

OPEN ENROLLMENT

QUESTIONS and ANSWERS

February 2015

Questions and Answers

Intra-District Open Enrollment

Q1: What is “Intra-district” open enrollment?

A1: Intra-district open enrollment includes all school buildings within the district. All school districts in Ohio must participate.

Q2: Can students admitted under Inter-district open enrollment participate in Intra-district open enrollment?

A2: Yes. There is nothing to prohibit this from occurring.

Q3: Do the rules on racial balance apply to both Inter-district and Intra-district open enrollment?

A3: Yes, the guidelines are the same.

Q4: If our district only has one building for all students, do we need to adopt an Intra-district open enrollment policy?

A4: No, simply submit the Open Enrollment Certification indicating the district has only one building.

Q5: If a grade level of a school building reaches the capacity limit established in the district policy, does this school need to accept new applicants for this grade?

A5: No, once building capacity is reached, the district does not have to consider new applicants. Students already enrolled or living in the attendance region of the school must be given preference over new applicants.

Questions and Answers

Inter-District Open Enrollment

General

Q1: What is “Inter-district” open enrollment?

A1: Inter-district open enrollment allows students from adjacent or other school districts to attend a school in the district even though those students are not “native” to the district. All school districts, including joint vocational school districts, must adopt a resolution either prohibiting or allowing students from adjacent or other districts to attend in their district.

Q2: What is the application procedure?

A2: School districts are responsible for creating their own application, procedure and timeline. Open enrollment procedures and timelines should be Board adopted and included in Board policy and procedures documents. The key is for the district to follow whatever procedures and timelines they develop.

Q3: When can a participating open enrollment district refuse to enroll a student?

A3: A student can be refused in order to maintain racial balance in a particular school building. The district should specify criteria used to determine racial balance in its Board policy. Classroom capacity may also be a reason for denying admission, provided the district has defined the capacity limits of their buildings/grades in their open enrollment policy. If a student has been suspended or expelled for ten consecutive days or more during the current or preceding term for which they are requesting admission, the district may deny admission. Special education students may be refused admission if the needed programs are not offered or space is not available.

Q4: Can a part-time or full-time post-secondary options student participate in open enrollment?

A4: Yes. The student is entitled to attend the same as any other student. The student has all the rights and privileges of any resident student.

Q5: Can a nonpublic student participate in open enrollment?

A5: No, a nonpublic student may not participate in open enrollment. A student must be enrolled in their resident district to participate in open enrollment.

Q6: Can a senior participating in open enrollment go back to their resident district for graduation?

A6: Yes, a resident senior may return at any time during the school year. The resident district would need to decide if the returned resident student has met all of its requirements for graduation. When the student returns to the resident district, he or she is no longer an open enrollment student.

- Q7: Is a student guaranteed participation in open enrollment in future years once they have been accepted?
- A7: Students apply for open enrollment on an annual basis. Each year the attending district may limit enrollment due to capacity or decide not to participate in open enrollment. However, students enrolled in the previous year when open enrollment is continued, must be given priority.
- Q8: Can the attending district develop a policy which restricts open enrollment students from participating in opportunities which are available to resident students (e.g. early graduation)?
- A8: No. A district cannot adopt policies, which would restrict open enrollment students from participating in any opportunities provided to resident students except those limitations allowed in Revised Code section [3313.98](#).
- Q9: Can an open enrollment student return to the resident district if expelled from the attending district?
- A9: Yes, unless the State Superintendent of Public Instruction permanently expels a student pursuant to Revised Code section [3313.662](#), which includes the conviction of certain criminal offenses.
- Q10: Can an open enrollment district adopt a policy requiring that open enrollment students stay for a full year? Can the resident district stop an open enrollment student from returning in the middle of the year?
- A10: No. A student is legally entitled to return to his resident district at any time.
- Q11: Which district is responsible for issuing a work permit?
- A11: The resident district per Revised Code section [3331.01](#).
- Q12: Could a district continue to operate an academic cooperative if they do not participate in open enrollment?
- A12: Yes. (See Revised Code section [3313.842](#))
- Q13: If a student enters a district via the “grandparent rule” and subsequently attends an adjoining district through open enrollment, which district is responsible for paying the open enrollment amount?
- A13: The district of residence of the parent is responsible and should be identified in EMIS. It appears if this were the situation, the “grandparent rule” would no longer apply and should be declared null and void for this student.
- Q14: Can a district that is participating in open enrollment adopt a policy that would deny enrollment of pupils after the start of the school year?
- A14: Yes, if it is explained in the application process. If the district accepts students at the start of the second term, they need to make applicants aware and require the pupils to meet the application time lines.

