Testimony Against AB 682 – Special Needs Voucher Bill

Date: February 19, 2014

Dear Distinguished Members of the Assembly Education Committee:

My name is Donna Pahuski and I am here to testify against AB 682 – the Special Needs Voucher Bill.

I live in Cambridge, WI, and my children are young adults – 22 and 25 years old. Both were educated in Wisconsin public schools. My daughter, Mary, (22) was diagnosed with autism at 3 years old and she is the reason that I have very strong feelings against Special Needs Vouchers.

I am supplying this testimony not only as the parent of a child with autism, I am also the sister of a 58-year old woman with the same disability, although my sister has other learning challenges as well. Here are pictures of my daughter and sister.

With my daughter and my sister, I love and support two people with essentially the same set of challenges; the main difference between them is that my daughter was born 36 years later and IDEA was in full effect during the course of her K-12 education. My sister, Sandy, received no special education at all as IDEA did not come into effect until 1975, the year that she graduated from an Illinois high school.

What was life like for a family with a disabled child pre-IDEA? I cannot tell you the number of times that I laid in bed as a child and listened to my mom cry about Sandy. Sandy's delays in childhood milestones such as language, self-help skills and her repetitive behaviors were sometimes too much for my mom, a mother of 5. When our mother would ask Sandy's teachers for help, they would say, "Sandy's brain is immature" but there was never anything they could offer by way of special education, disability expertise, therapies or even basic modifications to level the playing field for Sandy so that she could progress. The result was that Sandy took her education as far as she could take it; she eventually graduated after retaking numerous classes and she lived with our parents until they died a few years ago. A strength that Sandy had was in sticking to routine and so she was able to do unskilled labor in small parts factory jobs until they moved away, one by one. She then moved on to working for a cleaning company who exploited and mistreated her until she got the courage to tell family what was going on. Sandy is now dependent on human services, family and SSDI and she will be for the rest of her days.

I would now like to fast forward to the mid 1990's when my tiny daughter began her public education in the Marshall School District. Under IDEA, Mary was entitled to special educational services and supports to help her progress in the general curriculum. Mary's needs were significant when she began getting school-based services. There were services from fully-trained and licensed: speech and language therapists, a special education teacher with training in autism and an occupational therapist who helped her overcome her debilitating sensory needs. These caring professionals even taught my husband and myself

how to deal with Mary's needs so that she was getting skills practice, not just in school, but everywhere she went with us, her family.

And so Mary progressed… and progressed… and progressed. Today, Mary is a senior in college studying biomedical science and she will be attending graduate school next year. As a result of the support that she got through her special education, Mary eventually felt confident enough to try a semester abroad in Ecuador. Today, Mary is a fully independent young woman who is not likely to rely on anyone for anything.

I ask you to please examine these two outcomes of people I love who have been impacted by disability. While there are children in Wisconsin public schools who have not yet received the appropriate special education that they need, at least through IDEA there is a mechanism to "get there." This bill does not create an equivalent mechanism or legal requirement for special needs voucher schools. Moreover, unsuspecting families who might opt to take their vouchers to unscrupulous private schools (like LifeSkills Academy) would be little better off than my distressed mother who had no recourse when my sister was unable to make progress and falling further behind her peers.

I beg you to oppose AB 682 and, instead, direct your efforts to strengthening public education in Wisconsin. Fix open enrollment, increase funding for special education, be deliberate and diligent to increase accountability and oversight in ALL schools that receive one dollar of tax-payer money. If you do that, then we will have many more children with outcomes like Mary's and maybe we can save other families the heartbreak that my parents experienced in watching my sister struggle everyday to cope with even the most basic challenges in life. Thank you!

Sincerely,

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Schools participating in the proposed special needs voucher program will not be required to have special education teachers or related service providers to deliver the services denoted in the IEP. Families will have no recourse to ensure the IEP services are provided as there are no avenues such as mediation, DPI complaints or Due Process Hearings available as there are for students protected by IDEA. We have found that most families, if given a true choice to attend any school or program to meet their child's needs, would choose also to retain their rights under IDEA. Under the current bill, families have no choice but to relinquish rights if they feel they must escape their district.

DRW has advocated with other disability organizations over the course of several years to increase the funding for special education categorical aid and the high cost fund to allow Districts to be able to serve students with disabilities with greater success. Currently the state funds only twenty-six percent of the cost of special education and the state's contribution has reduced sharply over the last decade. This chronic underfunding results in the restriction of services and supports for students with disabilities, leading to tenuous negotiations in IEP meetings and often parent dissatisfaction with their District. Due to lack of funding and increasing costs, we see less flexibility among Districts as they have no room to think creatively about how to meet individual students' needs and therefore are forced to provide more of a one size fits all model for students. **An increase in funding for special education catergorical aid and the high cost fund would be a significant step toward greater agreement between families and Districts and provide that necessary flexibility to offer necessary services.**

DRW is also concerned that this proposal does not require voucher schools to accept all children with disabilities. This will lead to students with the most significant disabilities unable to access the voucher program and public school districts having a higher percentage of students with significant disabilities. Districts will see no reduction in overall special education costs as students with minimal needs will be the students able to access the program. Since there are no limits on the number of students that may be eligible to access the voucher system, the implications for funding are unknown and the overall impact on special education services in public school districts and the student they serve hang in the balance.

The current version of the bill requires an open enrollment denial as the gateway to voucher funding. The current open enrollment statutes make it nearly impossible for students with disabilities to access education in other Districts. DRW would support a revamped open enrollment system which would be the most advantageous school choice mechanism for families of students with disabilities. This choice preserves essential rights and a parent's mandated, meaningful role in the special education planning process, at the same time giving families the options to relieve the pressures of a lower quality or poorly equipped school district. **Significant improvements to the open enrollment system are a better alternative for students with disabilities than creating a new voucher system that requires them to relinquish IDEA protections.**

Disability Rights Wisconsin seeks special education solutions that create safe choices for families, ensure maintenance of essential rights and demonstrate a commitment to improved quality in public schools. The proposed special needs voucher does not allow for these protections and does nothing to improve the quality of our public schools.

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Protection and advocacy for people with disabilities.

February 19, 2014

Testimony on 2014 Assembly Bill 682: Creation of a Special Needs Scholarship
Monica Murphy, Managing Attorney

Disability Rights Wisconsin is Wisconsin's Protection and Advocacy agency for people with disabilities. A major focus of our work both individually and systemically across the state focuses on special education and the rights of students with disabilities. While the majority of our work focuses on public school settings we are clearly not in the business of protecting "public schools" but the protection of the rights of students with disabilities and their families to receive a Free Appropriate Education. This is the reason I am here today to share our concerns about serious implications of the special needs voucher bill being considered.

Disability Rights Wisconsin understands the concerns raised by the parents that are struggling with their current school districts and their desire to find an alternative for their child. We work closely with many of these parents to find solutions that hold school districts accountable to educate students with disabilities. Our state has a comprehensive dispute resolution system for parents that include a complaint process, facilitated IEP, mediation, and due process. At Disability Rights Wisconsin, we often use the Wisconsin Special Education Mediation System to resolve issues between parents and Districts. Mediation and facilitated IEP are excellent processes for resolving conflicts and are underutilized in our state by parents and Districts. During the last school year, fifty mediations were held and the parties fully or partially resolved their issue with an eighty-eight percent agreement rate. **We support special education quality solutions that emphasize, expand and better publicize these important alternative dispute resolution options for Wisconsin families that preserve relationships and result in quality educational solutions.** In the vast majority of our cases, we are able to assist families and come to a resolution between the parent and the school district sometimes even resulting in the placement of students in private schools to meet their needs. But, these agreements always come with the protections of the Individuals with Disabilities Education Act (IDEA.)

Disability Rights Wisconsin is in agreement with two of the current changes to the bill that protects students with disabilities. These were the addition of requiring the private schools to follow the requirements of Wisconsin Act 125, the seclusion and restraint bill and the addition of special education re-evaluation for students every three years to determine eligibility.

However, Disability Rights Wisconsin has been clear from the beginning that our organization's support of a special needs voucher bill is dependent on many factors including the protections of parent and student rights under IDEA and stopping the further draining of resources from the public school system, which serve the vast majority of students with disabilities. The lack of these protections continues to be our overall objection to moving forward with this special needs voucher bill. While supporters of the bill will say that the bill requires an individualized education plan (IEP) to be put in place at the voucher school, there is no link to the Federal or State protections guaranteed with this implementation. It is an IEP in name only, and therefore, not enforceable in the same manner.

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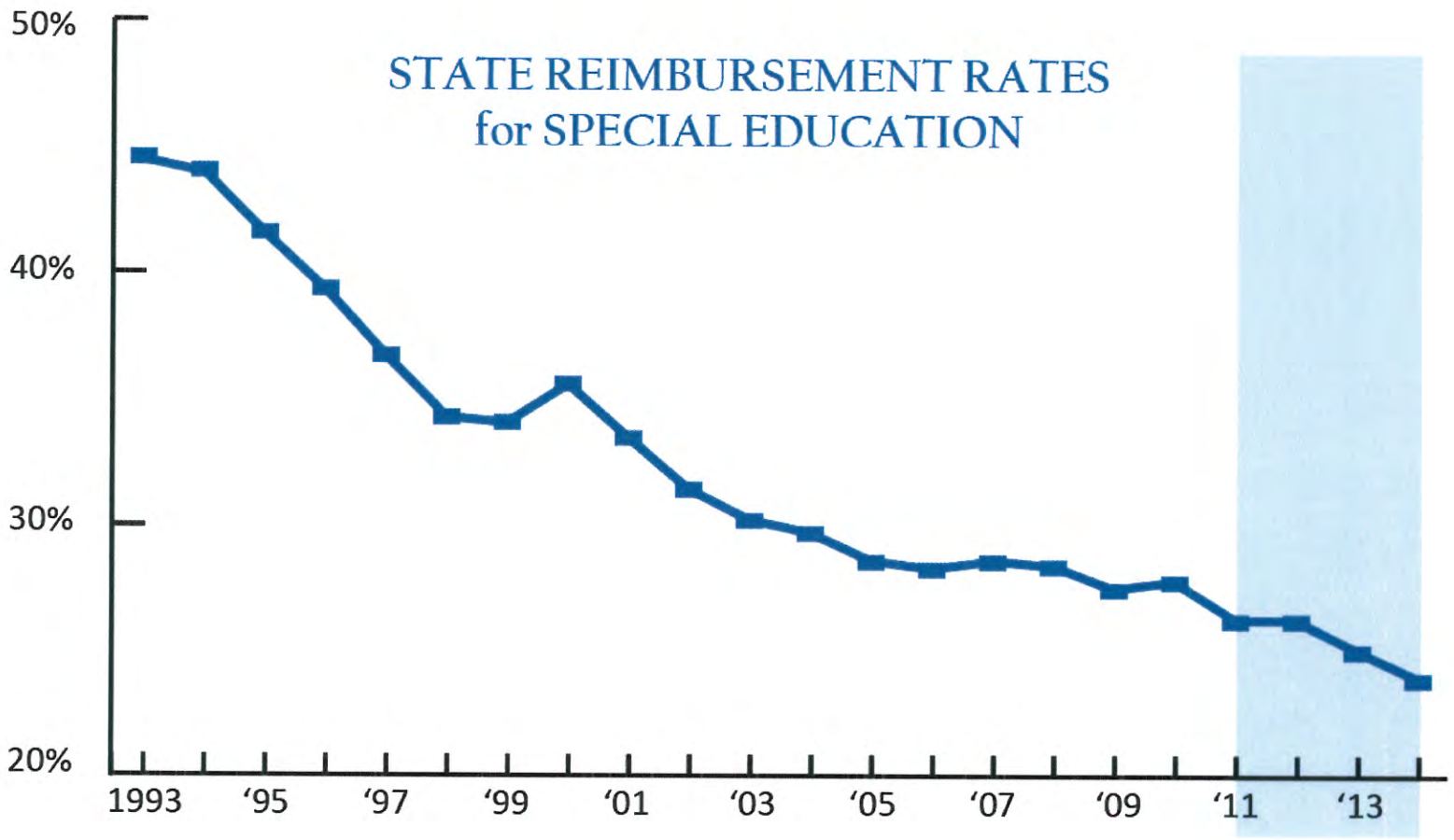
HOW DO YOU THINK THIS IMPACTS STUDENTS?



Submitted by Disability Rights WI

Survival Coalition
of Wisconsin Disability Organizations

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February 19, 2014

Assembly Committee on Education
Rep. Steve Kestell, Chair
State Capitol, Room 225 Northwest
Madison, WI 53707

Dear Rep. Kestell and members of the Committee:

Thank you for the opportunity to comment on proposed Assembly Bill 682. The Survival Coalition is a cross-disability coalition of more than 30 state and local organizations and groups focused on changing and improving policies and practices that support people with disabilities of all ages to be full participants in community life.

Members of Survival Coalition are comprised of and work with families statewide. Our focus is not on supporting public schools – or any education setting for that matter. Our job is to advocate for children and families. Therefore, our goal is to look systemically at settings that are the best use of public dollars and have the most protections and accountability for educational results. We know many families who struggle to get their children's special education needs met. However, we also hear clearly from these same families that vouchers are not the solution. In fact, not a single disability group in the state of Wisconsin supports special needs vouchers. And a statewide stakeholder survey last winter that gathered more than 1,100 responses in less than two weeks found that 87% of respondents actively opposed special needs vouchers.

Respondents listed multiple concerns, including lack of accountability, loss of federal legal protections, no assurance that private schools provide special education services, fraud and abuse, and lack of demonstrated improved outcomes from voucher programs in other states. The clear message that we hear from families statewide is that if their son or daughter's educational needs can't be met with multiple protections in place in public schools, how would an unregulated private school voucher provide assurance that their child would make progress or attain outcomes?

After a decade of special needs scholarships in multiple other states, there still is absolutely no evidence that public investment in private school voucher programs results in a better education for students with disabilities. As the director of our state's federally-mandated Developmental Disabilities Board, I connect with my peers in others states that have voucher programs. They say these voucher programs cannot be evaluated at all because there have been no requirements to collect data quantifying improved outcomes for their students with disabilities. Yet, they get calls from families and document egregious examples of fraud and abuse, with little to no educational outcomes for vulnerable students and their families. These voucher programs often promise much, but deliver very little. Schools have been found to have no curriculum, no certified teachers or therapists, and some have even been found forging student enrollment to capture public taxpayer dollars from students who no longer attend or were kicked out.

