

Legal and Financial Implications of School Choice for Special Education Students



April 18, 2018

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Michigan Schools of Choice Overview



MI Schools of Choice Law

- Allows enrolling district to count non-resident pupil in membership without resident district approval
- Provides for two types of school choice:
 - Pupil resides within same ISD (§105)
 - Pupil resides in contiguous ISD (§105c)
- Is voluntary; schools must opt in
- Must comply with law to avoid SSAA penalty and count pupil in membership

State Aid Penalty

- Forfeiture of 5% of District's *total* state school aid allocation for failure to comply with §§105 and 105c procedures



Limited Openings?

- Publish grades, schools, special programs available
- No later than 2nd Friday in August, district must:
 - notify public that it is accepting applications and when and how to apply
 - establish application period of not less than 15 calendar days but no more than 30



Post-Application Procedures

- Determine who will be allowed to enroll within 15 calendar days of end of application period, using random draw if necessary
- Notify parent of acceptance, date by which student needs to enroll, and enrollment procedures
- Date of enrollment shall be no later than end of first week of school

If Openings Remain

- Beginning on third Monday in August but no later than the end of the first week of school, district may enroll from waiting list
- If spots remain after filling from waiting list, district is not required to fill



Unlimited Openings?

- Can accept applications until end of first week of school
- Provide notice to public of place and manner for submitting applications and whether there's an application period
- Application period must be at least 15 calendar days
- Be prepared for large number of applicants!

Post-Application Procedures

- No later than end of first week of school, notify parent of student's acceptance, date by which student must enroll, and enrollment procedures
- Date of enrollment shall be no later than end of first week of school



Second Semester Choice

- May accept applications for 2nd semester no later than 2 weeks before end of first semester, must publish available grades, schools, programs with openings
- Must accept applications during last 2 weeks of first semester/trimester and notify parent by the beginning of new term
- May *not* accept after 2nd semester starts



Non-Discriminatory Selection

May *not* base enrollment on student's:

- Intellectual, academic, artistic, or other ability, talent, or accomplishment, or lack thereof
- **Mental or physical disabilities if student otherwise meets eligibility criteria**
- Age, if age appropriate for program
- Religion, race, color, national origin, sex, height, weight, marital status, athletic ability, or other state/federal protected status

“Special Programs”

- Special education programs are not considered “special programs” for SOC purposes
- District must consider SOC application without regard to student’s disability status



Past Discipline

- May deny enrollment if applicant:
 - Is, or has been in the previous two years, suspend from *another* school
 - Has ever been expelled from *another* school, or
 - Has been convicted of a felony
- Unless District has already counted student in membership



Sibling Preference

Districts must give SOC enrollment preference to other school-aged children residing in same household with student who is already enrolled and attending district under SOC



Right to Continued Enrollment

“A district shall continue to allow a pupil who was enrolled in and attend the district under this section in the school year or semester immediately preceding the school year or semester in question to enroll in the district until the pupil graduates from high school. This subsection does not prohibit a district from expelling a pupil described in this subsection fro disciplinary reasons.”

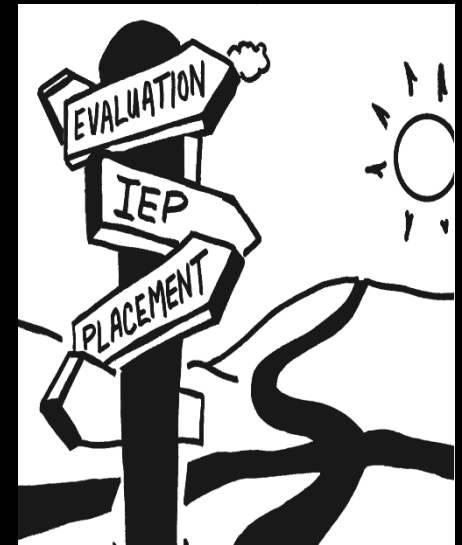
MCL 388.1705(11), 388.1705c(11)

School Choice & Special Education



§105 and Special Education

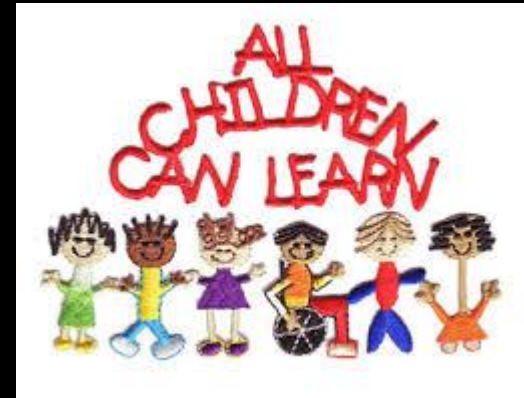
A student enrolled under §105 who is eligible for special education programs and services is considered a resident of the enrolling district for purposes of providing the student a free appropriate public education.



MCL 388.1705(19)

Free Appropriate Public Education

- Special education and related services that --
 - Are provided at public expense, under public supervision and direction, and without charge
 - Meet state standards
 - Are provided in conformity with IEP



§105c and Special Education

In order to enroll a non-resident special education student who resides in a contiguous ISD, the enrolling district *shall* have a written agreement with the student's resident district for the purpose of providing a free appropriate public education



MCL 388.1705c(19)

§105c Written Agreement

- Must address the following:
 - Payment of the added costs of special ed programs and services for student
 - How the agreement will be amended in event of significant changes in the costs or level of special education the student requires



“Added Costs”

- “Total unreimbursed costs” associated with pupil’s program:
 - Total approved costs of special education for pupil under 51(a)(7) of State School Aid Act
 - Minus any state school aid reimbursement and ISD reimbursement received for pupil
- Whether ISD reimbursement is available depends on ISD plan terms

Who Pays?

- Statute is silent
- Options include
 - Resident district pays
 - Enrolling district pays
 - Cost sharing/allocation



Other Terms to Consider

- Which district will count student in membership
- Which district will be responsible for:
 - IEP decisions
 - Transportation
 - Hearings, complaints, litigation costs
- Other terms??



Pupil Accounting Manual & §105c

- If enrolling district and resident district fail to reach agreement prior to student's initial enrollment, student *shall not* be enrolled
- If student initially enrolled as general ed student and is subsequently determined special ed eligible, district *must* enter into written agreement with student's resident district



Failure to Agree?

- Pupil accounting manual does not address except for pupils who seek initial SOC enrollment
- OCR previously opined that failure to agree may violate Section 504
- OCR is currently reviewing complaint filed against 2 MI districts for failing to reach §105c agreement



Transportation

- District is not required to provide non-resident student transportation to/from school unless student's IEP (or 105c agreement) requires
- Information about available transportation options must be provided upon parent request



Student Removal

- Districts may *not* “send back” students
- Once SOC student has enrolled, student has right to continued enrollment until graduation or student enrolls in another district
- Nothing prohibits expulsion for disciplinary reasons





SOC Checklist



- Opt in? 105, 105c, both, or neither
- Unlimited or limited openings?
- Publish grades, schools, or special programs for which enrollment is available
- Follow applicable timelines for applications, selection, notification, and enrollment
- If 105c applicant is special ed eligible, **must** have written agreement with student's resident district to enroll



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