Q15: If a district decides not to participate in open enrollment, can the district continue to accept tuition students from both adjacent and non-adjacent school districts?

A15: Yes. A district not participating in open enrollment can continue to accept tuition students from both adjacent and non-adjacent school districts.

Q16: If a district does not participate in open enrollment, can the district continue an agreement with the teacher's union to admit children of full-time employees' tuition free?

A16: Yes. Children of employees are not accepted under open enrollment, rather they should be accepted "tuition-free" under a specific admission policy adopted by the Board (see Revised Code section [3313.64\(F\) \(8\)](#)). It is not necessary to have this admission policy included in collective bargaining agreements.

Q17: Are preschool children eligible to open enroll in another district that has an open enrollment policy?

A17: Typically developing preschool students do not meet the compulsory attendance requirements in [ORC 3321.19 \(A\) \(1\)](#) and therefore cannot open enroll because they are not eligible to attend tuition free in their resident district. Preschool handicapped children are eligible for open enrollment because they are entitled to F.A.P.E. and are eligible to attend school in their district pursuant to ORC 3313.64.

Please note that no funding is transferred from the resident district to the educating district because preschool students are not counted in the resident district's ADM. The educating district would have to file for preschool tuition to get reimbursed. The "tuition" would equal all district costs because the educating district received no state or local funding. Rather than waiting for preschool tuition to be reimbursed, the educating district could contract and direct bill the district of residence.

Q18: If a kindergarten student is involved in open enrollment, what is the FTE for this student? Does all-day, every day kindergarten make a difference? Handicapped?

A18: Kindergarten students are counted as 1.0 FTE. The fact that the school has all-day, every day kindergarten does not enter into the situation. If the child is handicapped, he/she is still reported as 1.0 FTE.

Q19: Can a student in a foreign exchange program participate in open enrollment?

A19: Yes. Foreign exchange students are considered residents of the district in which they are residing [see ORC section es. Foreign exchange students are considered residents of the district in which they are residing [see ORC section [3313.64\(G\) \(2\)](#)] and therefore should be counted in resident district's ADM. This also means that foreign exchange students have all of the rights and privileges of any other resident students, including open enrollment. Note: The resolution passed by the board accepting the foreign exchange student should say that it won't charge the host family tuition.

Q20: Can a newly entering kindergarten student open enroll into a new educating district when the student does not meet the age eligibility requirements of the resident district?

A20: No. In order to open enroll in another district, the student first must be eligible to attend school in the resident district (otherwise, the student could not be counted in the resident district's ADM.) However, effective 09/24/2012 HB 312 says a student who has already been admitted to kindergarten in their resident district cannot be denied admission to another district's kindergarten program based on age.

- Q21: Could a student open enroll from a resident district in northwest Ohio to an educating district in southeast Ohio and live with a person who is not a parent and be eligible for open enrollment funding?
- A21: Yes. There is no distance or time limitation to participate in open enrollment. It is not an open enrollment requirement the student reside with natural or adoptive parents. However, there may be other provisions of law that require a minor child to have a guardian or other supervision.
- Q22: If the district of residence is questioned, who verifies residency?
- A22: Our position is that the educating district must verify and proof district of residency if questioned. At the very least, the educating district should provide the address used as the basis for determining the district of residence.
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Funding

- Q23: Can a student open enroll part of the day?
- A23: A student can open enrolled part-time but cannot be enrolled in multiple districts. There is one exception, a student can open enroll into a JVS part-time and also be enrolled part-time in a traditional school district.
- Q24: If adjacent districts participate in open enrollment, but are not members of the same JVSD, can a student choose the other district for the purpose of attending a different JVS?
- A24: Yes. The attending JVS would need to adopt an open enrollment policy the same as other public schools.
- Q25: If a district has an open enrollment policy and also a policy which admits employee children free of charge, can that district count these children on their ADM and still count them as open enrollment students?
- A25: Children of employees are counted as if they are residents of the district where they work and therefore should be counted in the ADM. Children of employees cannot open enroll into the district where their parents work. Children of employees must also be admitted prior to accepting open enrollment students from other districts.