We have talked with multiple families from voucher states who have students with significant disabilities. They say their children wouldn't even qualify: the voucher programs don't want and can't begin to meet the needs of students with complex needs or behavioral challenges. Other families find they are back in their home public school after the voucher programs kicks their child out. Just as troubling as we look at unemployment rates of 68% or more for people with disabilities is the fact that voucher programs do not have to track, report, or take responsibility for outcomes or even progress. We have no evidence that vouchers prepare students for adulthood and employment, or even make academic progress from year to year.

Here in Wisconsin, the track record on voucher programs in Southeast Wisconsin show that students with disabilities are at great risk for not having their needs met, even when their parents are trying to be vigilant. Last week at the Senate hearing on SB 525, two Milwaukee mothers whose children with disabilities attended vouchers schools told disturbing stories of schools completely unequipped to meet the needs of students with disabilities. One mother described how the building principal asked her to teach third grade when she only had a high school diploma. That same mother said she had just talked to another parent whose fourth grader with a disability was being housed in a kindergarten classroom because the fourth grade currently had no teacher. Another parent who collaborates with our Board said she placed her three children in voucher schools after seeing the great brochures and attending a family fun night. But several weeks later, she found her daughter with a disability in a corner of the room, completely ignored by staff. The teacher said she didn't have any training on working with students who had disabilities, so she didn't know how to teach her. This mother did pull her three children from voucher schools, but it took months of lost class time and a lot of personal difficulty for this working mom to set it all up.

Families of students with disabilities want to make the best educational choices for their children, but a voucher scholarship program without accountability to the same standards as public schools gives parents a false choice, and as we have seen from the Milwaukee family examples, it can cost students the most precious of resources—time. Poor educational preparation of students with disabilities translates into a lifetime of high unemployment (68% in Wisconsin), lower wages (30% less than workers without disabilities), and over-reliance on public benefit programs (27% have incomes below the federal poverty line).

Families of children with disabilities in Wisconsin know their children can achieve and learn with their peers with the right instruction and supports. Research clearly shows that more than 98% of students – including those with disabilities -- can learn grade-level content in the general education curriculum and achieve proficiency on grade level standards. Yet providing that high-quality instruction and other needed supports has gotten harder and harder to do as Wisconsin schools have faced 20 years of steadily eroding funding for special education supports. When my daughter was born, the state's share of support was 44%. Today, it's down to 26%

Survival Coalition supports policy efforts to provide families with more choice and better supports for their students with disabilities, like making open enrollment policies more flexible and increasing special education funding. But the investments need to ensure that students get access to evidence-based educational practices that are proven to improve educational outcomes for students with disabilities and are measured and tracked regularly. The current voucher scholarship bill only shifts taxpayer dollars away from public schools in favor of unregulated private schools that are not held accountable for student progress.

Survival Coalition looks forward to continuing to work toward improvements in quality statewide special education supports for all students with disabilities. Thank you for your consideration,

Sincerely,
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Survival Coalition Issue Teams: education, employment, housing, long term care for Adults, long term care for children, mental health, transportation, workforce, voting, Medicaid and health care.

Real Lives, Real Work, Real Smart, Wisconsin
Investing in People with Disabilities

WOTA

February 19, 2014

Representative Kestell and Members of the Assembly Education Committee

The Wisconsin Occupational Therapy Association is seeking to advocate for children with special needs that Occupational Therapists and Occupational Therapy Assistants have provided services to help them be successful in their occupation of student for 37 years. WOTA can support the concepts of school choice offered in this bill AB 682 and appreciates that many of the concerns raised by WOTA in the previous bill have been successfully addressed in this bill.

1. WOTA agreed with funding concerns raised by the disability rights community when the Special Needs Scholarships bill was written the first time. It is clear and good that funding concerns have been addressed and defined more clearly to give direction with specific formulas and requirements to the private schools and to DPI. This establishes accountability measures that will hold the schools to a strong set of standards. WOTA supports these requirements.

2. *"The bill directs DPI to develop a document, for inclusion with an application, comparing the rights of a child with a disability and his or her parent under state and federal handicapped education law with the rights of a child with a disability under the program created by this bill and federal handicapped education law."*
This is a good provision it gives parents informed choice.

3. WOTA previously testified that there was no requirement in the bill that the provisions of IDEA be followed so in essence the voucher school would not be required to provide related services of Occupational Therapy OT, Physical Therapy PT, Speech Therapy ST that are required by the IDEA law for public schools; they were only required to follow federal and state safety standards and anti-discrimination laws.
In this bill it now states *"The amount is the lesser of the cost to the school the child is attending under the scholarship of providing regular instruction, instructional and pupil support services, special education and **related services**, and supplementary aids and services to the child,"*
WOTA is very glad to see these requirements are included in the current bill because it will require special education and related services of Occupational Therapy, Physical Therapy and Speech and Language Therapy to be available. These therapies greatly assist children to be more successful in the school environment.
It still does not require the private school to follow the IDEA provisions and it is our understanding if a school receives federal funding under the IDEA law they would be required to follow the full intent of IDEA. WOTA supports private schools being required to follow the IDEA law because they would be receiving federal funds and it should be required in this bill.

4. Previously we testified that there is no requirement in the bill that the voucher school is required to use the IEP that comes with the child when the school changes. AB 682 requires that an IEP be completed.
"4. An individualized education program (IEP) has been completed for the child."
It defines IEP requirements more specifically and includes a level of accountability to parents and the public schools.

- Provide to each special needs scholarship applicant a profile of the private school's special education program, in a form prescribed by DPI, that includes the methods of instruction that will be used by the school to provide special education and related services to the child and the qualifications of the teachers and other persons who will be providing special education and related services to the child.
- Implement the child's most recent IEP or ISP, as modified by agreement between the private school and the child's parent, and related services agreed to by the private school and the child's parent that are not included in the child's IEP or ISP.
- Provide a record of the implementation of the child's IEP or ISP, including an evaluation of the child's progress, to the school board of the school district in which the child resides in the form and manner prescribed by DPI.
- Regularly report to the parent of a child attending the private school and receiving a special needs scholarship on the child's progress.

Children with special needs deserve to continue making gains and benefitting from their education in the same way they did at public schools if their families choose to avail themselves of the school choice scholarships. Occupational Therapy provides a vital service with extensive knowledge related to the children with special needs disabilities and provides an important link between the family and the teachers in progressing the child's fine motor, sensory, and cognitive skill development. In advocating for children with Special Needs the WOTA is gratified that our specific issues were heard and addressed in AB 682 and SB 525 it helps us keep the faith that the process works. Thank you for creating a bill that made changes according to testimony on the previous Special Needs Scholarship bill.

Teri Black

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Testimony on AB682, Special Needs Vouchers
Assembly Education Committee
19 February 2014

Lydia & Miriam Oakleaf, 2013

My name is Joanne Juhnke, and I chair the steering committee of the statewide all-volunteer grassroots group Stop Special Needs Vouchers. Together with my husband Mike Oakleaf, I parent two wonderful daughters. Nine-year-old Miriam has a long complex IEP in the Madison public schools – in fact, we're having an IEP meeting for her this afternoon! – and twelve-year-old Lydia does not.

I would like to begin by pointing out some areas in which parents on both sides of the special needs voucher question actually agree.

We all care deeply about our children, and other people's children as well.

We all want our children to succeed, in their education and in their lives. When something stands in the way of that, we do not remain silent. The fact that we're here means that we're involved and invested.

And, there are many of us who oppose the vouchers who have ourselves experienced challenges in the public schools, along with our students' many successes. We believe in public education for students with disabilities under the Individuals with Disabilities Education Act, but we also understand that things do not always go right in the public schools, because many of us have lived it on a deep level.

The families of Stop Special Needs Vouchers want everyone, our own children and beyond, to have access to the free appropriate public education in the least restrictive environment that is the promise of the IDEA.

Where we disagree intensely with those who support special needs vouchers is on what to do about it.

Not complying with IDEA is clearly a problem. But I cannot believe it is better to respond to a school's failure to abide by the IDEA – by sending our students and tax dollars to private schools that we're not even going to expect to abide by the IDEA.

Open enrollment discrimination against students with disabilities is clearly a problem. But I cannot believe it is better to respond to the ten-percentage-point discrepancy in open enrollment denial rates between students with disabilities and students without – by turning open enrollment denial into a hoop to jump through on the way to a voucher at a school that we're not even going expect to abide by the IDEA.

A couple of further comments on using open enrollment as a voucher-gateway rather than addressing the issues within open enrollment directly. First, we need to realize that counting past open-enrollment denials as a measure of how many students will be eligible does not necessarily accurately reflect what will happen when

families start getting the glossy brochures promising the moon and stars, from private schools that will be happy to instruct them exactly how to go about getting an open-enrollment denial in order to get that voucher money. The bill does not, in fact, create a numerical limit on how many vouchers could theoretically be granted.

Second, there was an interesting argument in last week's public hearing, stating that based on past open-enrollment denials, the number of students currently eligible would only be about one-percent of current students with IEPs, so with such small numbers, the public schools wouldn't even notice the difference.

I would like to remind this committee that in 1990, when the Milwaukee Parental Choice program first started, it was limited to one percent of the students, under a thousand students total. Well, today there are 25,000 students in that program, in voucher schools that are doing no better on the whole, and in many cases worse, than MPS. We see disasters like LifeSkills Academy taking our tax money and damaging their students. And the public schools are struggling mightily under the weight of it all.

Back to open enrollment. Last fall, I and a group of other parents went to State Superintendent Tony Evers last fall, to open a conversation on open enrollment and how to address the fact that students with disabilities get denied at that higher rate. That meeting led to discussions that have already managed to make some initial gains for transparency around undue financial burden that are underway to being implemented. Starting this cycle, any undue financial burden denial will be accompanied by the dollar figures so the family can see: is my district denying open enrollment over a few dollars difference, or is the receiving district claiming that it will cost $20,000 more to educate my child than it costs my own district?

We haven't solved it all yet, but we've made a start and we're going to keep working.

It is in this context that I find myself asking:

What might we be able to accomplish if all the time, and energy, and lobbying, and campaign money that is being spent both in promoting special needs vouchers and in defending against them, could be spent instead toward solving the issues within Wisconsin's public schools, where we do in fact require all students to be accepted and educated regardless of disability?

I'd far rather be here testifying in favor of a full fix to open enrollment or a proposal to restore some of the chronic underfunding for special education or a bill that would offer whatever it takes to get schools that aren't doing right by our kids to shape up.

Until then, Stop Special Needs Vouchers is going to have to continue with efforts divided between defending and creating. I ask you as members of the Assembly Education Committee to oppose this deeply flawed special needs vouchers bill. Meanwhile, I will gladly give our contact information to anyone who wants to talk about what we might be able to accomplish together.

Thank you for your time and attention.

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John H. Ashley, Executive Director

TO: Members, Assembly Committee on Education
FROM: Dan Rossmiller, WASB Government Relations Director
RE: WASB Opposition to Assembly Bill 682, relating to Special Needs Scholarships/Vouchers
DATE: February 19, 2014

Good morning Chairman Kestell and members of the committee. My name is Dan Rossmiller. I am the Director of Government Relations for the Wisconsin Association of School Boards (WASB), representing the 424 locally elected school boards in our state. We oppose Assembly Bill 682.

While the bill before you represents an improvement over the proposal that was before this committee last session, it remains badly flawed. Assembly Bill 682, although well-intended, will: deprive special education students and their parents of enforceable legal rights to be provided with special education services as well as important due process rights available under federal law. It is unlikely to help students with the most serious disabilities and thus discriminates against those students. The bill will increase costs to the state for providing special education. At the same time the bill will have negative financial impacts on public schools because it will skim state aid directly off the top of the state general school aid appropriation, thus reducing state aid to local school districts, resulting in increased property taxes at the local level in most school district. It will also result in fewer resources being available to local school districts to educate both special and regular education students.

The job of educating students with disabilities has been made more difficult by a steady decrease in the level of state categorical aid for special education services relative to special education costs. When revenue limits were first put on school districts in the 1993-94 school year, special education categorical aids provided by the state to local districts reimbursed almost 45 percent of a local district's costs of providing special education services to students with disabilities. Today, special education categorical aids reimburse just over 25 percent of a local district's costs. Special education categorical aid has been frozen since the 2009-10 school year and will remain frozen through the 2014-15 school year under current law. Increasing this aid would improve special education services for *all* students, not just the few who would be covered by this bill.

Under current law each student with a disability is provided with an individualized education plan (or IEP), which is agreed upon by both the parents and the school. Parents who are not satisfied with progress their child is making or the services being provided to their child under the IEP are entitled to a series of protections including mediation, which attempts to resolve any differences, as well as a due process hearing to ensure that the rights of the parent and the student are protected. If a parent's or guardian's concerns are not addressed to their satisfaction through these steps they have the option to apply to the state's Open Enrollment program to attend a school in another public school district.

The WASB and other public education groups recognize there are limitations to the current Open Enrollment system with respect to students with disabilities have been meeting with disability rights advocates and parents of students with disabilities to explore ways to improve access to open enrollment for students with special needs.

Unlike the approach offered by Assembly Bill 682, the approach the WASB and other public education groups are pursuing would provide parents with options to the special education program offered by their district of residence without sacrificing the due process rights of parents and students or special education students' legal entitlement to services outlined in the student's individual education plan (IEP).

We are sympathetic to the concerns of parents who have children with special needs who are not progressing or thriving to the extent one would wish them to; however, we are also concerned for the children who would remain in the public schools if this bill were to pass. Private schools would have no obligation to accept students with disabilities under this bill. That decision remains entirely up to the private school. However, because of the funding structure this bill sets up, when private schools ***do*** decide to accept students with disabilities, it is unlikely that those private schools will accept students with significant disabilities. Because the amount of the scholarship is limited, there is a disincentive to accept students with significant disabilities that can be costly to educate. As a result, public schools would be likely to see a higher concentration of students with significant disabilities.

In order to pay for special needs vouchers Assembly Bill 682 would specifically reduce the amount of general aids made available to all public school districts. The bill does not increase the amount appropriated for general aids but would continue a disturbing legislative pattern of creating a sum-sufficient allocation that would receive a first draw on the general aid appropriation in order to serve a narrow segment of students who attend schools outside of public school districts at taxpayer expense.

The WASB protested the use of such a funding mechanism when independent charter school expansion legislation was before this committee and we will continue to protest the creation or expansion of sum-sufficient draws on the general aids appropriation that reduce the amount of state aid received by local school districts. If the Legislature determines special education vouchers are indeed one of its policy priorities, it should fund those vouchers through a stand-alone appropriation.

