
Attorney General Endorses Expansive Interpretation of Eligible Public School Districts Providing Shared Time Services

By Marshall W. Grate / Aug 14, 2013

On August 6, 2013, the Attorney General issued an opinion addressing an important issue involving shared time instruction. Section 166b of the State School Aid Act, MCL 388.1766b, permits nonpublic schools students to enroll in non-core classes that are taught by public school teachers at nonpublic schools sites, and the public school districts' receive state school aid for these students, provided the requirements of MCL 388.1766b are followed.

Previously, if a public school district declined a request for shared time instruction from a nonpublic school, located within the public school district's boundaries (home school district), then a public school district that was contiguous to the home school district could receive state aid by providing the shared time services. However, if the home school district provided the requested instruction, then the nonpublic school could not request the same-shared time instruction from a contiguous public school district.

In 2012, the legislature enacted Public Act 130, which greatly expanded the education opportunities of providing shared time instruction. Public school districts and public school academies, which were eligible to provide shared time instruction, not only included contiguous school districts to the home school district, but also included any school district or public school academy located in an intermediate school district that was contiguous to the home school district. This amendment also specified that the nonpublic school was not required to make more than one request for shared time instruction.

Public Act 130 left a key question unanswered. Some believed that if the nonpublic school's request for shared time instruction to the home school district was granted, then the nonpublic school was not free to request shared time instruction from another eligible school district for the subsequent year. Others, including the Michigan Department of Education, construed Public Act 130 as allowing a nonpublic school to request shared time instruction from another eligible school district in a subsequent year, even when the home school district successfully provided the shared time instruction. The Attorney General answered this specific question:

Can a nonpublic school seek future shared time services from other eligible public school districts even though the public school district in which the nonpublic school is located, has granted and provided the nonpublic school's request for the same shared time services during the current school year?

The Attorney General answered this question in the affirmative. The Attorney General interpreted Public Act 130 as expressly providing that a nonpublic school is not required to submit more than one request to the home district for shared time instruction services. Since the Public Act 130 included no limitation or qualification regarding whether the home school district granted or denied a request, the Attorney General concluded that Public Act 130 only requires a nonpublic school to make one written request to the home school district. Regardless of whether the home school district granted or denied the request for shared time instruction, the nonpublic school could seek the same instruction from another eligible school district for the subsequent school year.

The Attorney General was also asked regarding the circumstances under which a nonpublic school could reject a home school district's offer to provide shared time services as unacceptable. Since the statute did not address this issue, the Attorney General refused to offer any guidance. The Attorney General commented that the specific terms of any shared time services agreement would control.

Thus, the Attorney General adopted the Michigan Department of Education's interpretation that a nonpublic school only needs to make one request for shared time instruction to the home school district before going elsewhere for shared time services. The Attorney General's reluctance to offer any guidance regarding unacceptable shared time arrangements underscores the importance of the parties entering into a shared time services agreement that incorporates their expectations and that complies with statutory requirements and constitutional law. If you have any questions, please contact your Clark Hill Education Law attorney.