- Q26: Which district reports the open enrollment student and which district receives the deduction via EMIS reporting?
- A26: The student is reported on the resident district's ADM for funding purposes. Both the resident district and educating district must report the student in EMIS as instructed in the EMIS Manual. When the educating district reports the student in EMIS and points to the district of residence, the resident district receives a deduction which is used to pay the educating district.
- Q27: What will be the amount of money that will be deducted from the resident district and how much will the sending district receive?
- A27: A fixed amount established by the General Assembly via the budget bill will be subtracted from the resident district and given to the educating district. If the student is not open enrolled for the full year, a percentage of the amount established by the General Assembly will be deducted. The sending district (a.k.a. the resident district) should count the student in its ADM and would receive its per pupil basic aid amount which could be different than the fixed amount established by the General Assembly.
- Q28: If a student is a resident of and is enrolled in District A, and enrolls in district A's VEPD, then open enrolls to a different district and attends a VEPD in the new district that is not part of the jointure, how should the student be reported and how will the student be funded?
- A28: District of Residence reports student in October Count as an Open Enrollment Student. Educating VEPD reports the student as one of its students. Funding for the student goes to DOR and then is transferred to the educating VEPD through the Open Enrollment process. The 20% goes to the educating district where the student is enrolled – funding is provided to cover the administrative costs for the student. The student would receive a diploma from the educating district where the student is enrolled. If the student is handicapped, the same reporting and funding flow applies. Weighted funding is not transferred through the open enrollment process. The educating VEPD can also bill excess costs back to the student's district of residence. The student should receive a diploma from the most recent district in which he/she was enrolled.
- Q29: If a student is a resident of District A, enrolls in District A's VEPD, and then open enrolls directly to the VEPD in a new district that is not part of the jointure, how should the student be reported and how will the student be funded?
- A29: District of Residence reports student in October Count as an Open Enrollment Student. Educating VEPD reports the student as one of its students, but points to the district of residence rather than to a district it serves. (EMIS allows for this to happen). Funding for the student goes to DOR and then is transferred to the educating VEPD through the Open Enrollment process. The 20% stays with the resident district because the student did not open enroll into a district served by the new VEPD where the student open enrolled. (This is provided to cover the administrative costs for the student.) The student would receive a diploma from the district of residence, since that is the district where the student is enrolled. If the student is handicapped, the same reporting and funding flow applies. Weighted funding is not transferred through the Open Enrollment process. The educating VEPD can bill excess costs back to the student's district of residence. The student should receive a diploma from the most recent district in which he/she was enrolled.

- Q30: If a child open enrolls from district "A" to district "B" and then gets court placed in a JDC/DYS, should district "B" continue to count that student as OE during this confinement period?
- A30: It is assumed that the court order will name the resident district, district A, as the district responsible for the cost of the education during the period of incarceration. If the court order names district B, then district B is responsible. If resident district (A) is responsible, the educating district (B) should reduce the open enrollment FTE for the student via EMIS reporting by the number of days the student is in DYS. This would result in the resident district paying the educating district for part of the year and the DYS for the balance of the year, avoiding being double billed.

Racial Balance

- Q31: Do the rules on racial balance apply only to court ordered desegregation districts?
- A31: No. Racial balances apply to any district with minority composition in the district.
- Q32: If the school district is not under a desegregation court order, is there any legal requirement that compels the district to maintain racially balanced schools?
- A32: Any school district that has a building whose minority composition varies significantly from the district's average minority composition needs to be aware of the potential of creating an inappropriate racial balance.
- Q33: Which districts qualify to object to the enrollment of native students in an adjacent or other district in order to maintain an appropriate racial balance? Does this include all minorities?
- A33: Districts that are under desegregation plan and monitored by EEO or are under desegregation court orders. Appropriate racial balance is where all buildings in the district do not differ significantly in their minority composition. This includes all minorities.
- Q34: Is the plus or minus (+ or -) 15% going to remain the factor for determining an appropriate racial balance and what is the authority for this percentage?
- A34: Plus or minus (+ or -) 15% is only a factor if the district chooses to use it. Plus or minus 15% is a factor obtained from a federal court case and adopted by the state board. Local school boards should make a decision about what they are going to use as a measure for appropriate racial balance.
- Q35: When can a district object to the enrollment of students from an adjacent or other district in order to maintain an appropriate racial balance?
- A35: Any district may object to students leaving a district in order to maintain an appropriate racial balance. It is recommended that if a district wishes to object, the Board adopt a policy as part of its open enrollment plan, which forms a basis for objection.
- Q36: Can a school district include a question about the race of a student? How will the enrolling district determine if enrolling a student will disturb the racial balance of an adjacent district?
- A36: Yes, race can be asked on the application form.

