OPEN ENROLLMENT IN KENTUCKY PUBLIC SCHOOLS
Questions and (Partial) Answers

In 2021, Kentucky state law was amended to add the following rule to KRS 158.120:

By July 1, 2022, a board of education shall adopt a nonresident pupil policy to govern the terms under which the district shall allow enrollment of nonresident pupils. Upon allowing nonresident pupil enrollment, the policy shall allow nonresident children to be eligible to enroll in any public school located within the district. The policy shall not discriminate between nonresident pupils, but may recognize enrollment capacity, as determined by the local school district. The nonresident pupil policy and any subsequent changes adopted by a board of education shall be filed with the Kentucky Department of Education no later than thirty (30) days following their adoption.

State law now provides that a district that enrolls a nonresident pupil will receive SEEK funding for that student. See below right for more about SEEK.

This handout shares answers to likely questions, aiming to be helpful to families and community members. Where answers seem clear, we’ve shared them. Where answers are unsettled, we hope we can contribute by identifying what’s not clear yet. You can also see the complete statute at tinyurl.com/KYNonresidentLaw.

1. I want to enroll my child in a school district that isn’t the one where we live. How do I make that happen?
2. Each school board has set its own policy, and each district may be handling applications a different way. That means you need to contact the school district where you want to enroll your child. Ask how that can be done, and ask for any documents that explain the process. You’ll also want to ask about transportation, because many districts will not offer bus service outside the district boundaries.

3. When can I apply, and when will I hear if my child can enroll?
The new law doesn’t settle that. You will need to ask the district where you want to enroll your child how they do it. Many policies suggest that families will hear soon after applying, but few set a specific timetable.

4. Once admitted, can my child stay in that district in later years?
The law doesn’t settle that. Some district policies provide that students will need to reapply each year.

5. Can the district where I want to enroll my child decide not to accept any nonresident students?
The answer is not completely clear. The Kentucky Department of Education has concluded that the new legal language means district policy must allow nonresident enrollment, as explained in Department guidance at tinyurl.com/KDENonresident. However, at least one district reads the law as allowing it to reject all applications from nonresident students. It may take a lawsuit or a change to state law to resolve this question.

6. What about the district where we live? Can our home district decide my child cannot enroll in another district?
No. Your residential district no longer has a say in your decision. That’s the most important change made by the new open enrollment law.

7. Can a district turn down nonresident students because its classrooms are full?
Yes. The new law says a district policy “may recognize enrollment capacity.” That means the district can turn down students from other districts if they do not have room in their classrooms for more students.

MORE ON SEEK FUNDING AND NONRESIDENT STUDENTS

Kentucky’s SEEK formula guarantees school districts $4,100 per student in average daily attendance, plus add-on amounts for added student needs. The guarantee is paid by combining local and state dollars. Specifically, districts contribute 30¢ per $100 of taxable property, and then the state pays the rest.

Enrolling a nonresident student will add $4,100 and any appropriate add-ons to a district’s SEEK guarantee. The local contribution will not increase (because it’s based on property assessments). Accordingly, the increased guarantee will be paid by higher state funding.

For the district where a nonresident student lives, the enrollment change will subtract $4,100 and any appropriate add-ons from the SEEK guarantee. The local contribution will not change, so the reduction in the guarantee will come from lower state funding. (To learn more about the SEEK formula, check out our explainer at tinyurl.com/PrichSEEK.)
8. Can a district turn down nonresident students for other reasons?

The answer is not completely clear. The new law says they can’t discriminate between nonresidential students. At the Prichard Committee, we think that means all students are to be admitted if the district has room for students in their grade. We think it would be discrimination if districts decided which students to admit based on past grades, test scores, talents, extracurriculars, disciplinary issues, or other factors besides being a student who wants to enroll.

However, many school districts currently have policies that do take factors like those into account. Often, the policies call for a family to share the student’s records, meet with the principal for a discussion, and then wait for the principal to decide whether the child can enroll. Sometimes, the policies add a right to appeal to the superintendent, the school board, or both. That indicates that they understand the law differently.

This is another issue that may have to be settled by the courts or by additional changes to state law.

9. Can a district give some groups of students priority for admission?

The answer is not completely clear. The new law says districts cannot discriminate between students. Some district policies currently say that students will get priority if their parents work for the school district or their siblings are already enrolled. The Prichard Committee thinks that’s a form of discriminating between students, but expects there will be discussion back and forth about other interpretations, and the issue may need to be resolved by court ruling or a change to the law.

10. Can a district charge tuition for nonresident students?

The answer is not completely clear. The new law says they can’t discriminate between students. The Kentucky Department of Education’s reasons that charging tuition would discriminate between students whose families can and cannot afford tuition, and so tuition is not allowed. The Department also argues that tuition-based public schools would violate Kentucky’s Constitution. At the Prichard Committee, we find those arguments convincing.

However, some Kentucky school districts have adopted policies that charge tuition. In addition, the new open enrollment language is section 1 of KRS 158.120. Right after that paragraph, the next one says “Any board of education may charge a reasonable tuition fee per month for each child attending its schools whose parent, guardian, or other legal custodian is not a bona fide resident of the district.” Districts will argue that means tuition is allowed under the new law.

Court action or additional legislation may be needed to settle this issue.

11. If tuition is allowed, must it be waived for students who qualify for free or reduced-price lunches

Yes. Kentucky law requires fee waivers for those students.

12. What can our district do if adding one more student will require us to hire another teacher?

The law allows district policy to “recognize enrollment capacity.” Your district can identify how many students you can serve based on factors like available staff, available classrooms, and class size limitations. When a student applies who would require you to add another teacher or overcrowd a classroom, your district can turn down that application and not allow that student to enroll.

13. Will the added SEEK money be enough to handle our district’s added costs?

That probably depends on whether you’ll need to add a teacher. For example, let’s say your district is committed to having no more than 24 students in a fourth-grade class. If you have a room with 23 students, adding one more will increase costs for paper and copying and other supplies that get used up, maybe for some additional books, possibly for another desk or chair. Adding $4,100 in state SEEK funding is likely to cover all of that. ($4,100 is the SEEK base guarantee for 2022-23).

However, if there are already 24 students in each fourth grade class, adding one more might mean you have to hire another teacher, and $4,100 won’t come close to covering that salary. That’s why your district may want to define your capacity to fit current staff or planned staff additions.

14. If students from our district enroll in another district, how will that affect our school system?

The open enrollment rules are likely to create challenges for districts that end up with lower enrollments. The district’s share of state funding will go down, and often costs will not go down by as much. In addition, planning for staff and supplies will have to be done with an additional uncertainty about how many students will attend in the coming year.

Learn more about this and other Kentucky education issues, from early childhood to postsecondary education at prichardcommittee.org.

The Prichard Committee
Building a Groundswell for Excellent Education

8/19/22