

Enrollment Options and IDEA Obligations

In 1990, the Idaho legislature enacted Idaho Code 33-1402 entitled “Enrollment Options.” This statute addresses the enrollment options available to an Idaho student’s parent or guardian who determines it is in the best interest of the student to attend a school within a nonresident school district (referred to as nonresident or receiving school district).

The enrollment options provisions apply to all Idaho students, regardless of disability. Once a student has been accepted and enrolled in a receiving school district, the student has the same rights, entitlements, responsibilities, and privileges as all other students enrolled in that school district, including all due process rights.

The enrollment options statute must be distinguished from the dual enrollment statute, found at Idaho Code 33-203.¹

As more parents choose to enroll their children in online programs or virtual schools offered by Idaho school districts, this Q & A is intended to assist school districts in addressing the special needs of those students who qualify for an Individualized Education Program (IEP) under the Individuals with Disabilities Education Act (IDEA).

This guidance addresses those instances when a parent or guardian of a student with a disability determines that it is in the student’s best interest to attend a school within a nonresident Idaho district, including online programs operated by another Idaho school district.² School districts in Idaho refer to enrollment options in various ways, including open enrollment, non-resident enrollment, and out of district enrollment. For the purposes of this Q & A, the term “open enrollment” will be used.

¹ Information regarding dual enrollment can be found in the [Dual Enrollment Q&A](#).

² Idaho Code 33-1402 was amended in 1993 to allow parents, through a district’s enrollment options policies, to request that their child attend another school within the resident district. However, this provision is not discussed in this Q & A.

Definitions

For the purposes of this Q & A, the following definitions apply:

Child Find:	An Individuals with Disabilities Education Act (IDEA) requirement that all children with disabilities who are in need of special education and related services are identified, located, and evaluated. ³
Enrollment:	Those students attending an Idaho school district by following the enrollment process established by its board.
Free Appropriate Public Education (FAPE):	The provision of special education and related services that are: 1) provided at public expense without charge to the parent and provided under public supervision and direction; 2) meet the standards of the Idaho State Department of Education (SDE); 3) include an appropriate preschool, elementary school or secondary school education in Idaho; and 4) are provided in conformity with an IEP. ⁴
Home district (resident district):	The school district of the student’s residence. ⁵
Idaho school district:	A traditional school district or a public charter school in Idaho authorized by state law to provide educational services to public elementary or secondary students. A school district is also defined as a local educational agency (LEA). ⁷
Idaho Special Education Manual:	A manual developed by the Idaho State Department of Education and approved by the Idaho State Board of Education which Idaho school districts have adopted as policy.
Individuals with Disabilities Education Act (IDEA):	A federal law ensuring appropriate educational services are provided to children with disabilities. ⁶
Nonresident public school student (nonresident student):	A student who meets the definition of school age, is attending preschool through grade twelve, and is enrolled in a nonresident Idaho public school district through that district’s open enrollment policy. ⁷

³ 34 CFR 300.111; *Idaho Special Education Manual 2018, Glossary at xiv.*

⁴ 34 CFR 300.17; *Idaho Special Education Manual 2018, Glossary at xix.*

⁵ *Idaho Code 33-1401(3).*

⁶ *Idaho Special Education Manual 2018, Glossary at xxii.*

⁷ *Idaho Code 1401(5).*

Definitions

Online school:	An Idaho public school district program or school offered in the home through an online program to resident and nonresident students.
Open Enrollment:	The enrollment of a nonresident student through an Idaho school district’s enrollment options program, as set forth in Idaho Code 33-1402.
Parent:	A biological or adoptive parent, a foster parent, a guardian authorized to act as a child’s parent, an individual acting in the place of the biological or adoptive parent with whom the child lives or is legally responsible for the child’s welfare, or an appointed surrogate parent. ⁸
Resident public school student (resident student):	A student who meets the definition of school age, is attending preschool through grade twelve, and is enrolled in the Idaho public school district in which the student’s parent or guardian resides. ⁹
Section 504 of the 1973 Rehabilitation Act (Section 504):	A federal law that protects the rights of individuals with disabilities in programs and activities receiving Federal financial assistance from the U.S. Department of Education. ¹⁰

OPEN ENROLLMENT POLICIES



Question 1: What is open enrollment?



