school year during which a teacher holds a contract, the board by which the teacher is employed or an employee at the direction of the board shall give the teacher written notice of renewal or refusal to renew the teacher's contract for the ensuing school year. If no such notice is given on or before May 15, the contract then in force shall continue for the ensuing school year. A teacher who receives a notice of renewal of contract for the ensuing school year, or a teacher who does not receive a notice of renewal or refusal to renew the teacher's contract for the ensuing school year on or before May 15, shall accept or reject in writing such contract not later than the following June 15. No teacher may be employed or dismissed except by a majority vote of the full membership of the board. Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the board. No such board may enter into a contract of employment with a teacher for any period of time as to which the teacher is then under a contract of employment with another board.

(3) At least 15 days prior to giving written notice of refusal to renew a teacher's contract for the ensuing school year, the employing board shall inform the teacher by preliminary notice in writing that the board is considering nonrenewal of the teacher's contract and that, if the teacher files a request therefor with the board within 5 days after receiving the preliminary notice, the teacher has the right to a private conference with the board prior to being given written notice of refusal to renew the teacher's contract.

History: 1971 c. 154; 1981 c. 223; 1983 a. 189; 1993 a. 399, 492; 1995 a. 27 s. 9145 (1); 1997 a. 27, 164; 2011 a. 10, 114.

Notice of intent not to renew that part of a contract providing extra pay for extra work as a coach is not necessary.

*Richards v. Sheboygan Board of Education*, 58 Wis. 2d 444, 206 N.W.2d 597 (1973).

Under the facts of the case, the failure to timely provide notice of the right to a private conference under sub. (3) did not provide sufficient grounds to issue a writ of mandamus. *Rawhouser v. CESA No. 4*, 75 Wis. 2d 52, 248 N.W.2d 442 (1977).

In the absence of evidence of a school board's bias, the trial court had no jurisdiction to hold a de novo hearing regarding the competence of a teacher facing nonrenewal under sub. (3). *Naus v. Sheboygan Falls Joint School District No. 1*, 76 Wis. 2d 104, 250 N.W.2d 725 (1977).

Arbitration was proper under a "discharge and nonrenewal" clause in a collective bargaining agreement when the school board did not offer teacher a second contract after rejecting a contract that was signed and returned by the teacher with the title "probationary contract" crossed out. *Jefferson Joint School Dist. No. 10 v. Jefferson Education Association* 78 Wis. 2d 94, 253 N.W.2d 536 (1977).

Under sub. (2), a board has the exclusive right to hire and fire a teacher. Due process does not require that the board be an impartial decisionmaker. *Hortonville Education Association v. Hortonville Joint School District No. 1*, 87 Wis. 2d 347, 274 N.W.2d 697 (1979).

An employment contract that recites that a teacher's employment will not be renewed cannot be construed as a waiver of rights granted by this section. There is a presumption of good faith applicable to a board's decisions. *Faust v. Ladysmith-Hawkins School Systems*, 88 Wis. 2d 525, 277 N.W.2d 303, 281 N.W.2d 611 (1979).

The layoff of a teacher is not the equivalent of a "refusal to renew" when a collective bargaining agreement under s. 111.70 contains layoff provisions incorporated in the teacher's contract. *Mack v. Joint School District No. 3, Hales Corners*, 92 Wis. 2d 476, 285 N.W.2d 604 (1979).

Arbitrators appointed pursuant to the grievance procedure contained in a collective bargaining agreement properly held a de novo factual hearing to determine whether just cause existed for the school board to terminate a teacher. *Fortney v. School District of West Salem*, 108 Wis. 2d 167, 321 N.W.2d 255 (1982).

A teacher who forgot to accept an employment offer under s. 118.22 (2) and who was consequently terminated did not voluntarily terminate employment under s. 108.04 (7). *Nelson v. LIRC*, 123 Wis. 2d 221, 365 N.W.2d 629 (Ct. App. 1985).

Sub. (2) requires written notice of nonrenewal. A district must follow the explicit written notice requirement. *Sterlinske v. School District of Bruce*, 211 Wis. 2d 608, 565 N.W.2d 273 (Ct. App. 1997), 96-2624.

A "private conference" under sub. (3) on nonrenewal of teacher's contract is a "meeting" within s. 19.82 (2). 66 Atty. Gen. 211.

Civil rights; academic freedom; refusal to hire a nontenure teacher for a constitutionally impermissible reason. 1970 WLR 162.

Fairness of a hearing before a school board on nonrenewal of a teacher's contract. 1971 WLR 354.

Menu



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Menu

Wisconsin School District Record of Fire/ Tornado/ School safety/ Other Evacuation Drills

Dates: From September 2021- June 2022

School District: Lakeland School of Walworth County
School Name: Lakeland School
Address: W3905 Count Road NN, Elkhorn, WI 53121 Municipality: Geneva Township County: Walworth

Table with columns: Date of Drill, Time of Drill, Evaluation Time (min/sec), # Students, # Adults, Fire Dep Invited?, Type of Drill (Fire, Tornado, School Safety, Other), Evacuation Drill Remarks (Attach Sheet if necessary)

On this form, or as an attachment, please note any deficiencies concerning: (1) the performance of alarm equipment; (2) staff functions; (3) student performance; (4) obstructions; or (5) other factors which may pose a safety hazard or affect the efficient, orderly exiting from the building. Use of this form is mandated per section 118.07 (2) (b) of the Wisconsin Statutes for annual reporting to the fire department. The person having direct charge of the school is responsible for ensuring correction of deficiencies.

School Official's Name: Trish McCullough
School Official's Signature: Trish McCullough
Title: Assistant Director- Principal
Date: