



WISCONSIN
ASSOCIATION OF
SCHOOL BOARDS

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John H. Ashley, Executive Director

TO: Members, Assembly Committee on Education
FROM: Dan Rossmiller & Chris Kulow, Government Relations Staff
RE: Assembly Bill 488, relating to requiring an evaluation of whether a pupil with an extended absence from school is a child with a disability.
DATE: January 14, 2016

The Wisconsin Association of School Boards, representing 423 school boards across the state of Wisconsin, is neutral on Assembly Bill 488.

This bill requires a school attendance officer to:

- direct the school board of the school district in which a child resides to determine whether to refer a child who has been excused absent due to a medical condition for ten or more days for an evaluation as to whether the child is a child with a disability;
- direct the school district to provide the parent or guardian of that child with information about the school district's special education referral and evaluation procedures; and
- notify the parent or guardian of a child who is a habitual truant whether that they may request a special education referral for an evaluation of whether the child is a child with a disability together with information about the school district's special education referral and evaluation procedures.

The bill also requires that school attendance policies must include provisions that require the school attendance officer to direct the school board in which a child resides to determine whether to refer a child who is absent for ten or more days for an evaluation as to whether the child is a child with a disability. (This provision does not specify whether the absence is excused or not.)

While we are still evaluating the merits of the bill, we have a number of concerns with the way this bill is drafted that prevent us from supporting the bill in its present form. These concerns are largely technical.

One concern is that the bill does not specify the measuring period during which the ten more days are to be measured. Is it during a school year? During a semester? During the child's entire educational career? This needs to be clarified in order for schools to be certain they are complying with the requirements set forth in the bill.

Another concern is that (as noted above) the ten-or-more-day period described in Section 3 of the bill dealing with school attendance policies does not specify whether the absence is excused or not or whether, like under Section 1 of the bill, the absences are in any way related to a medical condition. Further, like the provisions in Section 1 of the bill this provision in Section 3 also does not specify the measuring period during which the ten more days are to be measured. If it is intended that the ten-or-more-day period applies to all absences, it intersects with section 118.15(3) (c), Stats., which allows a child to be excused in writing by his or her parent or guardian before the absence for a period of up to ten days in a school year. Further, a district may have to count truancy or days of disciplinary suspension toward the ten days mentioned in Section 3 of the bill as currently drafted. We think Section 3 of the bill should clarify that this section does not apply except to absences related to a medical condition that are excused under s. 118.15 (3) (a). This change would make Section 3 of the bill parallel Section 1 of the bill, which we believe was the intent.

We note that concerns have been raised from time to time about whether certain districts are over-identifying students or subgroups of students as children with disabilities. Another potential concern we have with the bill is that if extended absences from school occur disproportionately among low-income students (students in poverty) and students of color (minority students), the provisions of this bill could lead to higher rates of identification of poor and minority students as children with disabilities.

Finally, while the bill aims primarily at referrals and evaluations as to whether the child absent for an extended period is a child with a disability as defined under the federal special education law known as the Individuals with Disabilities Education Act (IDEA), it strikes us that the children most likely to be absent for extended period should perhaps be evaluated as to whether they have a physical or mental impairment eligible that substantially limits one or more major life activities and thus may qualify for what is known as a section 504 accommodation.

Section 504 of the Rehabilitation Act of 1973 is a federal antidiscrimination law designed to eliminate discrimination on the basis of disability against students with disabilities. It aims generally to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education. Its language provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"

A student with a suspected disability may be referred for an evaluation pursuant to the IDEA, under Section 504 or both. The bill addresses only referrals for an evaluation under IDEA.

**Testimony on Assembly Bill 488
By Sally Flaschberger,
Lead Advocacy Specialist
Disability Right Wisconsin**

Recommendation: Support

Good Morning. My name is Sally Flaschberger and I am a lead special education advocate with Disability Rights Wisconsin. 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. One of the issues we often work on is related to school refusal, school absences due to chronic conditions, and truancy referrals for students with disabilities related to disability related absences.

Students miss school for many reasons but dealing with chronic medical or mental health conditions can be one of the most impactful reasons a student is unable to come to school. This is very different from a student who is truant. A truant student is a student who misses school without an acceptable excuse or reason. Students with disabilities can be treated as a habitual truant once they reach the 10 days of absence and consequences instead of interventions are imposed on the student and family.