Answer: Open enrollment, as set forth in the enrollment options statute, allows a parent or guardian to apply to another Idaho school district for their child’s attendance.¹¹ School districts in Idaho refer to enrollment options in various ways, including open enrollment, non-resident enrollment, and out of district enrollment. For the purposes of this Q & A, the term “open enrollment” will be used.

⁸ 34 C.F.R. 300.30.

⁹ Idaho Code 33-1401(2).

¹⁰ Idaho Special Education Manual 2018, Glossary at xxxi.

¹¹ Idaho Code 33-1402.



Question 2: Is an Idaho school district required to have an open enrollment policy that allows nonresident students to apply for enrollment?



Answer: No. By resolution of its board of trustees, any Idaho school district may opt not to receive students through an open enrollment program. However, a school district may not take any action to prohibit or prevent application by resident students to attend school in another school district, or to attend another school within the home district.¹²



Question 3: Is a school district required to have a policy if it elects to enroll nonresident students?



Answer: Yes. A district is required to have a written policy which defines the hardship impact on the district or on individual schools within the district. The policy must also provide specific standards for acceptance and rejection of applications for accepting out of district students.¹³ The policy must be nondiscriminatory and allow equal opportunity for participation for students with disabilities.¹⁴



Question 4: Can a school district set limits on the number of nonresident students it will receive in its open enrollment policy?



Answer: Yes. Each school district's policy must provide specific standards for the acceptance and rejection of applications. Standards may include the capacity of the program, class, grade level or school buildings. Standards may not include previous academic achievement, athletic or other extracurricular ability, disabling conditions, or proficiency in the English language.¹⁵



Question 5: Can a school district's policy state that students with disabilities will not be accepted, as the district's special education program is full?



Answer: No. The specific standards for the acceptance and rejection of student applications may not include considerations of whether a student has a disability, has an IEP, had an IEP, or may need an IEP in the future. To do so fails to allow equal opportunity for participation by students with disabilities and is discriminatory.¹⁶

¹² Idaho Code 33-1402.

¹³ Idaho Code 33-1404.

¹⁴ 34 CFR Part 104.

¹⁵ Idaho Code 33-1404.

¹⁶ 34 CFR Part 104.



Q6: Can a school district’s policy state that nonresident students who have been on an IEP in the past, or who may need an IEP in the future will not be accepted under its open enrollment policy?



Answer: No. The specific standards for the acceptance and rejection of student applications may not include considerations of whether a student has a disability, has an IEP, had an IEP, or may need an IEP in the future. A student who has, or is perceived to have, a disability may not “be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity.”¹⁷



Q7: Can a school district’s policy exclude a student with disabilities from applying for open enrollment due to the increased cost that may be incurred?



Answer: No. A district’s blanket rejection of nonresident students with disabilities whose attendance might increase its costs violates Section 504 by subjecting students with disabilities to a different standard if the district does not also apply this same standard to students without disabilities.¹⁸



Q8: Can a school district’s policy deny enrollment to a nonresident student based on a determination that the student’s special education file does not meet current district standards?



Answer: No. A district’s blanket rejection of nonresident students with disabilities whose special education file is determined not to meet current district standards violates Section 504 by subjecting students with disabilities to a different standard if the district does not also apply this same standard to students without disabilities.¹⁹

ENROLLMENT PROCESS AND RESPONSIBILITIES



Question 9: How does a parent enroll a student in a nonresident school district?



Answer: An annual application must be submitted to the nonresident school district, with notice to the home district. Although the enrollment options statute provides that a student’s application and accumulative record must be submitted to the receiving school district by February 1 for enrollment during the following school

¹⁷ 42 USC 12132; 29 USC 794(a).