Q37: In a subsequent year of open enrollment, a resident district decides to object to their native students leaving because this would have a negative impact on their racial balance. Can the native district do this?

A37: Yes.

Q38: Of the remaining students allowed to participate, must the attending district give preference to the students who attended the previous year?

A38: Yes.

Special Education

Q39: Does an open enrollment district have to accept a special education student?

A39: Yes, but only if the district has the available services necessary to meet the needs of the student's IEP.

Q40: Which district is responsible for instruction and which district receives the State subsidy for special education services for a student with an IEP and receiving home instructions (which could be the attending district)?

A40: The resident district is responsible for instruction and may contract with another district for those services.

Q41: If a participating open enrollment district provides extended year programs for special education students, is it obligated to accept an open enrollment student requiring an extended year program identified by an IEP? Can the attending district charge the excess cost back to the resident district?

A41: Yes. The attending district must offer the same programs to open enrollment students unless the class capacities have been reached. If the student is in special education, the attending district is permitted to charge the resident district for any excess costs provided there is a contract in place.

Q42: Can the resident district refuse to pay excess cost for a student who is identified as handicapped after enrolling in an adjacent or other district if they provide the same service?

A42: No. The resident district would be responsible for the excess cost and may not refuse this responsibility.

Q43: Can maximum class size for special education classes be increased for open enrollment purposes?

A43: No. Class size is dictated by rule and cannot be changed for open enrollment purposes.

Transportation

Q44: Is the attending district required to provide transportation?

A44: Yes, but only from an existing bus stop within the district. Transportation from outside the district is the responsibility of the parent(s). The attending district is responsible to transport open enrollment students inside the district only for the same grade levels that they transport their own students.

- Q45: Is the attending district required to transport handicapped students participating in open enrollment?
- A45: Transportation from outside the district is the responsibility of the parent(s) unless the IEP calls for "special transportation." Cooperative transportation can be worked out between the attending and resident district.
- Q46: May a board of education transport open enrollment students of another district?
- A46: Yes. Revised Code section [3327.05](#) permits a district to transport students attending through open enrollment without obtaining permission from the resident board of education.
- Q47: Will a district receive State transportation subsidy when entering an adjacent or other district and transporting non-resident open enrollment pupils to school?
- A47: Yes. (See Administrative Code section [3301-83-01](#).)
- Q48: Can a homeschooled student open enroll?
- A48: *Technically yes*, but once accepted by another district the homeschooled student loses their homeschooled status. A student cannot be homeschooled and open enrolled into another district at the same time. At the discretion of the Board, homeschooled students can enroll part-time in their district of residence in order to take some classes and still keep their homeschooled status. However, homeschooled students cannot open enroll into another district and still be excused from compulsory education by their district of residence.
- Q49: Can a district not accept a returning open enrollment student because of high absenteeism?
- A49: No. [ORC 3313.98\(C\)\(4\)](#) does not allow open enrollment applicants to be rejected for disciplinary reasons so it would be logical and consistent with State statute that districts would not be allowed to reject students for absenteeism. In general, the law gives open enrollment students the same rights as "native" students. A district could not tell one of its own students that he or she cannot re-enroll in the upcoming school year because they were chronically absent in the past school year.
- Q50: Can a student who does not meet the age requirement for entry into kindergarten in his or her district of residence open enroll into another district?
- A50: No. In order for a student to open enroll into another district, that student must first be eligible to enroll in their resident district.
- Q51: Can a student enroll part-time in one district or community school and part-time in another district or community school?
- A51: No. While the law does not specifically address part-time enrollment, ORC [3321.04](#) says every parent of a compulsory school age child must send such child to a school or a special education program. ODE has interpreted this statute to mean students cannot enroll in more than one district or community school at the same time unless specifically allowed elsewhere in statute (i.e., JVSD).

