

*Date:* September 19, 2017

*To:* Governor Scott Walker

*From:* Tony Evers, State Superintendent



*Subject:* Veto Recommendations for the 2017-19 Budget Bill [ASA1 to AB 64]

Pursuant to Article X, § 1 of the Wisconsin Constitution, the State Superintendent is vested with the authority to supervise public instruction in the state. This authority was affirmed under *Thompson v. Craney* (199 Wis. 2d 674, 546 N.W.2d 123 (1996)), in which the Wisconsin Supreme Court declared that the powers of the State Superintendent of Public Instruction could not be reallocated or diminished as a result of action taken by the Governor in the state budget.

As you review the 2017-19 biennial budget bill, I respectfully request that you consider the following veto recommendations. Please contact me to discuss my concerns or any of these recommendations.

### **Recommend for Full Veto**

#### **1. Special Education Open Enrollment and the Special Needs Scholarship Program**

*Current Law:* In response to concerns that pupils with disabilities were being denied requests to open enroll at a higher rate than students without disabilities, the 2015-17 biennial budget, enacted as 2015 Act 55, eliminated the ability of the resident district to deny open enrollment to a special needs pupil based on undue financial burden and provided for a flat open enrollment payment amount of \$12,000 (FY17) to the district the pupil attends. These changes created consistency for school districts, both those sending and those receiving pupils with disabilities under open enrollment, and provided more equitable access for pupils with disabilities.

Act 55 also created the Special Needs Scholarship Program (SNSP), which provides a child with a disability, for whom an individualized education program (IEP) or service plan is in effect, with a voucher (\$12,000 in FY17) to attend a private school, if the child had attended a public school in the prior year, and had applied for and been denied under the public school open enrollment program. There is no income test for the SNSP, unlike the three other parental choice programs in the state. The SNSP is funded by reductions to the general aid payments of the participating children's resident districts. School districts have the authority to utilize a revenue limit exemption equal to the total aid reduction attributable to the SNSP; thus, the cost of the payments to private schools on behalf of SNSP voucher recipients is effectively borne by taxpayers in the pupils' resident school districts.

Per Act 55, the FY17 per pupil transfer/payment amount was set at the same level (\$12,000) for both special education open enrollment (SEOE) and the SNSP. Under both programs, the per pupil amount increases annually, by the same indexing mechanism as is used for the state's three private school parental choice programs and for independent charter schools. The SNSP payment and the SEOE transfer amount will be \$12,207 in FY18 and \$12,427 in FY19 under the budget bill. The SEOE and SNSP payment amounts were constructed so as to represent the average *non-special education* costs

of the pupils participating in the programs. Under SEOE, the non-resident school district counts the pupil for revenue limit purposes (though for most districts, the SEOE transfer amount exceeds the district's per pupil revenue limit authority); and can capture federal and state special education aid, to help offset the higher costs of educating pupils with special needs. Private schools do not receive federal or state special education aid, but do have the ability to generate revenues (e.g., tuition, donations, etc.) that are not controlled by the state, as are the property taxes that districts may raise under state-imposed revenue limits.

*2017-19 Biennial Budget Bill:* the 2017-19 budget proposes significant changes to both SEOE and the SNSP, one of which is centered on adjusting the payment/transfer amounts to reflect *actual costs* rather than regular education costs.

Per pupil payment/transfer amount: Beginning in FY19, the non-resident school district (SEOE) or the private school (SNSP) attended by the child would be permitted to submit to the Department of Public Instruction (Department) a financial statement indicating:

- For SEOE pupils, the cost incurred by the non-resident school district to “provide the child a free and appropriate education”; and
- For SNSP pupils, the cost incurred by the private school to “implement the child's most recent IEP or services plan, 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 services plan.*”