¹⁸ 34 CFR 104(b)(4)(i); 28 CFR 35.130(b)(3)(i); Cuyahoga Heights (OH) Local School District, 113 LRP 32259 (OCR 2013).

¹⁹ 34 CFR 104(b)(4)(i); 28 CFR 35.130(b)(3)(i); Cuyahoga Heights (OH) Local School District, 113 LRP 32259 (OCR 2013).



Question 9: How does a parent enroll a student in a nonresident school district?

year, the deadline may be waived upon agreement between the resident and nonresident school boards.²⁰



Question 10: When a nonresident school district accepts a student through its open enrollment policy, what responsibilities does the resident school district have towards the student?



Answer: The resident school district has no responsibility to provide the student with a free appropriate public education (FAPE), as the student is not enrolled in the resident district.²¹ However, the resident school district continues to have child find obligations.²²



Question 11: When a nonresident school district accepts a student through its open enrollment policy, what responsibilities does the nonresident school district have towards the student?



Answer: Upon enrollment, the nonresident school district assumes all responsibilities for the nonresident student, and the nonresident student receives the same rights, entitlements, and privileges as all other students enrolled in the nonresident school district. The nonresident school district also has child find obligations.²³



Question 12: A student applied for open enrollment last year, and was accepted, but failed to enroll. The student is applying again this year to the same nonresident school district. Is the district required to consider the student for open enrollment this year?



Answer: No. A student who applied and was accepted in a nonresident school district but failed to attend is ineligible to again apply for open enrollment in that nonresident school district.²⁴

²⁰ Idaho Code 33-1402.

²¹ Dutkevitch v. Pennsylvania Cyber Charter School, 57 IDELR 32 (M.D. Penn. 2011).

²² 34 CFR 300.111; Idaho Special Education Manual 2018, at 21.

²³ Idaho Special Education Manual 2018, at 21.

²⁴ Idaho Code 33-1402.

OPEN ENROLLMENT AND ONLINE SCHOOLS



Question 13: An Idaho school district has an online school in which students throughout Idaho can enroll. Does the district's open enrollment policy apply to the online school?



Answer: Yes. District policies apply to all schools and programs within a district. The policies apply equally to resident and nonresident students enrolled in the online school.



Question 14: Can a school district set specific qualification criteria for enrollment in its online program for nonresident students?



Answer: It depends. A district may set specific criteria for enrollment in its online program, but it may not deny a nonresident student enrollment because the student has an IEP or may be in need of special education services.

For example, a district's policy for its online program requires that all students wishing to enroll must be Idaho residents and must seek enrollment by a certain date. A student on an IEP who meets the Idaho residency requirement and has met the application deadline has the right to be enrolled in the online school to the same extent as any other Idaho student who has met the enrollment criteria. Further, the student's IEP must be fully implemented while attending the online school.

CHILD FIND RESPONSIBILITIES



Question 15: Does a school district have child find responsibilities when a nonresident student enrolls through its open enrollment policy?



Answer: Yes. A school district has the same responsibilities for child find for a nonresident student enrolled in the district as it does for all other enrolled students.



Question 16: Does the home district have any child find responsibilities to a student who enrolls in a nonresident school district through its open enrollment policy?



Answer: Yes. Both the home district and the nonresident district where the student is enrolled have child find responsibilities.²⁵

²⁵ Idaho Special Education Manual 2018, at 21.



Question 17: Does a school district have child find obligations for nonresident students enroll in its online school?



Answer: Yes. The IDEA requirements, including child find, apply to students with disabilities attending public online programs to the same extent that they apply to students attending traditional brick and mortar schools.²⁶

PROVISION OF SPECIAL EDUCATION SERVICES



Question 18: A district's open enrollment policy provides for an 18:1 student/teacher ratio for those students on an IEP. Can the district deny a nonresident student on an IEP from enrolling in the district's online school because the ratio has been met?



