

## **5E - NONPUBLIC PART-TIME and HOME SCHOOLED PUPILS**

A nonpublic pupil who attends a private, denominational or a parochial school or a pupil that is home schooled may be enrolled on a part-time basis in grades 1-12 in nonessential elective courses provided by a public school. Subject to a district's enrollment policy (i.e., course prerequisites, deadlines, etc.), the public school's nonessential elective courses that are offered to public school pupils *must* be available to resident nonpublic school pupils or home schooled pupils upon request. The district *may* also choose to make available these elective courses to nonresident nonpublic pupils without obtaining approval from the pupil's district of residence.

### **A. Requirements for Enrollment**

The nonpublic pupil, home schooled pupil and the public school district must meet specific requirements in order for the pupil to be eligible for part-time membership purposes. A district may enroll a nonpublic pupil or home schooled pupil under the following criteria:

1. **The nonpublic or home schooled pupil is being educated part time at the public school**
  - The course(s) being provided must be restricted to nonessential elective courses for pupils in grades 1 to 12. (NOTE: Kindergarten pupils are ineligible.)
  - The course(s) being provided must also be available at the public school to the regular public school pupils in the minor's grade level or age group as part of their minimum hours of instruction.
  - The course length and grading system must also be similar to that of the course offered to public school pupils.
  - The instruction is scheduled to occur during the regular school day.
  - The instruction is provided directly by an employee of the district or public school academy or of an intermediate district. In accordance with MCL 388.1763, instruction is to be provided by a certificated teacher.
  - Daily attendance records must be maintained, and comply with district policies and procedures as defined by the school.
  
2. **The district or public school academy is providing the certificated teacher at the nonpublic school site**
  - The nonpublic school has met the reporting requirements of the Nonpublic School Act. The nonpublic school must be within the boundaries of the public school district, **except**, if the nonpublic school submitted a written request for a specific fiscal year to the district where that nonpublic school is located and that public school does not agree by May 1 of the immediately preceding year, or within 60 days if the request is made after March 1, to provide some or all of the instruction in the request, then a contiguous public school may provide the instruction for those classes in the request that the public school did not agree to provide. A cooperative agreement is unnecessary. The public school academy that is located in the district in which the nonpublic school is located or in a district that is contiguous to the district in which the nonpublic school is located also may provide instruction under this subparagraph in the same manner as a district that is contiguous to the district in which the nonpublic school is located.

- The instruction must be taking place within the boundaries of the public school district or the contiguous district.
- The instruction is provided directly by an employee of the district or public school academy or of an intermediate district. In accordance with MCL 388.1763, instruction is to be provided by a certificated teacher.
- The course(s) being provided must also be available at the public school (or academy) to the regular public school (or academy) pupils in the minor's grade level or age group as part of their minimum hours of instruction.
- The course length and grading system must also be similar to that of the course offered to public school (or academy) pupils.
- The course(s) being provided must be restricted to nonessential elective courses for pupils in grades 1 to 12. (NOTE: Kindergarten pupils are ineligible.)
- Daily attendance records must be maintained, and comply with district (or academy) policies and procedures as defined by the school.
- A home-schooled pupil enrolled in a curricular offering being provided at the nonpublic school site must be a resident of the public school district that is providing the instruction.

Courses that are considered essential to a pupil's curriculum (pursuant to the *Snyder v Charlotte* court case), and thus are **not eligible**, include mathematics, reading, English, social studies, science, writing, the Constitution of the United States, the Constitution of the State of Michigan, and the history and present form of civil government of the United States, the State of Michigan, and the political subdivisions and municipalities of the State of Michigan. Courses that are NOT considered essential courses are eligible, including advanced placement level courses. Nonpublic pupils with an IEP may enroll in a public school to receive special education programs and be counted in membership. (NOTE: *Auxiliary or Title I* programs are *service* programs and do not generate state aid foundation funding.)