Because the bill would make no change to revenue limits or the calculation of state aids and because it would reduce the amount of state general aids distributed to school districts, under revenue limits, if school districts use their available revenue limit authority, this will result in a property tax increase. If school districts do not use all their available revenue limit authority, this bill will result in cuts to educational programs and staff for regular education students.

Further, under Assembly Bill 682, resident school districts could no longer count students who leave their districts under a Special Needs Voucher for state aid or revenue limit purposes. Under the school aid formula, all other things being equal, having fewer students equates to having more property wealth per pupil, which under the school aid formula results in less state general equalization aid to the district. (Those of you who serve on the Speaker's Task Force on Rural School understand this is essentially the same problem declining enrollment districts face.)

Under Assembly Bill 682, even though the resident district of the departing student would receive less aid and its special education costs would be spread across fewer students, it would have to absorb significant costs related to that student, such as annual state testing and all necessary accommodations (if requested by parent) and all testing and staff costs associated with the three-year Individualized Education Program (IEP) review (if allowed by parent).

Furthermore, if Special Education Voucher students return to their resident school district due to their needs not being met at the eligible school or being dismissed by the private school, the public school district to which they return will have to absorb any costs associated with retesting, reevaluation, and intensive services needed to restore students to prior functioning levels. Depending on when the student returned, the public school district could be in a situation in which it would be both unable to claim that student for general school aids and prevented from levying property taxes on that student under revenue limits.

An unusual feature in the main federal law governing special education, the Individuals with Disabilities Education Act (or IDEA) relates to what are called "equitable participation" requirements. These requirements place a burden on the school district in which a private school is located and in which children with disabilities are privately placed by their parents, which would include any children receiving special needs vouchers. These children may or may not have ever lived within that school district in which the private school is located, yet the federal law imposes a burden on such districts to set aside federal special education funds they receive for the purpose of providing special education services to students in the private school. As the number of students with disabilities attending a private school located within a district increases, as would likely happen if this bill were passed, more federal IDEA funds would have to be set aside by the district and spent on services for special education voucher students in the private school rather than on its own resident public school students who need special education services. Again, the districts affected may not be districts from which the outgoing special needs voucher students originated.

In short, while Assembly Bill 682 purports to offer a solution to a small, select group of children with special needs whose parents may be dissatisfied, it would raise issues and concerns for all other public school children with special needs and their parents and would create significant problems for public school districts. For the variety of reasons indicated, we oppose Assembly Bill 682.

We would, however, welcome and work toward legislative efforts to increase special education categorical aids and improve the public school open enrollment process for all students, especially for those with special needs.

Wisconsin Department of Administration
Division of Executive Budget and Finance

Fiscal Estimate - 2013 Session

☒ Original ☐ Updated ☐ Corrected ☐ Supplemental

LRB Number **13-2515/6**	Introduction Number **SB-525**

Description
Creating a Special Needs Scholarship Program for disabled pupils, granting rule-making authority, and making an appropriation

Fiscal Effect

State:
☐ No State Fiscal Effect
☒ Indeterminate
- ☐ Increase Existing Appropriations
- ☐ Decrease Existing Appropriations
- ☒ Create New Appropriations
- ☐ Increase Existing Revenues
- ☐ Decrease Existing Revenues
- ☒ Increase Costs - May be possible to absorb within agency's budget ☐ Yes ☒ No
- ☐ Decrease Costs

Local:
☐ No Local Government Costs
☒ Indeterminate
1. ☒ Increase Costs ☐ Permissive ☒ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☒ Increase Revenue ☒ Permissive ☐ Mandatory
4. ☒ Decrease Revenue ☐ Permissive ☒ Mandatory

5. Types of Local Government Units Affected
☐ Towns ☐ Village ☐ Cities
☐ Counties ☐ Others
☒ School Districts ☐ WTCS Districts

Fund Sources Affected **Affected Ch. 20 Appropriations**
☒ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEGS 20.255 (2)(ac), 2(az) [New], 2(cy)

Agency/Prepared By	Authorized Signature	Date
DPI/ Sheryl Cordell (608) 266-1344	Michael Bormett (608) 266-2804	2/11/2014

Fiscal Estimate Narratives

DPI 2/11/2014

LRB Number **13-2515/6**	Introduction Number **SB-525**	Estimate Type **Original**
Description Creating a Special Needs Scholarship Program for disabled pupils, granting rule-making authority, and making an appropriation		

Assumptions Used in Arriving at Fiscal Estimate

BACKGROUND
This bill establishes a Special Needs Scholarship Program. Under the program, beginning in the 2014-15 school year, a child with a disability may receive a scholarship to attend a public school located outside the pupil¡¦s school district of residence, a charter school, or a private school, if all of the following conditions are met:

1. The child has applied to attend a public school outside of his or her school district of residence under the Open Enrollment Program and was rejected by the school board of the nonresident school district or was prohibited from attending school in a nonresident school district by the school board of the child's resident school district.

2. The school has notified the Department of Public Instruction (DPI) of its intent to participate in the program and the child has been accepted by the school.

3. If the school is a private school, it is approved as a private school by DPI or is accredited.

4. An individualized education program (IEP) has been completed for the child.

5. With certain exceptions, the child attended a public school in this state in the previous school year.

The bill directs DPI to develop a document, for inclusion with an application, comparing the rights of a child with a disability and his or her parent under state and federal handicapped education law with the rights of a child with a disability under the program created by this bill and federal handicapped education law.

A school that accepts a child under the program must notify DPI. Upon receipt of the notice, DPI must notify the school board of the pupil's school district of residence and determine the amount of the child¡¦s scholarship. The amount is the lesser of the cost to the school the child is attending under the scholarship of providing regular instruction, instructional and pupil support services, special education and related services, and supplementary aids and services to the child, plus the per pupil operating and debt service costs, or an amount equal to the statewide cost per public school pupil plus the state aid per child with a disability. If the child is attending for less than a full school term, DPI must prorate the amount of the scholarship.

DPI pays the scholarship directly to the school or school district that the child will attend. The scholarship continues while the child attends a school eligible to participate in the program until he or she graduates from high school or until the end of the school term in which he or she turns 21, whichever comes first.

Under the bill, the total amount appropriated as state school equalization aid is reduced by the total amount of scholarships paid by DPI to schools and school districts under the program, as described above. A pupil attending a private school, a public school outside the pupil's school district of residence, or an independent charter school under the program is not counted for state aid or revenue limit purposes by the pupil¡¦s school district of residence.

Each private school participating in the program must comply with applicable health and safety laws; hold a valid certificate of occupancy if the municipality in which the school is located issues such certificates; comply with federal law that prohibits discrimination against any person on the basis of race, color, or national origin; conduct criminal background investigations of its employees and exclude from employment any person not permitted to hold a teaching license as the result of an offense and any person who might reasonably be believed to pose a threat to the safety of others; provide to each applicant a profile of the school's special education program; implement the child¡¦s most recent IEP; and comply with the restrictions on the use of seclusion and physical restraint that currently apply to public and charter schools.

The private school must also annually submit to DPI a school financial report prepared by a certified public accountant. If the private school expects to receive at least $50,000 in scholarships during a school year, it must either file a surety bond with DPI or provide DPI with information demonstrating that it has the ability to pay an amount equal to 25 percent of the total amount of scholarships that it expects to receive.

The bill provides that if a child attends a private school under the program, his or her school district of residence must provide transportation to and from the school if the school is located at least two miles from the child's residence, the child resides in the private school's attendance area, and the private school is situated within the school district of residence or not more than five miles beyond the boundaries of the school district.

If the child attends a public school under the program, the child's parent is responsible for transporting the child to and from school unless transportation is required in the child's IEP. If the latter applies, the school district that the child attends is responsible for transporting the child. The bill allows a low-income pupil to apply to DPI for reimbursement of transportation costs.

The bill authorizes DPI to bar a school from participating in the program if the school intentionally and substantially misrepresents information required under the bill, routinely fails to comply with financial standards, uses a pupil¡¦s scholarship for any purpose other than educational purposes, or fails to refund any scholarship overpayments to the state.

Finally, the bill directs the Legislative Audit Bureau to contract for a study of the program. The results of the study must be reported to the legislature by January 9, 2017.

STATE FISCAL EFFECT: The overall cost of this bill for the state is indeterminate.

State General Equalization Aid:
The bill does not change the amount appropriated for general school aids, but under this bill, Section 1 specifically reduces the amount of general school aids that would be made available to school districts beginning in the 2014-15 fiscal year to pay for special needs scholarships. Since the bill does not make any changes to school district revenue limits or the calculation of general school aids, this provision would result in a commensurate increase in school district property taxes on a statewide basis.

State Categorical Special Education Aid:
The scholarship program will not reduce most school districts' current special education costs and will not reduce the amount of state special education categorical aids necessary to support children with disabilities in public schools going forward.

Private schools under this proposal have no obligation to accept all students with disabilities. It is likely that few students with significant disabilities (physical and/or cognitive) will be accepted into private schools. Most special needs scholarship students will have minimal needs. The result is school districts will have a higher percentage of students with significant disabilities compared to their current population and will not have a reduction in costs.

Special Education and school-age parents categorical aid and additional special education aid (i.e. high cost) are sum-certain appropriations which have not been increased in the past six years. Aid payments are prorated as total eligible costs exceed the appropriation. In recent years the proration rate has been in the range of 26-28% for special education categorical aid and 50-55% for special education high cost categorical aid.

State aid for transportation; open enrollment and, course options, and special needs scholarships:
The state currently has an appropriation, s. 20.255(2)(cy), Stats., for the reimbursement of transportation costs for parents of low-income pupils participating in the open enrollment program. Claims for the open enrollment program are prorated due to having more claims than money available. The proration factor for the 2012-13 school year was 30.9%. It is indeterminate how many additional claims would be realized by the Special Needs Scholarship program low-income parents as eligible for transportation reimbursement. However, for every additional claim by a scholarship parent, the aid proration percentage will decrease.

Federal Individuals with Disabilities Education Act (IDEA) funds:

The bill will not affect the IDEA grant amount awarded to the state as long as the special needs scholarship is a sum sufficient appropriation. In the future, if the Wisconsin legislature changed the program to be sum certain versus sum sufficient, State Maintenance of Effort (MOE) could be impacted which could result in Wisconsin receiving reduced IDEA grant monies.

The special needs scholarship program is paid from appropriation s. 20.255(2)(az), Stats., which is a sum sufficient appropriation. Because the scholarship program appropriation is sum sufficient, DPI may expend any amount of monies necessary for the program that is allowable under the scholarship program requirements per s. 115.7915, Stats. As a result, state level MOE will not be impacted because the state is "making available" all needed funds to support the scholarship program.

MOE is the requirement placed upon many federally funded grant programs that the State Education Agency (SEA) and Local Education Agencies (LEAs) demonstrate that the level of state and local funding remains relatively constant from year to year. Part B of the IDEA, which addresses IDEA funding allocations to the SEA and LEAs, includes MOE provisions applicable separately at both the state and local levels.

At the state level, IDEA Part B prohibits a state from reducing state financial support for special education below the amount of that support for the preceding fiscal year (34 CFR s. 300.163). In Wisconsin, this state support includes "special education categorical aids" (including supplemental and high cost aid) as well as special education support provided by the Wisconsin School for the Deaf, Wisconsin Center for the Blind and Visually Impaired, and the Department of Corrections. Approximately $375 million is paid out to LEAs each year through Wisconsin¡¦s special education categorical aid program to help cover the local costs of providing special education and related services for children with disabilities. This state support is not federal funding, but rather an appropriation made in Wisconsin¡¦s state budget. To meet the IDEA MOE state-level expectation, Wisconsin must continue to fund special education (i.e. make funds available) at least at the same level every year. If the state fails to meet MOE requirements, the IDEA Part B grant funding is reduced by the same amount as the amount the state fell short of its MOE requirement.

Federal Medicaid School Based Services Funds:
The bill may impact the state's claiming of federal Medicaid School Based Services (SBS) funds. Only Medicaid-certified providers may provide SBS services; the state Department of Health Services is responsible for the certification process. While all school districts in the state are Medicaid-certified providers, not all private schools are certified. Thus, if a parent takes a scholarship under this bill to transfer his or her student from a resident public school to a private school, there may be a loss of federal SBS funds to the state unless the private school is a Medicaid-certified provider. Under current law, 60 percent of all federal SBS claims are deposited in the state¡¦s general fund; thus there could be a loss of GPR earned. This amount is indeterminate.

Department of Public Instruction:
This bill will increase costs for DPI. The amount of the increase is indeterminate and cannot be absorbed by the department.

This bill requires DPI to implement and administer a new scholarship program; however no additional staff or funding is provided. Current DPI special education staff is 100 percent federally funded by IDEA funds which cannot be used to implement and/or administer this state program. The additional workload cannot be absorbed by the department.

Based on experience administering other choice programs, DPI estimates needing 4 new FTE to administer the special needs scholarship program at a cost of $340,015 GPR annually for salaries, fringe benefits, fixed costs, and supplies and services. The 4 FTE are as follows: 1 school administration consultant, 1 information systems development services specialist, 1 school finance auditor, and 1 financial specialist-5. DPI estimates needing 2 contract programmers at a cost of $30,000 GPR for the initial design, programming and implementation of a special needs scholarship program (databases, applications, forms, interfaces, etc).