Answer: It depends. A district may not summarily deny admission simply on the student/teacher ratio set forth in its open enrollment policy. A district must conduct a review of each student's needs and make an individualized determination.

For example, the IEP of a 6th grade student with a specific learning disability provides that the student is in the regular classroom for the entire school day except for 30 minutes daily of resource room services. The district's open enrollment policy sets a student/teacher ratio for 6th grade at 28:1. The district will need to consider both the student/teacher ratio for 6th grade, as well as the ratio set forth for students on an IEP.



Question 19: Must a nonresident school district ensure that all IEP requirements are met for a student with a disability enrolled through its open enrollment policy?



Answer: Yes. A district's responsibilities include ensuring that all IEP requirements are met, including those governing IEP content, IEP team participants, parent participation, when IEPs must be in effect, consideration of special factors, the development, review, and revision of IEPs, secondary transition services and participation in State and districtwide assessment programs.²⁷

²⁶ Dear Colleague Letter, 68 IDELR 108 (OSERS/OSEP 2016).

²⁷ 34 CFR 300.320-300.324; Dear Colleague Letter, 68 IDELR 108 (OSERS/OSEP 2016).



Question 20: What obligation does a school district have to ensure least restrictive environment (LRE) requirements are met for a nonresident student enrolled through its open enrollment policy?



Answer: A school district that enrolled a nonresident student through its open enrollment policy is obligated to implement all IDEA requirements, including LRE, and ensure the availability of a continuum of alternative placements to provide special education and related services.²⁸ Each student's IEP must also include an explanation of the extent to which the student will not participate with nondisabled students in the regular class and not participate in extracurricular and nonacademic activities.²⁹



Question 21: What obligation does a school district have if an enrolled nonresident student's IEP team determines the educational program in the district is not the appropriate placement for the student?



Answer: The nonresident district has an obligation to provide each enrolled student with a disability with FAPE in the LRE.

For example, if a student is enrolled in a nonresident district's online school, and the IEP team determines that the online school is not the appropriate placement for the Student, the district is obligated to implement the student's IEP as written. If the IEP team determined that an in-person educational program was the appropriate placement for the nonresident student, the district would be obligated to provide such a program. This could entail contracting with another school district to provide the services. If the IEP team determined the student needed residential placement, the nonresident district that enrolled the student would be responsible for the payment and oversight of the residential school to ensure the student receives FAPE.

DENIAL OF ENROLLMENT AND DISENROLLMENT



Question 22: If, after accepting a student through its enrollment options policy, it is determined that the student needs special education and related services, can the nonresident school district disenroll the student?



Answer: No. When a nonresident district accepts a student through its open enrollment policy, the district is required to treat that student in the same manner as all other enrolled students. During the period of time the nonresident student is enrolled in the district the student has the same rights, entitlements and privileges

²⁸ 34 CFR 300.114-300.117.

²⁹ 34 CFR 300.320(a)(4).



Question 22: If, after accepting a student through its enrollment options policy, it is determined that the student needs special education and related services, can the nonresident school district disenroll the student?

as all other students, including the entitlement to receive special education services.



Question 23: Is a nonresident school district obligated to evaluate and/or reevaluate a student with a disability who is enrolled in the district through its open enrollment policy?



Answer: Yes. The district's responsibilities include implementing the evaluation and reevaluation requirements.³⁰

DISCIPLINE



Question 24: Is a nonresident school district obligated to enroll a student who is currently under suspension or expulsion from another district?



Answer: No. Students under suspension or expulsion are ineligible for open enrollment.³¹



Question 25: Can a nonresident school district elect to disenroll a student attending through its open enrollment policy for disciplinary reasons?



Answer: No. Students enrolled in a nonresident school district through its open enrollment policy are entitled to the same due process rights as all other students enrolled in the district.³²

For Questions Contact

Special Education

[Idaho State Department of Education](#)

650 W State Street, Boise, ID 83702

208.332.6800

³⁰ 34 CFR 300.301-300.305.

³¹ Idaho Code 33-1402.

³² Idaho Code 33-205.