Q52: Can districts or community schools enroll students on a part-time basis?

A52: Yes. While students cannot be enrolled in more than one school district or community school at the same time, there are certain situations where students can and should be enrolled part time. For example, part-time kindergartens, JVSD students, homeschool students who want to take a few classes, and seniors who meet graduation requirements. Absent a statutory requirement, it would be up to the local board to decide the conditions and circumstances for when to allow part-time enrollment.

Q53: Is there part-time open enrollment?

A53: Yes. Because the open enrollment statute does not specify whether or not a student can open enroll part-time in another district, it is open to interpretation by ODE. *In general, if a district allows native students to enroll part-time, than it could accept open enrollment students on a part-time basis. The key is that native students and open enrolled students must be treated the same.* If a district does not allow its native students to enroll part-time, then it cannot allow students from another district to open enroll part-time.

No student should be enrolled in their home district for part of the day and open enrolled in another district another part of the day. A student who open enrolls in another district is 100% enrolled in that district for their entire educational program regardless of whether the education program is full-time or part-time. If a student open enrolls into another district and then wishes to participate in a career tech program, he or she can attend the JVSD serving the district in which the student accepted open enrollment.

Q54: If a district has a policy under ORC [3313.64\(F\)\(8\)](#) or a contract provision that allows students of employees to attend the district, can the district instead accept students of employees through its open enrollment policy?

A 54: No. Because under the board adopted policy or the negotiated contract the students of the employees are already allowed to attend the district, the boards' open enroll policy does not apply to these students. Open enrollment is for students who would otherwise not be entitled to attend the district (unless accepted through open enrollment). Provisions in the employee bargaining agreement take precedence over both [3313.64\(F\)\(8\)](#) and [ORC 3313.98](#). Further, the specific provision for students of employees under [3313.64\(F\)\(8\)](#) takes precedence over the more general open enrollment statute (see 10/15/99 memo from Susan Tavakolian). ORC [3313.64\(F\)\(8\)](#) says that "No child may be admitted under this policy after the first day of classes...". Since after classes start, students of employees are no longer able to attend the district, they technically would be eligible to apply for open enrollment at that point.

The open enrollment statute defines "native student" as a student entitled under ORC [3313.64](#) or [3313.65](#) to attend school in the district. A "students of employees" policy or contract provision essentially makes the student of the employee a "native student" under the law, and a native student cannot open enroll into a district in which he or she is already allowed to attend. When a parent who works for a district chooses to enroll their child under their employer's adopted policy pursuant to ORC [3313.64\(F\)\(8\)](#) or employment contract provision, the students should be counted in the district's ADM and the "how received element" in EMIS should be "A" which is for "Non-resident Student-

Parent is a District Employee”. The district should not code these students as being open enrolled.

[It should be understood that ODE does not have the resources to detect violations or to enforce this position. When informed of potential violations of the code or local policy, the coordinator should investigate and report findings to the Director of Finance Program Services.]

Q55: Can students of employees be given preferential treatment in the open enrollment selection process?

A55: Our long standing position has been that districts cannot place additional restrictions or assign other priorities for the selection of open enrollment students. We realize that the law is subject to interpretation but coordinators are not attorneys and cannot give legal opinions.

OAC [3301-48-02\(A\)\(1\)\(b\)](#) says the open enrollment policy shall include “criteria for prioritizing applications ...” which suggests districts can give preferential treatment to students of employees as long as it is specified in policy. Further, [ORC 3313.98\(B\)\(2\)](#) says “A policy permitting enrollment of students from adjacent or from other districts, as applicable, shall provide for all of the following: ... (b) Procedures for admitting adjacent or other district applicants free of any tuition obligation to the district’s schools, including, but not limited to: ... (ii) A requirement that all native students wishing to be enrolled in the district will be enrolled and that any adjacent or other district students previously enrolled in the district shall receive preference over first-time applicants; ...” Because the law says “but not limited to”, a district could argue that it can put additional requirements in policy as long as they don’t violate other sections of the law, namely what is listed in [ORC 3313.98\(C\)](#).

While there has been an increased willingness for school boards to interpret the law in ways that increase revenue and allow districts to be “selective” in which students they open enroll. ODE position remains that the law intended the open enrollment selection process to be fair and nondiscriminatory.