The following are DPI requirements in the bill:
o Confirm child has been denied open enrollment and attended a Wisconsin public school for the entire school year immediately preceding the school year the child receives first special needs scholarship.
o Notify the resident school district a child has been awarded a scholarship.
o Determine both the cost of a student¡¦s education at the eligible school and the standard scholarship amount. Scholarship amount is the lesser of the eligible school cost or the standard amount.
o Notify parent of the scholarship amount with an explanation of how the amount was determined.

o Track acknowledgement of document (rights of child with a disability and of her or her parent) by the parent. This constitutes notice that the applicant has been informed of his or her rights under state law and under IDEA.
o Track acknowledgement of private school profiles by parents. DPI will not make a scholarship payment to a private school unless acknowledgement is confirmed.
o Pay special needs scholarships to school district, charter school or private school from s.20.255 (2) (az), Stats..
o For children who previously qualified for a special needs scholarship that are no longer eligible who continue to attend the private school, DPI will pay the private school an amount equal to a Wisconsin parental school choice program amount.
o Deduct scholarship amount from state general equalization aid.
o Pay scholarships to eligible school per payment schedule in s. 119.23(4)(c), Stats., : 25% in September, November, February, and May.
o Bar school from participating in the program if the school intentionally and substantially misrepresents required information, routinely fails to comply with financial standards, uses a pupil's scholarship for any purpose other than educational purposes, or fails to refund any scholarship overpayments to the state within 60 days.
o Notify all children eligible to participate in the program and their parents of barred schools. These children can attend another eligible school under the scholarship program.
o Administer an appeal process for barred schools.
o Promulgate rules to implement and administer the program.
o Ensure all calculations to the $4.3 billion general school aid formula are conducted accurately and in a timely manner.
o Implement the program (IT applications, forms, school and DPI staff training, etc.)
o Develop application form parents use to apply to an eligible school.
o Develop rights comparison document and revise as necessary. This document compares the rights of a child with a disability and of his or her parent under state law and IDEA (federal special education law) to rights under the scholarship program and IDEA.
o Maintain database of eligible schools that have notified DPI of their intent to participate.
o Review private schools annual financial reports.
o Track private schools surety bond procurement or filing of financial reports to DPI demonstrating ability to pay total scholarship amount.
o Monitor private schools for the following:
* Comply with all health and safety laws or codes that apply to private schools.
* Hold a valid certificate of occupancy, if required by the municipality in which the school is located. If the municipality in which the school is located does not issue certificates of occupancy, the private school shall obtain a certificate of occupancy issued by the local or regional governmental unit with authority to issue certificates of occupancy or submit to DPI a letter or form from the municipality in which the private school is located that explains that the municipality does not issue certificates of occupancy.
* Comply with 42 USC 2000d federal law that prohibits discrimination on the basis of race, color, or national origin by any program or activity that receives federal financial assistance
* Conduct criminal background investigations of its employees and exclude from employment any person not permitted to hold a teaching license as the result of an offense and any person who might reasonably be believed to pose a threat to the safety of others.

It can be presumed that there will be appeals regarding when and for how long a school district or private school could be barred from the program. Since the bill does not address how these appeals would be handled, the department would likely have to follow Chapter 227, Stats., in regard to due process. The related costs and staff time in doing so could be substantial and will need to be covered by the 4 FTE listed above. The department also estimates that for each contested case hearing, it will cost $2,000 GPR for the hearing officer and approximately 40 hours of DPI staff attorney time. These costs are indeterminate.

The wording included in s. 115.7915 (6), Stats., of "Intentionally and substantially misrepresented" and "Routinely failed to comply" significantly negates the requirements listed under the Private School Duties s. 115.7915 (4) in this bill. This wording will increase DPI legal costs for program compliance because DPI will need to engage in significant amounts of litigation to determine precisely how the wording applies in many different fact situations. The amount of the increase is indeterminate.

LOCAL FISCAL EFFECT: The overall cost of this bill for local school districts is indeterminate.

General School Aids and Property Taxes:
Under current law, the total amount of state funding available for distribution under general school aids (the

"school aid" formula) is established by a single general fund appropriation. Assuming revenue limits are unchanged and that school districts use all of their available revenue limit authority, if more state funding is made available through general school aids, school district property taxes will decrease. Conversely, if less state funding is provided, property taxes will increase.

Under this bill, Section 1 specifically reduces the amount of general school aids that would be made available to school districts beginning in the 2014-15 fiscal year to pay for special needs scholarships. Since the bill does not make any changes to school district revenue limits or the calculation of general school aids, this provision would result in a commensurate increase in school district property taxes on a statewide basis. However, since the bill is drafted in a manner that reduces general school aids before the department would "run" the school aid formula, the impact of this overall reduction in general school aids would affect school districts differently. Had this legislation been in place in 2013-14, 61 school districts would have realized no reduction in their general school aids from the state as they are either no longer eligible for state equalization aids or are "primary aid only" districts that receive state aid only at the first tier of the formula. Thus, the impact of a reduction in general school aids, and resulting increase in property taxes, would have been concentrated on the remaining 363 school districts in the state.

In addition, since the bill would reduce the overall amount of general school aids available it would also increase the uniform general aid reduction for all school districts under current law to pay for the state¡¦s independent charter schools program. Since all but two school districts (that no longer receive any general school aid whatsoever) have their state general aids reduced for this program, the bill would also reduce state general aid for 422 school districts and increase their property taxes by an identical amount.

Since the number of students that would receive special education scholarships under this bill and the amount of each individual scholarship is unknown, the exact fiscal impact of this bill upon state general school aids and resulting increase in property taxes is indeterminate. The department estimates approximately 3,900 children with disabilities would be eligible for the scholarship in the 2014-15 school year based on prior year open enrollment denials from the 2012-13 and 2013-14 school year and projected denials for 2014-15 school year. This is equal to approximately 3.2 % of the children with disabilities enrolled in public school in Wisconsin. If these 3,900 eligible children received the standard scholarship amount of $14,705, the 2014-15 cost of the special needs scholarship program would be $57,349,500. Therefore, the resulting statewide property tax increase would be $57,349,500. If 5% of the children with disabilities in Wisconsin receive a scholarship, the property tax increase would be $88,744,675 (10% would be $177,489,350).

Federal Individuals with Disabilities Education Act (IDEA) Funds and Equitable Services
Resident school districts may have an increase in Equitable Services resulting in decreased IDEA funds available for the public school students at the district.

IDEA requires school districts to set aside funds to pay for special education services for private school students with disabilities. Equitable Services are IDEA entitlement funds a school district is required by federal law to set aside to pay for special education services for children with disabilities who were parentally placed in private schools located within their school district boundaries. These children may or may not live within the school district boundaries in which the private school is located. Under IDEA, the public school district in which the private school is located must set aside the federal funds and provide the special education services.

If the availability of scholarships results in an increase in the number of students with disabilities attending private schools, the amount of federal IDEA grant funds a district has to set aside will also increase and must be spent on private school students rather than public school students. In addition, the districts that may see their IDEA funds diverted to private schools may not be the districts with the outgoing scholarship students. As an example, if five students from the ABC School District take scholarships to attend a private school located within the XYZ School District, the XYZ School District will see the amount of IDEA grant monies available for their own special education costs decrease as it will need to be spent on the private school students.

Federal Individuals with Disabilities Education Act (IDEA) Funds and Maintenance of Effort (MOE):
The special needs scholarship program will not impact MOE for local school districts.

The funds for the scholarship are paid from appropriation s. 20.255(2)(az), Stats., and not tied to a district's ledger. The district will never account for the cost of the scholarship and therefore it will not be an expenditure included in the MOE calculation. MOE is also examined at a per student with disability capita amount. The special needs scholarship students are not counted in the school membership of the resident

school district. As a result, districts will see a decrease in their students with disabilities which is an allowed exception to MOE under IDEA.

Legal Costs:
School districts may incur increased legal costs due to disputes over IEP eligibility.

Standardized Testing Costs:
School districts may have increased testing costs. These testing costs for the special needs scholarship student are additional costs to school districts for which they are not receiving state or local aid.

If a scholarship student chooses to attend a private school and the private school does not administer the state standardized tests, the resident school district must administer the tests at the request of the parent. Administering the test to children with disabilities could require various accommodations and costs to the resident district. Furthermore, the district may not be able to properly administer the test because the resident district would not be aware of required accommodations, thus exposing the district to litigation that could be costly.

Cost of servicing special needs students who return to the public school
School districts may have increased costs as a result of providing more intensive services to children returning from private schools. If children return to public school due to their needs not being met at the private school or being dismissed by the private school, the public school may be providing more or more intensive services to restore the children to prior functioning levels than they would have provided had the children not attended the private school. The responsibility for legal compliance, determining eligibility, determining educational deficits, etc., starts over when the children return to the public school. Not only would this lost time be detrimental to the children, the burden and costs fall on the resident district to appropriately assess and provide for the children.

Long-Range Fiscal Implications

To the extent this bill permanently reduces pupil membership in public school districts, spending authority under revenue limits in affected districts will be reduced.

School Administrators Alliance
Representing the Interests of Wisconsin School Children

TO: Assembly Committee on Education
FROM: John Forester, Director of Government Relations
DATE: February 19, 2014
RE: Assembly Bill 682 – Special Needs Vouchers

The SAA strongly opposes Assembly Bill 682, relating to creating a special needs voucher program for disabled students. This bill would offer special needs students who have been denied open enrollment a taxpayer funded voucher to attend another school district, a charter school or a private school.

The SAA has long opposed special needs voucher legislation, and we are proud to join advocates for disabled students in their opposition to AB 682. I think it bears repeating that no statewide disability group in Wisconsin has endorsed special needs voucher legislation.

If adopted, AB 682 will drain resources from students attending traditional public schools throughout Wisconsin, result in the loss of due process rights and services for special education students, increase local property taxes, and provide private voucher schools with yet another unjustified sum sufficient appropriation. The SAA asks you to oppose the bill on the basis of the following concerns.

Special Needs Voucher Funding

Special needs vouchers would take tax dollars out of traditional public schools, hurting all the students that remain in those schools. Under this bill, the special needs voucher would be funded as a first draw on the general school aids that would otherwise be payable to all school districts receiving general aid in the state. Given that the per pupil payments to independent charter schools are also funded in this manner, passage of this bill will result in a growing aid reduction to public schools.

In its fiscal estimate of the bill, the Department of Public Instruction (DPI) estimates that 3,900 students with disabilities would be eligible for the special needs voucher in the 2014-15 school year. If each of these 3,900 eligible students received the standard scholarship amount of $14,705, the 2014-15 cost of the special needs voucher program would be $57,349,500. Even if only 1,000 eligible students received the standard scholarship, $14,705,000 would be taken from the general school aid appropriation. And, because local school districts are allowed to levy property taxes to cover the reduction in state aid, this bill will likely result in increases in local property taxes.

Loss of Rights, Services for Students

In the special needs voucher legislation introduced last session, the most egregious shortcomings of the bill related to the loss of due process rights and services for special needs students.

In that bill, it was clear that families that used a special needs voucher to send their child to a private school would give up their child's rights and protections under the Individuals with Disabilities Education Act (IDEA), including due process rights and the right to an enforceable Individual Education Program (IEP). What's more, the bill did not require a private school accepting a voucher to even offer any of the services identified in the student's IEP, nor to have qualified special education or related services personnel on staff.

In AB 682, the authors clearly made changes to try and address the problems with last session's bill, many of the changes purportedly to provide protections for students and parents as well as assurances of quality special needs services for children. Upon closer examination however, these protections are inadequate. The bill still fails to require that private schools accepting special needs vouchers have qualified staff or provide any of the services prescribed for the child in the IEP. It appears there is no enforcement mechanism in the bill for any of these protections. Unfortunately, it also appears that this bill would not change the fact that families using a special needs voucher to send their child to a private school would give up their child's rights and protections under the IDEA.

Special Education Categorical Aids

I would like to share with you one of the major challenges public schools face in their efforts to provide quality services for all the special needs children in their schools. Federal and state categorical aids for special education have not kept pace with special education cost increases for at least the past 20 years. The categorical aid is the state's primary direct fund source for recognizing the additional costs of educating children with disabilities. In 1993-94, the state's level of reimbursement was 44.6 percent of aidable costs. The reimbursement level fell to 30 percent in 2004-05 and is projected to fall below 25 percent in 2014-15 without additional state special education funding. Many believe that, under these circumstances, districts are being forced to take money from regular education to pay for special education. It is my hope that the proponents of AB 682 will recognize this as a major problem and ultimately support increased categorical aid funding for special education.

Sum Certain vs. Sum Sufficient

Finally, I would like to comment on this bill's creation of a sum sufficient appropriation for the special needs voucher program. To my knowledge, this would be the sixth sum sufficient appropriation in Wisconsin K-12 education. The others are national board certified teachers, independent charter schools

which the sum sufficient appropriation for special needs vouchers would come, is sum certain. Special education is sum certain. School day milk is sum certain. School breakfast is sum certain. Pupil transportation, which is reimbursed at less than seven cents on the dollar, is sum certain. The SAA believes that passage of this bill would provide private voucher schools with yet another unjustified sum sufficient appropriation.

Thank you for your consideration of our views. We urge your opposition to AB 682.

Penfield
Children's Center

833 North 26th Street
Milwaukee, WI
53223

Phone 414.344.7676
Fax 414.344.7739

February 13, 2014

Senator Leah Vukmir
Room 131 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

RE: Education of Children with Special Needs

Dear Senator Vukmir:

I write to express my support for your efforts to provide expanded educational choices for children with special needs. Penfield Children's Center serves over 1200 children and infants with disabilities and delays each year in Milwaukee County. Our 5 star early childhood education center has 8 fully inclusive classrooms with approximately 40% children with special needs. Almost 90% of our families live below the federal poverty level.

Many of these children transition to Milwaukee Public School with an IEP at the age of three. Others choose to attend charter schools or choice schools based on parent preference.

Transitioning children with special needs is often a labor of love for parents that takes dogged determination and hours of education about the various settings that may be appropriate for their child. Penfield staff work closely with parents teaching them how to advocate and make informed decisions. Often the transitions can be a source of frustration and confusion for parents.
The system of funding education for children with special needs must be modernized. Public policy has not kept up with the science and technology that is keeping micro-preemies and other infants alive with a host of health concerns and developmental delays that follow them well into their school years. A Special Needs Scholarship Program that follows the child, has accountability benchmarks and allows parents a choice as to where to educate their children, is long overdue.

Your efforts to extend educational resources for child with special needs are truly appreciated. As you move forward with your efforts, Penfield is available to share its expertise and its vision for a better system for our children. Please don't hesitate to call.

Thank you again.

Sincerely,

Christine P. Holmes

Christine P. Holmes
President and CEO

cc Luther Olsen
cc Alberta Darling

WISCONSIN INSTITUTE
FOR LAW & LIBERTY

Contact: Rick Esenberg
Tel. 414-727-6367
FAX: 414-727-6385
Email: rick@will-law.org

FOR IMMEDIATE RELEASE

WILL to DPI: Open Enrollment Process May Violate ADA, State Law

Records show that School Districts and the DPI may be illegally rejecting open enrollment applications from students with disabilities

February 13, 2014, Milwaukee, WI – Today, the Wisconsin Institute for Law & Liberty sent a letter to Superintendent Evers of the Department of Public Instruction, raising serious concerns about whether the DPI is misapplying the open enrollment laws in a way that discriminates against students with disabilities in violation of state law as well as Title II of the Americans with Disabilities Act of 1990 ("ADA") and Section 504 of the Rehabilitation Act of 1973.

Explained CJ Szafir, WILL Education Policy Director, "Every school year, hundreds of students with disabilities are denied the right to open enroll by their school district. When parents appeal the decision, records and interviews with parents have shown that the DPI is not protecting the rights of those students but is instead approving the rejections without conducting the analysis that it is legally required. The whole process leaves parents frustrated, and trapped in a school district that does not serve the needs of their child."