## **B. Educational Site**

1. A district in which a nonpublic school is located may provide nonessential elective courses to nonpublic school pupils at the public school district site or at the nonpublic school district site; however, programs operated at the nonpublic school site must be developed under conditions consistent with the decision in the *Agostini v. Felton* court case and also in accordance with provisions in Section 166b of the State School Aid Act.
2. A district that is contiguous to the district, or a public school academy located within a contiguous district, or a public school academy that is located in the district in which a nonpublic school is located, may provide instruction of nonessential elective courses to nonpublic school pupils at the public school district site or at the nonpublic school district site; however, programs operated at the nonpublic school site must be developed under conditions consistent with the decision in the *Agostini v. Felton* court case and also in accordance with provisions in Section 166b of the State School Aid Act.
3. If a nonpublic pupil or a home schooled pupil is enrolled part-time at the public school (or academy) for nonessential courses becomes homebound/hospitalized, the public school must provide homebound/hospitalized services to that pupil for those nonessential courses. The nonpublic school or the parents are responsible for the provision of the essential courses. This pupil remains a prorated FTE.

**C. Calculating the FTE**

The calculation of the part-time membership FTE for each pupil, from the nonpublic school, enrolled in a nonessential elective course is computed by dividing the number of eligible classes enrolled in and attended by the nonpublic student divided by the number of classes required to be a full time pupil (1.0 FTE) at the public school.

Example 1: A pupil is home schooled but wants to enroll at the public school for band and German III class. He enrolls in and attends both classes. Six (6) classes are required to generate a 1.0 FTE at the respective public school. This student would generate a .33 FTE ( $2/6 = .33$ ).

**Ineligible FTE for nonpublic nonessential courses**

Example 3: A nonpublic school contracts with District A to offer Latin I and II to the nonpublic middle school pupils. District A's certificated language arts teacher from the high school teaches these classes at the nonpublic school right after lunch. District A provides Latin I and Latin II to public high school pupils but does not provide these classes to the public middle school pupils. A district may provide to nonpublic pupils only those nonessential elective courses that the district also provides to the resident public pupils in the same grade level(s), or age group, during the regular school day. Therefore, District A cannot count the FTE for those pupils being educated in Latin I and Latin II at the nonpublic school.

**D. Regulatory References**

State Aid Act Sections:

388.1606(4)  
388.1606(6)  
388.1766b

Administrative Rule:

340.2(20)

Revised School Code:

380.1561

Nonpublic School Act:

MCL 388.551 – MCL 388.558

Court Cases:

Agostini v. Felton, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997)  
Clonlara v. State Board of Education, 442 Mich 230, 242 (1993)  
Snyder v. Charlotte Public Schools, 421 Mich 517, 365 NW2d 151 (1984)  
School District of Traverse City v. Attorney General, 384 Mich 390, 185 NW2d9 (1971)

**Enrolling Nonpublic Pupils**

Q #1

Does the public school have to follow the enrollment procedures such as birth certificate, proof of address, and immunization records for the nonpublic pupil in the shared time programs?

A #1

The nonpublic school is responsible for the enrollment of the nonpublic school pupils who are part of the shared time program. Therefore, the public school does not have to collect the immunization information for these pupils and is not responsible for reporting this information to the Department. The public school does need to collect enough information pertaining to the student (birth date, address, etc.) in order to complete the necessary

information on the MSDS.

### Essential Courses

Q #2

The nonpublic school wants to contract with the public school to teach remedial reading and remedial math to some of the fifth and sixth grade pupils. The nonpublic school will teach reading and math to the rest of the fifth and sixth grade pupils. May we provide this service at the nonpublic site?

A #2

No. The nonpublic school is required to provide the essential courses, such as reading and math, to all of its pupils. Remedial reading and remedial math are essential courses and therefore are ineligible subjects to generate FTE. However, remedial reading may be defined as an ancillary class and be part of the requirements in the IEP for those resident special education pupils whom the district is required to provide services.

Q #3

The nonpublic school in our district wants us to provide an English as a Second Language (ESL) class to a group of pupils enrolled at the nonpublic school. Can we enroll and count these pupils for shared time?

A #3

No. English is an essential course; thus, ESL is an essential course. The district cannot enroll and count nonpublic pupils for ESL courses for membership purpose.

### Courses offered to the public school pupils vs. nonpublic school pupils

Q #4

The middle school calendar is made up of four marking periods for the year. Sixth-grade pupils are required to alternately enroll in band, chorus, art, and study skills for one marking period. The nonpublic school would like us to provide a teacher to teach band first semester and chorus second semester to their pupils in grades 4-6. May we count this FTE?