Over the course of the last year, I personally worked with several families whose children were absent from school for more than 10 days. By the time these parents contact DRW, the students have been out of school many days, aren't receiving any education, and are being threatened with truancy. These students have often not been referred for a special education evaluation even though the parents have informed the school district the absences are related to physical or mental health impairments. Often parents have provided extensive medical documentation and access to medical professionals to verify absences and conditions with no further follow up of school staff in regards to how this is impacting education.

One case in particular was a young high school student. She had been diagnosed by her outside mental health provider with anxiety and depression and was receiving treatment for a year before she moved to a new school district. She had started to miss school periodically in the last six months of her 8th grade year. During the summer, she had moved to a new school district and quickly was unable to attend school due to her anxiety and depression. She would try everyday and her mother would work hard to get her to school. But, day after day she missed school and was counted as absent. The school was concerned and worked with the family but decided to file truancy charges against the student. This charge threw the student and the family into the juvenile system and eventually the judge removed the student from home and as punishment placed her in Shelter Care for 30 days. During this time, the young girl did not receive mental

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health treatment and even though required by the Judge to attend school still did not attend school. She stopped showering and was generally sinking further into depression. After 30 days, it was determined this consequence was not changing her behavior. She was returned to her home. Soon after this stay in Shelter Care, her depression worsened and she tried to commit suicide. Her school refusal and lack of education services continued. The mom felt the school could be doing more but didn't know what this was. After many months, the parent was given information by an outside mental health provider about special education. Learning of this option, the mom requested the evaluation for her daughter. This was seven months and almost 100 days of absences later. The school district personal never referred this student for an evaluation and never provided information to the parent about how to ask for this evaluation. Since that time, the school has put services into place and has made education available to the student. Sadly, this student is still struggling with her mental health and still not consistently attending school. But, the team is working together to continue to look for solutions without using consequences like truancy which only exacerbated her condition. When I look back at this case, I wonder if the school had acted after the 10 absences to put these interventions in place would she have been able to break her cycle of school refusal and begin attending school on a regular basis. I am hoping this new change in AB 488 can help the next student that might be struggling with these issues before it is out of control.

School Districts have a responsibility to evaluate students if they suspect a disability and to inform parents if they ask for what might be considered a special education evaluation. Chronic absences related to physical or mental impairments could be enough to trigger schools to suspect a disability. This new law would be yet another trigger for schools to consider the reason behind absences and become a check point to be sure students like the example above don't fall through the cracks. This law would require schools to consider at the 10 days of absence whether a referral needs to happen and more importantly require that parents be given information on how to refer their child for a special education evaluation. It is a simple but important change to the current law.



STATE REPRESENTATIVE
CORY MASON

WISCONSIN STATE ASSEMBLY
66TH ASSEMBLY DISTRICT
REPRESENTING THE RACINE COMMUNITY

To: Assembly Committee on Education
From: State Representative Cory Mason
Re: Support of Assembly Bill 488
Date: January 14, 2016

Chairman Thiesfeldt and members of the Committee, thank you for holding today's hearing on this critical legislation. I come before you today on behalf of a constituent of mine. I was contacted by this young person and her family about the complex medical issues she and her father have faced recently. Unfortunately, this resulted in a long absence from school for this student. The student was threatened with exclusion from high school extracurricular activities, as well as delayed graduation. Very little information was given to the family on the options available to the student. The student was able ultimately able to graduate on time, but the whole process would have been greatly improved with more hands-on intervention and help from the school. After consulting with advocates and other concerned citizens, I reached the conclusion that a broader policy change was needed.

This bill will help students and families who are dealing with these same medical and educational challenges. Assembly Bill 488 ensures evaluation by local education authorities as to whether a student disability assessment should be conducted for students facing extended absences. This bill also gives the proper tools for parents and guardians to request a referral for a disability evaluation. Lastly, this legislation would require school attendance officers to inform parents of their right to request an evaluation.

This legislation will benefit both students and schools by guaranteeing the proper access to education that students with disabilities need and deserve. Parents and guardians of students with disabilities will also be able to easily navigate a streamlined process that assures their students receive individualized and proper treatment. Our current system convolutes and obscures the path to proper care and education for families and children potentially facing disabilities. We need to provide a better, clearer system for our Wisconsinites who are grappling with these issues.

Many parents and guardians are concerned about the consequences of prolonged absences, and we need to provide help for these individuals and families, not make it harder for them. Help us move forward and guarantee a proper education for all Wisconsinites regardless of disability or prior condition. It is my hope that today's hearing will lead to bipartisan support for this legislation and that we can move forward collaboratively and quickly to advance this legislation. Thank you.