The purpose of Wisconsin's open enrollment program is to allow parents to choose a school district for their child other than the school district where they reside. But students with disabilities have their applications for open enrollment rejected at a much higher rate than those without a disability. A major cause of this disparity is the resident school district claiming that they would incur an "undue financial burden" if the child leaves the school district.

After interviews with parents of students with disabilities, and an analysis of the law and public records, WILL has serious concerns about how the DPI is administering the Open Enrollment Laws. School districts are denying open enrollment applications for students with disabilities on account of some perceived "financial burden" – but the districts are not accurately calculating whether such a burden actually exists and the DPI is not correcting the resident school districts' errors even when the misapplication is appealed. This raises the question of whether the DPI is following the requirements of the Open Enrollment Law and Title II of the Americans with Disabilities Act (ADA), as explained in a federal court case, *Doe v. Burmaster*, Case No. 03-CV-892 (E.D. Wis. December 2, 2004).

Before WILL takes action on this issue, we hope that Superintendent Evers will take the time to answer a few questions, which are explained in greater detail in WILL's letter. The letter to Superintendent Evers can be found on the WILL website (or by clicking here).

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The Wisconsin Institute for Law & Liberty is a non-profit, public interest law firm promoting the public interest in constitutional and open government, individual liberty, and a robust civil society. Further inquiries may be directed to Mr. Esenberg at rick@will-law.org.

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February 13, 2014

Superintendent Tony Evers
Wisconsin Department of Public Instruction
125 S. Webster Street
P.O. Box 7841
Madison, WI 53707-7841

Dear Superintendent Evers:

We are writing on behalf of parents of students with disabilities. With open enrollment for the 2014-2015 school year now underway, we are concerned that individual school districts and the Department of Public Instruction may be misapplying the Open Enrollment Law in a way that discriminates against students with disabilities in violation of state law as well as Title II of the Americans with Disabilities Act of 1990 ("ADA") and Section 504 of the Rehabilitation Act of 1973 ("Section 504").

As you know, Title II prohibits state and local governments from discriminating on the basis of disability and Section 504 prohibits such discrimination in programs or activities receiving Federal financial assistance. In addition, section 118.51(12) of the Wisconsin Statutes limits the circumstances under which a disabled child requiring special education or related services may be denied open enrollment. Further guidance on the application of the Title II and Section 504 to sec. 118.51(12) was provided by the consent decree in *Doe v. Burmaster,* Case No. 03-CV-892 (E.D. Wis., December 2, 2004).

The crux of the problem is the following. Wis. Stat. Section 118.51(12)[1] provides that a resident school district may deny an open enrollment application:

> [i]f the estimate of the costs of the special education or related services required in the individualized education program for a child with a disability . . . would impose upon the child's resident school district an undue financial burden in light

[1] In our opinion Section 118.51(12), itself, may be a violation of the ADA because there is nothing in the ADA which permits a covered entity to discriminate against individuals with disabilities in the availability of educational services based on an "undue financial burden" exception. However, for purposes of this letter that is not a factual question for the DPI to answer and we will assume for purposes of this letter only that such discrimination is allowed if the entity can prove an "undue financial burden."

> of the resident school district's total economic circumstances, including its revenue limit under subch. VII of ch. 121, its ability to pay tuition costs for the pupil, and the per pupil special education or related services costs for children with disabilities continuing to be served by the resident school district.

The cited statutes and consent decree make clear that: 1) a non-resident school district violates the ADA and Section 504 if it charges open enrollment special education tuition to a resident district where there are no actual additional special education costs incurred by the nonresident district in educating that student, (2) a resident school district violates the ADA and Section 504 when it "den[ies] an open enrollment request by a student with a disability on the basis of the financial burden created by tuition charges *that do not reflect the actual additional special education costs* the non-resident school district would incur in educating that student," and (3) the DPI violates the ADA and Section 504 when it upholds an open enrollment denial by a non-resident district for a special education student based on "undue financial burden" not caused by tuition charges that reflect only actual additional special education costs. *See Doe,* at 2. Undue burden may not be based on the Annual Regular Education Amount, i.e., the tuition that a nonresident district may charge a resident district for all students, whether those students require special education or related services or not.

This suggests that denials of open enrollment for students with disabilities on the grounds that they cause an "undue" financial burden should be rare to nonexistent. A nonresident district may charge only for actual additional costs of providing those services (as opposed, for example, to the average cost of providing those services to all students or the enrolling student's proportionate share of those costs). A resident district may only claim as a financial burden charges from the resident district that reflect those additional costs – and only those additional costs. Of course, in assessing the degree of that burden, one must take into consideration revenue received by the resident district attributable to that student and any costs that it does not incur because it is no longer required to educate that child.

Thus, open enrollment can only be denied when the marginal cost of providing special (not regular) education services to a child in the nonresident district so far exceeds the marginal cost of educating that child in the resident district (a cost that the resident district will no longer incur) that the difference (reduced by the revenue attributable to that child still received by the resident district) is so significant as to create a burden that is undue.

This should rarely be the case but it appears that students with disabilities are being denied open enrollment on this basis fairly frequently. In the 2012-2013 school year, there were more than 41,000 applications. Of these, approximately 5,500 were for students with disabilities.[2] According to the DPI's records, more than 42% of students with disabilities were denied open enrollment in the 2012-13 school year. This was a **much higher** rate than denials for students without disabilities and the difference appears to be attributable in part to claims that these students would create an "undue financial burden." In recent years, as interest in open enrollment has grown, the number of students with disabilities who have been denied the right to

[2] The ADA defines an individual with a disability as a person with "a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment." 28 CFR 35.014

open enroll by their resident school districts due to an asserted "undue financial burden" has averaged around 400 students per year.

Based on our review of certain records and interviews of the parents of students with disabilities who have been denied open enrollment, it seems likely that both individual districts and DPI are misapplying the "undue financial" burden exception. But before we take action, we would appreciate answers to the following questions:

I. ***How does DPI ensure that the charges imposed by a nonresident district reflect only the actual additional special education costs that will be incurred by that district?***

With respect to the non-resident school district, based upon our review of appeal records, there is no indication that either the resident school district, in issuing its denial, or the DPI, in adjudicating the appeal, verify that the special education tuition charge from the non-resident school district was lawfully calculated and constitutes only the actual additional costs of providing only special education services under *Doe*. Please advise as to what steps, if any, the DPI takes to make sure that the tuition charge from the non-resident district is lawful under *Doe*.

This is particularly significant since it is our understanding that resident districts often claim that they will save no money if a student seeking open enrollment leaves, i.e., the marginal cost of providing special education services to that child is zero. That seems implausible, but, if it is the case, it seems odd that the nonresident district will incur substantial costs.

II. ***How does the DPI calculate "cost" when it reviews a denial of an open enrollment application of a student with disabilities for "undue financial burden"?***

Our review of open enrollment applications, appeal records, and DPI appeal decisions suggests that resident districts and the DPI treat the tuition charge from the nonresident district as the financial burden. There does not appear to be any consideration of the costs that the resident district will not incur relative to the departing student or the revenue attributable to that student which, under the law, the resident district will continue to receive.

An example may help. In DPI Decision and Order 12-OE-218 dated August 22, 2012 (attached as Exhibit A) a student with disabilities applied for open enrollment out of the Madison Metropolitan School District (MMSD) and into the McFarland School District. MMSD denied the open enrollment application, asserting an "undue financial burden."

The parent appealed the denial to the DPI. In upholding MMSD's denial, the DPI stated:

> The Madison Metropolitan School District has experienced continued flat or declining enrollment and their enrollment projections do not indicate any large increases in the future. With flat or declining enrollment, total revenues will also remain flat or decline and force the district to further reduce spending. The district determined that it faces a budget deficit of $14.142 million in 2012-2013 requiring the district to reduce staff, dip into the District's equity fund, limit the

amount of funds dedicated to repairing the District's crumbling infrastructure, and increase the tax burden on MMSD residents by 4.09%.

The DPI accepted MMSD's statements (nearly verbatim from the language in MMSD's response to the appeal) as well as MMSD's statement that "Madison [would] experience no savings with transfer.[3]" The DPI concluded that MMSD's decision to deny the open enrollment request was neither arbitrary nor unreasonable.

The open enrollment application for the student with disabilities whose denial was appealed in D&O 12-OE-218 had total tuition costs of $9,118, comprising of an "Annual Regular Education Open Enrollment Amount" of $6,445 plus special education tuition of $2,673.[4] Under *Doe*, only the $2,673 amount, if it accurately represents actual additional special education costs to the non-resident school district for the open enrolling student, can be considered by the resident school district to be a cost to the resident school district in determining whether an "undue financial burden" will result from the open enrollment.

In D&O 12-OE-218, the DPI appears to have taken no steps to verify whether the calculation of "undue financial burden" by the resident school district included the revenue attributable specifically to the student whose open enrollment application was denied. Open enrolling students, whether regular education students or special education students, remain included in the district's headcount for purposes of calculating the district's revenue limit. In D&O 12-OE-218, the revenue limit of the resident school district for the year for which open enrollment was sought was around $11,000 per pupil – which is greater than the total $9,118 ($6,445 regular education tuition plus $2,673 special education tuition) open enrollment tuition cost that the resident school district would have been required to pay to the non-resident school district for the student's open enrollment. In such a scenario – when the revenue a resident district receives for a child open enrolling is greater than the total open enrollment costs for a resident district – it is impossible for that resident district to claim an "undue financial burden." The revenue sources attributable to that child exceed the costs attributable to her open enrollment.

We understand that districts may argue that they incur a financial burden because, had the student not departed, the costs attributable to her would be even less than the cost of open enrollment - resulting in a net revenue loss to the district attributable to her departure. Whether this can be considered a financial burden is questionable. But even if it can, problems remain.

Furthermore, a resident school district that pays special education tuition to a non-resident district is entitled to be refunded a portion of such tuition from the non-resident district in the form of categorical funds. However, in D&O 12-OE-218 there is no indication that such a refund was applied against the cost that the resident school district calculated to be an "undue

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[3] The standard for denial of an open enrollment application is "undue financial burden" which is very different from "no savings." For the DPI to accept – and for the resident school district to assert – an undue financial burden calculation based upon a "no savings" standard is a clear violation of *Doe* and, therefore, the ADA.

[4] This amount was stated by the non-resident school district to be the actual additional cost of providing special education services to the student, but the appeal papers do not reflect that the DPI made any attempt to verify the accuracy of that number.

financial burden" nor taken into account by the DPI in adjudicating the appeal and upholding the denial.

As noted above, to determine if there is *any* financial burden - much less an undue one - it is necessary to ask what actual additional special education costs the district will not incur as a result of the open enrollment. The DPI appears to have accepted as valid, without further verification, the resident district's claim that "no savings" would result from the student enrolling into the non-resident school district. If there is an "actual additional special education cost" (as required under *Doe*) to the non-resident school district of $2,673, it seems unlikely that there can be no savings to the resident school district. While this may happen in the odd case of a student with disabilities seeking to transfer from a district with a large special education infrastructure to one with little in the way of existing programming, it is unclear that this type of situation could present itself as often as resident districts claim that it does. Yet, there appears to be no examination of a claim that there are substantial "actual additional special education cost" in one district – so much as to constitute an undue burden - but "no savings" in the other district.

In light of the above, please explain how the DPI, in adjudicating appeals of open enrollment denials issued to students with disabilities, confirms that a denial for "undue financial burden" complies with the requirements of *Doe,* including the requirement that the non-resident school district accurately calculate actual additional costs, that all material information has been accurately included in the resident school district's "undue financial burden" calculation, and that no material information has been omitted from the resident school district's "undue financial burden" calculation and, in addition, how the DPI determines if the financial burden is undue.

III. *How does the DPI determine if there is an undue financial burden?*

In D & O 12-OE-218, a cost of $2,637 to a district with an annual budget of $ 350 million dollars was considered to be "undue." We have been informed of cases when even smaller amounts were so regarded. State law does not authorize – and the ADA and Section 504 would not permit – the denial of open enrollment for *any* financial burden. How does DPI determine whether the burden is undue. Note that, in cases like D&O 12-OE-218, where the resident district student claims no savings from an isolated transfer of a special needs student, it cannot be the case that there is concern that the costs attributable to multiple departing students will "add up."

IV. *When an application for open enrollment has been rejected by the resident school district, the DPI places the burden of initiating the appeal of the denial - and of establishing that the denial was unlawful - on the student with disabilities whose open enrollment application has been denied. What is the basis for the DPI's determination that this is permitted under ADA and Section 504?*

In reviewing appeals of open enrollment application denials the DPI places the burden of proof on the applicant. Specifically, PI 36.10(3)(b), states that the "appellant [the student with disabilities appealing the open enrollment denial] *bears the burden of proving* that the school board's decision was arbitrary or unreasonable." (emphasis added) However, this is in direct

conflict with the federal regulations implementing the ADA. 28 CFR § 35.150(a)(3) requires that "[i]n those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, *a public entity has the burden of proving that compliance with §35.150(a) of this part would result in such alteration or burdens.*" (emphasis added)

The Open Enrollment Law states in Section 118.51(9) Wis. Stats. that the DPI is to affirm the school board's decision unless the DPI finds that the decision was arbitrary or unreasonable, but the statute, itself, does not impose the burden of proof on the student with disabilities. Please explain the basis for DPI's determination that a student with disabilities can be denied the right to participate in open enrollment, even when the denial was unlawful, unless the student undertakes and prevails in the burden of establishing that the denial was unlawful.

V. *How often does the DPI overturn resident school districts' denials of open enrollment applications of students with disabilities based on "undue financial burden"?*

Can you please tell us for each of the last 3 years (school years 2011-12, 2012-13, and 2013-14) how many appeals have been filed with the DPI to challenge a resident school district's denial of the open enrollment application of a student with disabilities based on "undue financial burden?" Also, please tell us how many times the DPI has overturned such a claim by a resident school district? In that regard, please consider this letter an official request under the Wisconsin Open Records Act for the DPI decisions in each of those cases and any record the DPI maintains tracking the number of appeals, and whether appeals are affirmed or reversed.

Conclusion

Both before and in the nearly ten years since the consent decree in *Doe*, the DPI has known of actions taken – or not taken - by resident school districts that have prevented thousands of students with disabilities from participating in Wisconsin's open enrollment program. In adjudicating appeals, as well as its policies and procedures, the DPI has either failed to act to prevent such discrimination or has assisted or facilitated such discrimination.

We look forward to the DPI's answers to our questions as to how these school district practices and actions, as well as DPI's own policies, practices and procedures, can be lawful under the ADA and Section 504.