A #4

Section 166b(2)(e) states that the curricula offering must also be available to full-time pupils in the minor's grade level or age group in the district during the regular day at a public school site. The district does not offer band or chorus to grades four and five. The district only offers the sixth-grade pupils band and chorus for one marking period. Thus, section 166b(2)(e) does not permit the district to offer band and chorus to the fourth and fifth grade pupils at the nonpublic school.

Also, the district may provide band and chorus to the sixth-grade nonpublic pupils because band and chorus are available to the sixth-grade public school pupils during the normal day; however, the district may not generate a larger per pupil FTE for those nonpublic sixth-grade pupils by providing more hours of band and chorus than is provided to the public school sixth-grade pupils in band and chorus.

Q #5

A district provides art, gym, music, computer skills, and study skills one hour a week for fourth through eighth grade. The nonpublic school wants the district to provide these same courses to their fourth through eighth grade pupils for one hour each week. May the district

pay one of the nonpublic teachers to provide the pupil instruction for these courses?

A #5

The public school may hire a certificated teacher on a part-time basis to provide the instruction for nonessential courses at a nonpublic school. The instructional time must be scheduled and taking place during the regular school day. The teacher must be an employee of the public school district: answerable to the public school for that instructional time, on the public school district's payroll, earning seniority in the public school system, and is entitled to the same fringe benefits available to the other teaching staff members on a pro-rata basis. The teacher may also be hired on a part-time basis by the nonpublic school for a distinctly separate portion of the school day.

Q #6

District A provides seventh and eighth graders band for one hour three days per week for the entire year. The nonpublic school wants District A to provide band to the seventh and eighth graders at the nonpublic school for one hour each day for one semester. Is this permissible?

A #6

Yes. Section 166b, of the State School Aid Act, limits the maximum amount of instruction time for any subject to being no more than that amount of instructional time provided to the same grade level and/or age group at the public school. District A is providing band to the seventh and eighth graders for one hour three days per week for 36 weeks, or approximately 108 hours for the year. The nonpublic school is requesting 90 hours of instruction for band for the seventh and eighth grade nonpublic pupils.

### **Virtual Learning accessibility**

Q #7

Mother is home schooling her children. The oldest child will be a junior next year and would like to enroll in the virtual learning program. May the district count this pupil for membership?

A #7

Revised School Code section 1481(5), MCL 380.1481(5), requires that nonpublic school pupils and home-schooled pupils may participate in course offerings of the Michigan Virtual High School to the same extent they are allowed to participate in school district course offerings under this act and the state school aid act of 1979, PA 94, MCL 388.1772. Any essential elective virtual learning courses taken by the nonpublic or home-schooled pupil are not countable for pupil membership; however, nonessential elective virtual learning courses may be counted for a pro-rated FTE provided the public school pays the related course fees. All resident home-schooled pupils are to be granted access to the virtual learning courses. The resident district may charge the fees required for enrolling in any essential elective virtual learning course that is normally covered by the district for the public school pupils.

### **Dually Enrolled**

Q #8

A home schooled pupil wants to enroll in one course at the public school and then attend college courses. May the home schooled pupil enroll in a vocational education course for the one required class and then enroll in the community college under dual enrollment?

A #8

The district may enroll a home schooled pupil or a nonpublic pupil for a vocational education class as this is a nonessential course. The vocational education class would serve as the one required course to be dually enrolled through the public school.

### **Nonpublic pupil travel time**

Q #9

District A has two nonpublic pupils attending the district. One pupil is enrolled in band and the parents transport the pupil to the public school for class. The second pupil is enrolled in vocational education and District A transports this pupil to the intermediate district's voc-tech center. May District A count the travel time for each of these pupils?

A #9

Section 101(7)(d), of the State School Aid Act, permits a district to count travel time between school districts for pupils enrolled in grades 9-12 or special education programs if the travel time is the sole reason that the pupil does not receive enough hours to be a full FTE. Travel is not the only reason these nonpublic pupils cannot meet the minimum required 1,098 hours of pupil instruction. Nonpublic pupils enrolled in a public school for nonessential courses are meant to be only part-time pupils (See Section 6(6), of the State School Aid Act).