Sincerely,

Rick Esenberg
President, Wisconsin Institute for Law & Liberty

CJ Szafir
Education Policy Director, Wisconsin Institute for Law & Liberty

cc: Attorney Janet A. Jenkins, Chief Legal Counsel, Department of Public Instruction

THE STATE OF WISCONSIN

BEFORE

THE DEPARTMENT OF PUBLIC INSTRUCTION

In the matter of the open enrollment denial of [redacted] by the Madison Metropolitan School District Board of Education	DECISION AND ORDER 12-OE-218

NATURE OF THE APPEAL

This is an appeal to the Department of Public Instruction, pursuant to Wis. Stats. § 118.51 (9), from the June 7, 2012, decision of the Madison Metropolitan School District Board of Education to deny the above-named pupil's application to transfer from the Madison Metropolitan School District to the McFarland School District under the full-time open enrollment program. This appeal was filed by the pupil's parent(s) and was received by the Department of Public Instruction on July 2, 2012.

In accordance with the provisions of Wis. Adm. Code § PI 36.10 (3) (c), the Decision and Order is based on a review of the record of the school board's decision and argument from the parties to the appeal.

FINDINGS OF FACT

1. By application submitted on April 16, 2012, to the nonresident school district via the Department of Public Instruction's web-based application form, the pupil and the pupil's parent(s) applied to transfer from the Madison Metropolitan School District to the McFarland School District pursuant to Wis. Stats. § 118.51.

2. The pupil will be in eleventh grade in the 2012-13 school year. At the time of application he was attending school in the Madison Metropolitan School District, where he was receiving special education in accordance with an individualized education program (IEP).

3. On May 15, 2012, the McFarland School District sent an estimate of special education costs to the Madison Metropolitan School District. Using form PI 2092, The McFarland School District states that the actual, additional cost it would incur to provide special education to the student is $2,673. This includes $2,423 for speech and language programming and $250 for other services that include assistive technology.

4. By form PI 9417 mailed June 7, 2012, the Madison Metropolitan School Board denied the application, citing:

> The resident school board (of Madison Metropolitan School District) has determined that the cost of the special education and related services required in the student's individualized education program (IEP), as proposed to be implemented by the McFarland School District, would impose an undue financial burden on the Madison Metropolitan School District. [See Wis. Stats. § 118.51 (12) (b)]

5. The parent(s) appealed the Madison Metropolitan School Board's decision on July 2, 2012.

6. Madison Metropolitan School Board Policy 4025 III. b. provides that the school board may deny open enrollment if the cost to provide special education and related services in the nonresident school district is an undue financial burden.

7. The Madison Metropolitan School District submitted form PI 9414[1] as part of the record of the decision. The Madison Metropolitan School District states that it would experience no savings as a result of the student's transfer. Therefore, the net open enrollment tuition cost is $2,673.

8. The Madison Metropolitan School District has experienced continued flat or declining enrollment and their enrollment projections do not indicate any large increases in the future. With flat or declining enrollment, total revenues will also remain flat or decline and force the district to further reduce spending. The district determined that it faces a budget deficit of $14.142 million in 2012-13, requiring the district to reduce staff, dip into the District's equity fund, limit the amount of funds dedicated to repairing the District's crumbling infrastructure, and increase the tax burden on MMSD residents by 4.09%.

DISCUSSION

The Department's role in deciding appeals under the open enrollment program is to ensure that the required statutory procedures were followed, that the school board's policy is in accordance with the statutes, that the school board's decision was based upon one or more of the statutory grounds and the school board's policy to the extent that the policy is in accordance with the statutes, and that the school board's decision was neither arbitrary nor unreasonable.

Wis. Stats. § 118.51 (12) (b), provides that if the cost of the special education program or services required in the child's individualized education program (IEP) as proposed to be implemented by the nonresident school district, would impose upon the child's resident school district an undue financial burden, the resident school board may deny the application. A school district's decision to deny an open enrollment transfer must not be arbitrary or unreasonable. See

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[1] To assist school districts in considering the issue of undue financial burden and in presenting the record of the decision to the department, the department developed a form (PI 9414) for districts to use in examining their total economic circumstances. A copy of PI 9414 is attached to this decision.

Wis. Stats. § 118.51 (9). "Arbitrary or capricious action on the part of an administrative agency occurs when it can be said that such action is unreasonable or does not have a rational basis. Arbitrary action is the result of an unconsidered, willful and irrational choice of conduct and not the result of the 'winnowing and sifting' process." State ex rel. Smits v. City of DePere, 104 Wis. 2d 26, 37-38 (1981), quoting Olson v. Rothwell, 28 Wis. 2d 233, 239 (1965). The test for whether an agency's determination is arbitrary is whether it can be said that such action does not have a rational basis. See Incorporation of Town of Pewaukee, 186 Wis. 2d 515 (Ct.App. 1994).

Undue financial burden is described as "...in light of the resident school district's *total economic circumstances*, including its *revenue limit* under subch. VII of ch. 121, its *ability to pay tuition costs* for the pupil and the *per pupil special education program or services costs* for children with disabilities continuing to be served by the resident school district..." [emphasis added] It is noted that the payment of any tuition, particularly when there are no savings within the district as a result of a student's transfer, is likely to constitute a financial burden. But the statute does not permit a district to deny because the tuition cost is a financial burden; the financial burden must be "undue."

The amount charged by a nonresident school board for a student with a disability may not exceed the open enrollment tuition for a non-disabled student plus any actual additional special education costs a nonresident district would incur in educating the student with a disability. A resident school board may not deny open enrollment to a student with a disability on the basis of the financial burden created by tuition charges that do not reflect the actual additional special education costs the nonresident district would incur in educating that student. The Department may not uphold the denial of an open enrollment request of a student with a disability without any determination that the undue financial burden forming the basis of the denial is created only by tuition charges that reflect the actual additional special education costs the nonresident district

would incur in educating the student with a disability. See John Doe et al v. Burmaster, U.S. District Court of Appeals for the Eastern District of Wisconsin, 03-CV-892.

The McFarland School District states that the actual, additional cost it would incur to provide special education to the student is $2,673. This includes $2,423 for speech and language programming and $250 for other services that includes assistive technology. The Madison Metropolitan School District states that it would experience no savings as a result of the student's transfer.

The Madison Metropolitan School District has experienced continued flat or declining enrollment and their enrollment projections do not indicate any large increases in the future. With flat or declining enrollment, total revenues will also remain flat or decline and force the district to further reduce spending. The district determined that it faces a budget deficit of $14.142 million in 2012-13, requiring the district to reduce staff, dip into the District's equity fund, limit the amount of funds dedicated to repairing the District's crumbling infrastructure, and increase the tax burden on MMSD residents by 4.09%.

The school board considered the cost of the special education and related services required in the student's IEP and determined that the cost is an undue financial burden. The decision was neither arbitrary nor unreasonable.

CONCLUSIONS OF LAW

1. Pursuant to Wis. Stats. § 118.51 (9), the Department has jurisdiction of this appeal.

2. All applications, notices and appeals were timely made.

3. The decision was based on the actual additional special education cost as submitted by the nonresident school district.

4. The decision was based on the resident school district's total economic circumstances.

5. The school board's decision was neither arbitrary nor unreasonable.

ORDER

IT IS THEREFORE ORDERED that in the above titled appeal, the school board's decision to deny the pupil's application under open enrollment is affirmed.

Dated this 22nd day of August, 2012

Michael J. Thompson, PhD
Deputy State Superintendent

WISCONSIN CATHOLIC CONFERENCE

TO: Representative Steve Kestell, Chair
Members, Assembly Committee on Education

FROM: Kim Wadas, Associate Director

DATE: February 19, 2014

RE: Assembly Bill 682, Special Needs Scholarship Program

The Wisconsin Catholic Conference (WCC) urges support for Assembly Bill 682 creating the Special Needs Scholarship Program. The Special Needs Scholarship Program provides scholarships to eligible children with disabilities, permitting students to attend the public or private school of the family's choice, and better serves those families searching for ways to improve the educational experience of their special needs student.

Every human life has an innate dignity, and recognition of this dignity requires that as a society we enable every individual to achieve the fullest measure of personal development of which he or she is capable. The right to life implies the defense of all other rights, including rights of equal opportunity in employment, housing, health care, and education. Persons with disabilities should have access to an educational experience that meets their physical, spiritual, intellectual, and emotional needs. Simply because their needs may be unique should not prevent them from having access to the same educational opportunity provided to students without special needs. The Special Needs Scholarship Program ensures that individuals with disabilities can participate in the same exercise of choice enjoyed by other students by helping to remove those financial barriers that may prevent families from seeking education alternatives.

The Special Needs Scholarship Program also upholds the rights of the parents and guardians of children with disabilities. As those first responsible for the health, safety, and education of their children, parents have a right to choose a school that best meets their children's needs. Public authorities have a corresponding duty to guarantee this parental right and for "ensuring the concrete conditions for its exercise," (*Catechism of the Catholic Church*, #2229).

As Catholics, we believe public policies should affirm the vital role of parents in their children's education by giving them meaningful choices in where and how their children are educated. By providing necessary resources for students and their families, the Special Needs Scholarship Program is a recognition by our state of the distinct challenges facing families of children with special needs. Its enactment would strengthen these parents and help them to fulfill their role as the primary educators of their children.

The WCC urges your support for Assembly Bill 682.

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WISCONSIN FAMILY TIES

16 North Carroll Street, Suite 230
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TESTIMONY IN OPPOSITION TO ASSEMBLY BILL 682

Wisconsin Family Ties is a statewide, parent-run organization serving families that include children and youth with social, emotional, behavioral or mental health challenges. We serve many families across the state whose children are able to attend public school thanks to the federal Individuals with Disabilities Education Act (IDEA). Wisconsin Family Ties is opposed to AB 682, the "Special Needs Scholarship Program." This proposal puts students who would use the vouchers to attend private schools at risk and would be detrimental to students who remain in public schools.

The IDEA affords students with disabilities rights and protections that enable them to receive the free and appropriate public education they deserve. However, obtaining an appropriate public education is not without adversity. Even in public schools, where the IDEA is in force, families face challenges in ensuring that their children with special educational needs get an appropriate education. Wisconsin Family Ties worked with approximately 200 such families in 2013, using the provisions of the IDEA within the public school system to bridge the divide and help students get the education that is required by law.

It is counterintuitive to be considering a measure that proposes to send such students to private vouchers schools which are not bound by the rights and protections of the IDEA. For students with disabilities in private schools, there will be little that Wisconsin Family Ties can offer when it comes to helping families and schools resolve conflicts.

Surveys of educators and support staff indicate that effectively serving students with emotional or behavioral disorders is one of the most significant challenges schools face. These are the students Wisconsin Family Ties works with every day. Wisconsin Family Ties questions whether private schools would have the resources to serve and educate students with emotional and behavioral needs, given AB 682's lack of requirements in private schools for qualified special education staff.

It is likely that students with the most significant needs would rarely be accepted by private schools for special needs vouchers in the first place. Public school districts would lose state equalization funds to the special needs voucher program, creating hardship for the very districts that would continue to educate the students with the greatest challenges.

In addition, there are reports that existing schools in the Milwaukee Parental Choice program all-too-frequently divest themselves of students with behavioral issues after the point each semester

that students are counted for funding purposes. Those students, having experienced significant educational disruption as the voucher schools show them the door, then return to the public schools that must accept and educate them in accordance with the IDEA. For students with mental health needs, who frequently feel ostracized, anxious or depressed, this disruption may have long-lasting effects.

Rather than this voucher proposal, Wisconsin Family Ties encourages the legislature to restore our state's commitment to special education, to ensure that students with special educational needs can learn and achieve in classrooms alongside their peers. We urge this committee to support AB 772, which would restore the state reimbursement rate for special education categorical aids to the level it was a decade ago. AB 772 would also increase categorical aids for high-cost students, another area in which the state's commitment has long fallen short of the need.

Wisconsin Family Ties recognizes that there is much room for improvement in many districts' special education programs. If ideas on how to improve the existing special education system had been addressed with the same vim and vigor – not to mention money and time – that has been expended in advancing proposals that benefit private educational interests, we would be well on the way to making Wisconsin's special education system a national exemplar.

Contact: Hugh Davis, Executive Director
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608.267.6866

Educating Our Children
WA WM
Building Our Future

School District of
West Allis-West Milwaukee, et al.
EDUCATIONAL ADMINISTRATION CENTER

February 19, 2014

Dear Assembly Education Committee Members,

The School District of West Allis-West Milwaukee is providing testimony on Assembly Bill 682.

The following are a few concerns regarding the Special Needs Scholarship proposal:

- By Federal Law the home public district is still ultimately responsible for the Individual Education Plan (IEP) of the Special Education Student even though he/she is not attending the district.
- Under current protocols, private schools are not required to have certified Special Education programs or staff members available for students which would be in violation of Federal IDEA guidelines.
- There is no clear defined plan in this legislation as to how the money will return to the home district should a child who attends a private or voucher school decides to come back during the same school year.
- In this legislation the transportation responsibility is to be delivered by the public school district with no financial reimbursement identified. Currently we are only reimbursed for 27% of transportation costs and this will be an additional financial burden for public schools.
- This legislation has the Special Needs Scholarship equal the state-wide average of what public schools receive per pupil for educating special needs students. However, no portion of the Special Education Voucher dollars will be maintained by the public school district for staff and other related services and responsibilities the public school must provide according to Federal IDEA law for special needs children. In addition, this state-wide average includes the cost of identifying speech and language students and mild learning disability children through self-contained cognitively disabled children and sever-physically disabled children as well as those identified with special needs in between these categories. We are very concerned about using an average, especially if the voucher scale is heavily skewed toward mild learning disabled children who cost much less to educate than the state average which is inclusive of children that require more significant educational services.

Thank you for your attention and consideration of this matter. Please contact my office with any questions.

Kurt D. Wachholz

Kurt Wachholz,
Superintendent of Schools

1205 S. 70th St. • West Allis • Wisconsin • 53214 • (414) 604-3000

Southeastern Wisconsin Schools Alliance

www.schoolsalliance.com

February 17, 2014

Brown Deer
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Glendale/ River Hills
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Greenfield
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Kenosha
Kettle Moraine
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Muskego-Norway
Nicolet
Oak Creek/ Franklin
Oconomowoc
Pewaukee
Port Washington/. Saukville
St. Francis
Shorewood
South Milwaukee
Waukesha
West Allis/ West Milwaukee
Westosha UHS
Whitefish Bay
Whitnall

My name is Terri Phillips and I am the Executive Director for the Southeastern Wisconsin Schools Alliance (SWSA). We represent 29 school districts in the Southeastern Wisconsin region and educate approximately 200,000 students. The districts I represent pride themselves in providing all students with the best educational opportunities possible, and this includes ensuring that the rights of our special needs students are protected.

As a large organization representing many public schools families, we appreciate the opportunity to testify at today's public hearing and share our position on the proposed Assembly Bill 682.

The SWSA is opposed to AB682 for the following reasons:

1. The Individuals with Disabilities Education Act (IDEA) guarantees children vital and long fought for rights and protections. This legislation would eliminate that protection for children moving to private voucher schools.
2. The proposed legislation is unlikely to assist children with the most severe disabilities, who are very expensive to educate. Private schools may very well accept children with mild disabilities and leave those children with the most severe disabilities in neighborhood schools whose state funding continues to decline.
3. Once again, we are considering funding a program that skims school aid directly off the top of the State K-12 funding allocation, thus reducing State funds to local school districts. Ultimately, this program will increase local property taxes as school districts will be forced to increase their levy in order to make up for state revenue loss.
4. The intention of this legislation is to assist those families who were denied open enrollment when they are dissatisfied with the services provided by their home district. Fortunately, students with disabilities are guaranteed a free and appropriate public education. The Department of Public Instruction has a process in place that families can access if due process has been violated.
5. Finally, SWSA asks the legislature to take a step back and examine what problem they are trying to resolve. We question the intent of this legislation when so many families of special needs students are speaking out against it.

The SWSA continues to offer guidance to members of our legislature as you consider future education legislation. We ask that you thoughtfully consider your actions before taking an action that will be so detrimental to our special needs students and their families.

Terri Phillips
SWSA Executive Director

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The Mission of the Southeastern Wisconsin Schools Alliance is to support and promote world class schools through research, advocacy, public policy and effective communication for the benefit of students and the economic vitality of the region.

GLENDALE RIVER HILLS
SCHOOL DISTRICT
Excellence o Diversity o Success

Lawrence D. Smalley
District Administrator

Good morning,

I am Larry Smalley, Superintendent of the Glendale River Hills School District located in Senator Alberta Darling's 8th Senate District and Dan Knodl's 24th Assembly District. I appreciate the opportunity to testify at today's public hearing and to share my District's position on the proposed Assembly Bill 682. My district serves 1,031 Junior Kindergarten through 8th grade students. Most (over 95%) of these students will go to nationally acclaimed Nicolet High School, a High School that is routinely recognized as one of the top high school's in this state as well as the nation.

Before becoming a school administrator I was a special education teacher for over 10 years, working with students with severe emotional and behavioral disabilities. This background has strengthened my understanding of Special Education law as well as enhanced my role as a Special Education advocate, something that I will maintain for the rest of my life.

As Superintendent of the Glendale River Hills' schools I pride myself in providing all students with the best educational opportunities possible, and this includes ensuring that the rights of our special needs students are protected.

The Glendale River Hills School District is opposed to AB682 for multiple reasons that can be summarized plainly as "just wrong for kids and local residents". Here are a couple reasons why this bill is wrong for kids that have special education needs as well as residents of the state of Wisconsin:

1. As you well know, the federal government isn't always helpful to public school's; No Child Left Behind and the flawed waiver process going on right now are a couple of examples where the federal government seems to get in the way of public schools. However, the Federal Government's, Individuals with Disabilities Education Act (IDEA) is not only good for public schools it is also morally correct! IDEA guarantees ALL children vital and long fought for rights and protections. Assembly Bill AB682 would eliminate that protection for children moving to private voucher schools. There is no other way to say it, the fact is that taking away the rights of our most needy students is just wrong!

2. If being morally wrong isn't bad enough, once again, the Bill as written skims school aid directly off the top of the State K-12 funding allocation, thus reducing State funds to local school districts. The Glendale River Hills School District is one of the lowest state supported school districts. This bill will, again, force an increase to my District residents' property taxes. Already a high taxed District, it makes no sense to me how my state assembly person-Dan Knodl-can support such a bill. Ultimately, this program will increase local property taxes for all school districts, which should make all legislators weary of such a Bill.

5. Finally, as I know the SWSA has asked of the legislature, I also ask you to take a step back and examine what problem you are trying to resolve. Obviously, I question the intent of this legislation when so many families of special needs students are speaking out against it.

Sincerely submitted,

Larry Smalley
Superintendent of the Glendale River Hills School District

KETTLE MORAINE SCHOOL DISTRICT

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February 18, 2014

Testimony on AB682 – Special Education Scholarship - Opposed

The provision of Free Appropriate Public Education (FAPE) for students with disabilities has been the heart and soul of state (Wisconsin Chapter 115 since 1973) and federal [Public Law 94-142 & Individuals with Disabilities Education Act (IDEA)] laws since 1975. This historic FAPE legislation guarantees that:

(1) Students with disabilities receive services by appropriately licensed staff;
(2) Appropriate Individual Educational Programs (IEPs) are implemented within specific timeframes through individualized instruction, showing educational benefits and progress toward IEP goals;
(3) Confidentiality, access to records and timely notices to parents are followed;
(4) A host of procedural safeguards to insure appropriate services are adhered to;
(5) Specific disciplinary procedures are followed;
(6) Parents who disagree with any of the above provisions have access to a host of IDEA procedures for complaints and appeals, including due process hearings; and
(7) most important, all of the above guarantees are at public expense, at no cost to parents of students with disabilities.

Unfortunately, the proposed "Special Education Scholarship" legislation does not and cannot require private schools to follow the above FAPE guarantees, nor can FAPE be implemented in private schools. Students with disabilities and their parents who accept a "Special Education Scholarship" and enroll in a private school, will not be able to count on FAPE guarantees to insure appropriate services. In other words, parents would not have the support of federal IDEA laws to demand IEP revisions or re-evaluations, to demand licensed teachers, therapists or aides, to demand a meaningful transition plan to adult life, or to access any of the other FAPE guarantees that are available in public schools.

I've heard that the intention of this legislation is to assist those families who were denied open enrollment when they are dissatisfied with the services provided by their home district. The Department of Public Instruction has processes to address these concerns while protecting FAPE guarantees. I've also witnessed that every special education parents and advocates I've heard from are against this legislation. Who is it serving?

In addition, the legislature is once again considering funding a program that skims school aid directly off the top of the State K-12 funding allocation, reducing State funds to local school districts. As with other voucher programs, this program will increase local property taxes as school districts will be forced to increase their levy in order to make up for state revenue loss. Look at the Kettle Moraine example. The formula punishes the conservative districts while rewarding the highest spending districts. Fix the formula before you further complicate and diminish the supports provided for schools. Consider fully funding special education. Then there would be no reason to deny open enrollment; programs could be expanded.

For these reasons I am opposed to AB682.

- Learning Without Boundaries –

Testimony of Betsy Kippers, WEAC President
before the Assembly Education Committee
February 19, 2014
Assembly Bill 682

Thank you for the opportunity to address the committee. I am Betsy Kippers, a physical education teacher from Racine. I currently serve as president of the Wisconsin Education Association Council, our state's largest union of educators.

The dedicated teachers and education support professionals working in our neighborhood public schools work every day to meet the needs of all students. As someone who devoted my teaching career to improving outcomes for students with special needs, I can tell you how important proper training and support systems are to being successful. Public schools are held accountable through oversight and parents have rights as an added layer of protection. That is the promise of public education.

Voucher programs for children with special needs, as proposed in AB 682, offer up an empty promise. Lacking proper accountability and oversight, these programs strip legal protections for parents and their children. Parents waive federally protected rights. That means these families accepting the voucher to attend a private school no longer have a right to specific services that accompany a free and appropriate public education as defined by the Individuals with Disabilities Education Act (IDEA).

Under the bill, this new program would be funded by skimming off the top of state aid to public school students, leaving fewer resources to support the 870,000 students in public schools. Proponents have said that the proposed voucher program would serve perhaps 1% of students, arguing that the impact on the students attending public schools would be small. The Senate author of the bill even referred to it as a "pilot" program in the hearing in the Senate Education Committee last week. History is an important teacher. I am reminded of another program that started out as a so-called "pilot" program limited to 1% of the students in the district. Twenty plus years later, the Milwaukee private voucher school program has no caps.

Diverting public funds to invest in unproven and ineffective voucher programs is not the answer. If we are serious about doing a better job in meeting the needs of children, and in particular, those with special needs, increase the reimbursement rate for special education. From 1993 until now, the state reimbursement rate to school districts for special education has fallen from 44 percent to 26 percent. I have provided committee members with a table tracking this data. When policymakers do not adequately fund special education, resources are taken from general education to fund the essential programs. This is what we are facing today. AB 682 would only compound the problem.

For all of these reasons, please oppose AB 682.

Betsy Kippers, President

The following chart shows the history of special education aidable costs and reimbursement rates since FY94:

Aid Year	Prior Year Aidable Costs	Percent Change	GPR Appropriation	Reimbursement
1993-1994	$585,879,900	10.8%	$261,330,400	44.6%
1994-1995	$625,111,900	6.7%	$275,548,700	44.1%
1995-1996	$661,269,000	5.8%	$275,548,700	41.7%
1996-1997	$698,164,300	5.6%	$275,548,700	39.5%
1997-1998	$747,324,400	7.0%	$275,548,700	36.9%
1998-1999	$799,556,100	7.0%	$275,548,700	34.5%
1999-2000	$839,923,200	5.0%	$288,048,700	34.3%
2000-2001	$880,915,600	4.9%	$315,681,400	35.8%
2001-2002	$936,788,000	6.3%	$315,681,400	33.7%
2002-2003	$994,520,000	6.2%	$315,681,400	31.7%
2003-2004	$1,037,592,100	4.3%	$316,466,900	30.5%
2004-2005	$1,069,500,000	3.1%	$320,771,600	30.0%
2005-2006	$1,110,800,000	3.9%	$320,771,600	28.9%
2006-2007	$1,162,200,000	4.6%	$332,771,600	28.6%
2007-2008	$1,213,480,400	4.4%	$350,192,500	28.9%
2008-2009	$1,285,385,300	5.9%	$368,939,100	28.7%
2009-2010	$1,322,974,700	2.9%	$368,939,100	27.8%
2010-2011	$1,312,271,300	-.8%	$368,939,100	28.1%
2011-2012	$1,385,983,300	5.6%	$368,939,100	26.6%
2012-2013			$368,939,100	26.0%
2013-2014			$368,939,100	
2014-2015			$368,939,100	

Source: DPI (http://pb.dpi.wi.gov/files/pb/pdf/budreq1315.pdf)

WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION

Tony Evers, PhD, State Superintendent

Assembly Committee on Education
February 19, 2014

Department of Public Instruction
Testimony on 2013 Assembly Bill 682

I want to thank Chairman Kestell and members of the committee for the opportunity to testify before you today on Assembly Bill 682 (AB 682). My name is Jennifer Kammerud and I am the legislative liaison for the Department of Public Instruction and with me today is Marge Resan from our special education team. We are here to today on behalf of State Superintendent Tony Evers to testify in opposition to AB 682.

This bill was first introduced last session, and while the authors have made changes to it, the bill is riddled with unanswered questions related to implementation. Furthermore, it will result in increased costs to the state, increased property taxes, the loss of due process rights and services for special education students, and fewer resources for local school districts to educate both special and regular education students. Moreover, at the end of the day, nothing in this bill will require data to show if this program is actually resulting in a better education for students with disabilities.

Let's start with how AB 682 will fund the vouchers created under the bill. Section 1 of the bill specifically reduces the amount of general school aids that would be made available to school districts beginning in the 2014-15 school year to pay for special education vouchers. This is on top of the $64 million dollars the state already takes from general school aids to fund independent charter schools in Milwaukee and Racine. Since the bill does not make any changes to school district revenue limits or the calculation of general school aids, this provision would result in a commensurate increase in school district property taxes on a statewide basis. Put another way, your school levy equals your revenue limit minus school aids. As aid goes down your levy can go up, meaning property taxes go up.

However, since this bill is drafted in a manner that reduces general school aids before the department would run the school aid formula, the impact of this overall reduction in general school aids would affect school districts differently. Had this legislation been in place in the 2013-14 school year, 61 school districts would have realized no reduction in their general school aids from the state as they are either no longer eligible for state equalization aids or are "primary aid only" districts that receive state aid only at the first tier of the formula. Thus, the impact of a reduction in general school aids, and resulting increase in property taxes, would have been concentrated on the remaining 363 school districts in the state.

How much would the voucher amount be? This year it would be $14,705. While the bill describes two calculations, with the department paying the lesser of the two calculations, the reality is that the voucher amount will always be the standard amount as the standard amount is both well below the average cost to public school districts to educate a special education student and because the department is unable to calculate this second calculation for private schools. The department can't do the calculation for private schools as the department has no private school data of the kind required under the bill to calculate the cost to educate a student in that setting and the bill allows no time to gather that information. Moreover, the calculation for private schools includes operating and debt service costs determined under the private school voucher program, which is the result of a lesser of calculation in and of itself. It is also based on prior year costs and doesn't take into account what happens when a new school accepts a student and there are no prior

year costs.

As a result, based on the nonstatutory language applying the bill retroactively to students who attempted to open enroll beginning in the 2012-13 school year, the department used the $14,705 per pupil figure to estimate the total cost for vouchers in the first year of the program. Based on those numbers, the cost of the program would be $57,349,500 if every student eligible were to take advantage of it.

It is interesting to note that the per pupil voucher amount of $14,705 under the bill is significantly higher than all other states that have a similar program, with the exception of Ohio's Autism Vouchers. The other seven states that have this type of program have average scholarship amounts ranging from $5,580 to $6,799 per pupil.

It should also be noted that the voucher amount under this program is sum sufficient. It can never be reduced or made sum certain due to federal maintenance of effort (MOE) requirements on the state under the Individuals with Disabilities Education Act (IDEA). Basically, as long as the scholarship amount is sum sufficient, there is no state MOE issue because we are saying we will make any amount available, no matter the amount. If, at any time, however, the law is changed to create a sum certain appropriation that is less than what was spent the year before, then we will have a state MOE issue if we ever decrease the amount made available from one year to the next.

The bill may also impact the state's general fund. Under current law, school districts, which are Medicaid-certified providers, can claim federal School Based Services (SBS) funds. Under current law 60 percent of the funds claimed are deposited in the state's general fund. Not all private schools are certified to claim SBS funds so there could be a loss of GPR earned.

School districts could also see significant increased costs under this program leading to fewer resources for special and general education students. Under AB 682 resident school districts no longer count students who leave their districts on this voucher for aid or revenue limit purposes. Under the school aid formula, if everything else remains constant, having fewer students gives you more property wealth behind every student which makes you look richer under the school aid formula resulting in less general equalization aid. This is the same problem declining enrollment districts have. Yet under this bill, the resident district must still absorb significant costs related to the student who has left such as annual state testing and all necessary accommodations (if requested by the parent) and all testing and staff costs associated with the three-year Individualized Education Program (IEP) review (if allowed by parent).

Furthermore, if students return to their resident school district due to their needs not being met at the eligible school or being dismissed by the private school, the public school district will have to absorb any costs associated with retesting, reevaluation, and intensive services needed to restore students to prior functioning levels. Depending on when the student returned the school district could be in a situation where they would be unable to claim that student for general school aids.

AB 682 will impact the amount of federal IDEA dollars a district has available to spend on public school special education students. Under equitable participation requirements in IDEA, school districts are required to set aside IDEA funds for special education services for private school students with disabilities attending private schools located in the school district. It doesn't matter what district the student comes from as the district responsible for setting aside funds is the school district in which the private school is located. As an example, if five students from the Sparta School District take scholarships to attend a private school in Tomah, it will be the Tomah School District that will see the amount of IDEA dollars available to cover their own special education costs decrease as Tomah will need to set aside more of this money for private school students.

While there have been changes made to the bill from last session, there is still little to no meaningful accountability in AB 682 for students or the state.

- The required reevaluation of the IEP by the school board of residence is meaningless if parents don't consent. There is no way to enforce this.
- While private schools are required to conduct background checks and exclude from employment certain persons, there is no one authorized to oversee that this is done.
- While private schools are required to provide a profile of the special education program available, along with methods of instruction, there is no oversight or verification.
- Minimal teacher requirements should be in place. No special education or related services staff are required to be employed or contracted by the private school. Even the existing choice programs require at least a bachelor's degree.
- Individualized Education Plans (IEP) are legally enforceable documents that exist between the school district and the parent. It is not a binding document on anyone but the school district. To say that a private school must implement the IEP or IEP as modified by agreement is basically a blank check that provides no assurances or guarantees to the parent and provides no due process or recourse to parents if the agreement is not kept.
- While there is a requirement for a record of implementation of the IEP or agreement, along with an evaluation of a child's progress, it is to the resident school district. This doesn't accomplish anything as there is no authority by the school district to do anything with this information on a student who is no longer attached to their district. Additionally, without parental consent this could have potential Family Educational Rights and Privacy Act (FERPA) issues.
- All of the penalties prescribed under the bill are conditioned and really do not provide viable recourse to review, enforce, or sanction any private school.

Other examples of areas where AB 682 doesn't measure up to the standards set in the existing choice programs include:

- Hours of instruction.
- Testing requirements.
- Surety bonds.
- Bad actor provisions.
- Ability for state to bar schools from the program.
- Record retention.

There are simply a host of other policy and administrative questions that need to be answered. I have an addendum to the department's testimony listing these. Given the issues and questions surrounding this bill, the department requests that you do not move this bill forward. At this time I would be happy to answer any questions you may have.

Administrative and Policy Questions
2013 Assembly Bill 682
February 2014

Costs to School Districts

1. What about the costs school districts incur for staff they must continue to pay when a student leaves? Under the bill, students can leave their resident school district at any time of the year. It is not uncommon for districts to hire someone just to work with one student. That person would still be under contract.

2. How high will the reduction in state general equalization aid be for some school districts moving forward? For the 2013-14 school year, 363 school districts would have realized a reduction in their state general equalization school aids from the state. This reduction is on top of the 2r independent charter deduction.

3. Should students be able to leave any time during the school year? Under the bill, an application may be made and the student may begin attending the school at any time during the school year. School districts determine costs of services, including transportation and staffing needs, at the beginning of the school year. This bill makes it more difficult for districts to predict their costs and stabilize budgets.

Costs to the State General Fund

1. How much of a loss would the program be to the general fund? 60 percent of all Medicaid school based services claims are deposited in the general fund. Only Medicaid-certified providers may provide these services. All school districts are certified, but many private schools are not. Thus if a parent takes a voucher under the bill to transfer from a public to a private school there may be a loss of federal school based services funds to the state.

2. Funding for the Department of Public Instruction (DPI) staff will be needed (see number one in the following section).

Inability for DPI to Implement the Program as Described

1. How will DPI implement this program? **The department is unable to implement the bill without additional staff and funding**. The current DPI special education staff is 100 percent federally funded. Managing this program is outside the activities funded by federal Individuals with Disabilities Education Act (IDEA) funds. This work would have to be funded with GPR dollars. [Based on experience administering other choice programs, DPI estimates needing 4 new FTE to administer the special needs scholarship program at a cost of $340,015 new GPR annually for salaries, fringe benefits, fixed costs, and supplies and services. The 4 FTE are as follows: 1 school administration consultant, 1 information systems development services specialist, 1 school finance auditor, and 1 financial specialist-5. Additionally, DPI estimates needing 2 contract programmers at a cost of $30,000 new GPR for the initial design, programming and implementation of a special needs scholarship program (databases, applications, forms, interfaces, etc).]

2. Why does the draft inhibit the ability of DPI to enforce provisions of the law? Why is this program less accountable than other choice programs? The wording included in Section 6 of this bill of "Intentionally and substantially misrepresented" and "Routinely failed to comply" significantly negates the requirements listed under the Private School Duties s. 115.7915 (4) in this bill. This wording will increase DPI legal costs for program compliance because DPI will need to engage in significant amounts of litigation to determine precisely how the wording applies in many different fact situations. Under existing choice programs, schools can be banned for simply not meeting the requirements.

3. Is there a time-frame during which schools will have to notify of their intent to participate or is there a year-round process for DPI to implement?

4. If a school is barred from the program, students under the bill are given the option to go to another school with a voucher. If the voucher amount has already been awarded, where is that amount to come from? Is it to come from the general fund?

5. How will the department accurately calculate the amount of each student's voucher using the second calculation method under the bill? The bill requires DPI to calculate the amount of the voucher based on the cost at the eligible school. The costs at eligible schools can vary tremendously. DPI does not have information to verify the reporting of accurate costs by eligible schools (i.e. private school costs and public school operating and debt service costs). Additionally, private schools have no incentive to provide a cost less than the standard scholarship amount. This will result in nearly all scholarships being awarded at the standard scholarship amount which will be higher than the current public school costs of many students with mild disabilities.

6. It appears that the department is to award the voucher prior to determining the scholarship amount. The department can't award the voucher until it determines which of the two voucher amounts under the bill is less, and the department is unable to calculate the scholarship under the second method (eligible school cost).

7. How quickly is the application approved and the voucher amount determined? How long does a scholarship applicant have to respond so the department can complete the application?

8. What happens if a resident school district does not provide an Individualized Education Program (IEP) in three days?

9. What is meant by "informed acknowledgement" and how does it differ from "informed consent"? The bill provides that receipt by an applicant of the document constitutes notice the applicant has been informed of his or her rights under IDEA and the scholarship program. Acceptance of a scholarship constitutes the applicant's "informed acknowledgement" of the rights specified in the document. Previous versions of this proposal noted acceptance of a scholarship constituted the applicant's "informed consent."

10. How is DPI to implement provisions surrounding unanimous IEP reevaluation determinations? The department is unable to carry out provisions in this bill that would attempt to require parents to have their child reevaluated for special education. School districts can only offer reevaluation. Parents

can refuse. Additionally, the department does not have information regarding unanimous IEP determinations nor is this a requirement under IDEA. DPI does not have the information regarding determinations to award scholarships based on unanimous IEP reevaluation determinations. This provision will require reporting more individual student data to DPI.

Lack of Appeal Processes

1. How are appeals handled? There is no appeal process for children, families or eligible schools listed in the bill. For example: who receives a scholarship and who doesn't, and when and for how long a school district or private school could be barred from the program.

2. Is the department supposed to follow Chapter 227 in regards to due process? The related costs in doing so could be substantial and will need to be covered by the 4 new DPI FTE listed earlier. Each contested case hearing will cost at least $2,000 GPR for the hearing officer and approximately 40 hours of DPI staff attorney time.

Lack of Private School Reporting and Accountability Requirements

1. Private schools under the special needs scholarship program are not required to meet the same reporting and accountability requirements as a private school participating in the Milwaukee Parental Choice Program (119.23). Below are a list of some of the requirements for the Milwaukee Parental Choice Program:
   - Teachers have at least a Bachelor's Degree.
   - Students are required to take the same tests as public school students.
   - The state determines when a surety bond is required.
   - Bad actors are barred from further participation in the program.
   - The state may withhold aid or terminate a school from the program if they violate any section of the statute.
   - Hours of instruction: 1,050 for grades 1-6; 1,137 for grades 7-12.
   - Required to keep pupil records and transmit records upon closure.

   Do we want the same accountability requirements for the special needs scholarship program as the existing choice programs?

Removal of Legal Protections for Students

1. Why is there no process governing dispute resolution over special education services in the private school setting like there is for public schools? There is no language created in the bill to provide dispute resolution options for parents who disagree with decisions made by their child's private school.

2. What about nondiscrimination protections under state law? This bill requires private schools participating in the voucher program to comply with federal law preventing discrimination on the basis of race, color or national origin (42 USC 2000 (d)). However, it does not require compliance with Wisconsin pupil nondiscrimination law which provides additional protections against discrimination on the basis of a person's sex, religion, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability. What recourse would

be available to parents of children with disabilities attending private schools under vouchers if their child was being discriminated against, harassed or bullied for one of these reasons?

3. What about segregation concerns? The department is deeply concerned with the potential under this bill for the creation of private schools that serve only special education students. This type of segregation flies in the face of what years of research and experience has taught us regarding educational outcomes for these students.

Conflicts with IDEA

1. Why is the IEP reevaluation required to be conducted by the resident school district? IDEA currently places the child find/evaluation responsibility on the school district in which the private school is located.

2. Why is a unanimous IEP determination required under this bill? Under this bill, the IEP team must unanimously determine a child is no longer a child with a disability. Unanimous determination requirements do not exist under IDEA. Under IDEA, the responsibility of making decisions about special education eligibility belongs to the IEP team. The IDEA includes requirements to ensure parents are equal participants on their child's IEP team, and no participant on the team has "veto" power over the team's decisions. This language sets up a situation where a child could never be determined as no longer being a child with a disability. Moreover, the bill's required reevaluation is related to eligibility not services.

Lack of Recourse for Parents and School Boards

1. Why is there no requirement that the private schools have certified staff to provide special services? Ohio's Jon Peterson Special Needs Scholarship Program requires providers to have the appropriate credentials to provide services listed on an IEP.

2. How will the student, their parents, and the state be able to judge educational success? There is no requirement to take state tests, as there is in the choice program, report on attendance, dropout rates, suspension or expulsion or any other measure.

3. What happens if the private school never implements the IEP or agreement as modified? Neither the department nor the resident school district or parent have the ability to enforce any agreement with the private school or ensure compliance.

Open Enrollment

1. The bill only requires the parent to apply to one nonresident school district. A parent is permitted to apply to three nonresident school districts in a school year. Why is the bill not requiring the parent to take full advantage of the open enrollment program?

2. The bill requires the pupil to be attending a public school, to apply for open enrollment and be denied before being eligible for a voucher. If the pupil is already attending a nonresident district

under open enrollment and is eligible to continue to attend, does the pupil get a special needs voucher if the pupil applies to and is denied by a different nonresident district?

3. A pupil who is already open enrolled may have the open enrollment revoked by the nonresident district if a new or revised IEP requires special education the nonresident district does not have or does not have space for or is habitually truant. The open enrollment may be revoked by the resident district if the cost to implement the new or revised IEP is an undue financial burden. Under the bill, as drafted, these pupils would not be eligible to apply for a special needs scholarship until they applied to a different nonresident district and were denied. Is this intended?

4. If the parent isn't required to file an appeal, what difference does it make whether DPI affirms or overturns the school district?

5. How is the timing supposed to work? The regular application period is from February to April. Notices of approval or denial must be sent by June 6 (for nonresident districts) and June 13 (for resident districts).

6. If the parent files an appeal, the appeal might not be decided until late July or even August. The Department must affirm the school board's decision unless it was arbitrary or unreasonable and the district gets the benefit of the doubt. Why would any parent file an appeal when (1) it will delay being able to apply for the special needs voucher and (2) there is a good chance the parent will lose the appeal and (3) while the parent is waiting someone else may have applied for and gotten the only space(s) at the private school the parent wants the child to attend. (See later comment about random selection.)

7. What is the relationship between the spaces the nonresident school district designates for special needs vouchers and the spaces it designates for open enrollment?

8. Why would a nonresident school district designate any open enrollment spaces for the most common special education programs under this bill? For example, a nonresident district would normally receive only the basic open enrollment amount ($6,635 for 14-15) for speech and language services, while under a voucher it will receive either its full tuition cost or the state average special education cost, either of which is larger than the basic open enrollment amount.

9. If a public school district set aside a number of spaces for students to participate in this program, could those set-aside seats be used as a reason to deny an application under traditional open enrollment for lack of space?

10. Why wouldn't a resident district deny open enrollment for any cost greater than its revenue per member? For example, if a district raises $10,000 in revenue and the open enrollment special education cost is more than that amount, wouldn't it be make sense for the district to deny the open enrollment and instead have the cost spread across the state?

11. There are no application periods or deadlines. Without application periods or deadlines, random selection is meaningless. How can a district conduct a random selection between a pupil who

submits an application in June and one who submits an application in August?

Other questions

1. Is it right that we will have individual private schools in the state receiving more state aid than entire public school districts? This scholarship program will result in some private schools receiving more state aid than a public school district.

2. Unlike the choice program the bill does not prohibit schools from charging tuition above the voucher amount. Why? The effects of this could be substantial.

3. What about income limits? Under the choice program there are income limits, currently set at 300 percent of the federal poverty level. If an IEP team unanimously determines a child is no longer eligible for special education the child continues to receive the amount provided under the MPCP or WPCP programs.

4. This program is a sum sufficient program. Why are we not instead looking at supporting special education in our public school districts in a sum sufficient fashion or at least increasing the current reimbursement rate for special education categorical aids beyond the current 27 percent?

5. Why doesn't the Legislative Audit Bureau Report look at academic performance, provision of services as agreed to, or fiscal accountability? The bill requires the Legislative Audit Bureau to study the program including determining the percentage of participating pupils who were victimized because of their special needs at their resident school district. This creates an assumption that the reasons parents want the special needs vouchers are that the pupil was victimized or had behavior problems. Parents of children with disabilities may apply for open enrollment for the same reasons as parents of non-disabled children. Why assume these two reasons?