Under the bill, for both SEOE and the SNSP, the Department would be required to provide the financial statement to the child's resident school district. However, neither the Department nor the resident school district would have the ability to verify the information on the statement or deny expenditures deemed inappropriate or unreasonable. Beginning in FY20, for pupils in their second or subsequent year of participation in SEOE or the SNSP, the transfer/payment amount would be:

- For SEOE pupils, the actual costs indicated on the financial statement, up to \$30,000; or, if no financial statement was submitted by the non-resident district, the current law SEOE per pupil transfer amount under the indexing mechanism. The resident district would not have the ability to make up the transfer amount above the per pupil amount via the tax levy.
- For SNSP pupils, the actual costs indicated on the financial statement submitted by the private school; or, if no financial statement was submitted by the private school, the current law SNSP per pupil payment amount under the indexing mechanism. The pupil's resident school district would incur a general aid reduction up to *150% of the per pupil amount in current law*, and would be authorized to use a revenue limit exemption to raise local property taxes by an equal amount (\$18,000, if this provision had been in place in FY17). The remaining actual costs identified by the private school would be eligible for state aid, at a rate of 90% of the costs above the amount deducted from the resident school district. This state aid would come from the existing, sum-sufficient appropriation for the SNSP, meaning that beyond the 90% rate of reimbursement, there would be no additional proration of this state aid to private schools.

SNSP eligibility requirements: In addition to the changes regarding payment, beginning with applications to participate in the SNSP in the FY19, a child with a disability would no longer have to have attended a public school, or have applied for and been denied under the open enrollment

program, in order to be eligible to receive a voucher under the SNSP program. With these changes, there is potential for a substantial expansion of this program. In fact, the Legislative Fiscal Bureau (LFB) projects that, as a result of removing these two eligibility criteria, there will be an increase of 250 participants in the SNSP in FY19 – a 50% increase compared to estimated FY19 participation under current law criteria (500 participants). These additional costs will be recouped via increases in local property taxes (increased revenue limit exemptions for public schools) and the state’s general fund, through the new state aid provisions for private schools.

The SNSP exists side by side with the SEOE provisions enacted under Act 55. The provisions of this budget bill change key components of the programs and I have several concerns with these policy changes:

- Moving to an “actual costs” basis for payments/transfers has the potential for a significant financial impact on school districts, and under the SNSP, for tax payers and for the state. While public schools can choose to not fully utilize the allowable SNSP revenue limit exemption (i.e., to “under levy”), doing so would come at the expense of programming for all other pupils enrolled in those schools. Under SEOE, the resident district cannot capture additional revenue raising authority for the amount above the per pupil transfer amount.
- Under the bill, there is no recourse for a resident district to dispute the expenditures presented on the financial statement. Of particular concern is the provision that allows a private school to submit costs for the “*related services agreed to by the private school and the child's parent that are not included in the child's IEP or services plan.*” This extremely vague language opens the door to virtually any kind of expenditure that could be deemed a benefit to the child – the potential for this provision alone to raise the costs of the SNSP is, frankly, unlimited.
- The bill creates inequity in the funding for pupils with disabilities in the SNSP compared to those in public schools:
  - The inclusion of the “related services” language for the SNSP is an exceedingly more generous allowance for costs than for public schools, and will result in a situation in which special education services for pupils with disabilities enrolled in public schools are limited in the monetary support provided under state law, while services for pupils with disabilities in private school are not limited.
  - Additionally, in providing state aid for the private schools’ costs from a sum-sufficient appropriation, there is no limit to the amount for which a private school could be reimbursed by the state. This does not exist on the public school side; all of the state special education aids for public schools are sum certain appropriations, resulting in proration of special education aid to school districts. The largest special education categorical aid program for public schools provides aid at a rate of roughly 27% of eligible costs.
- While some might argue that expanding the SNSP option to more families is a positive change, this expansion is proposed after just one year of the SNSP being in place. Given the removal of the prior year public school enrollment requirement, it is quite possible that a substantial portion of the newly eligible SNSP voucher recipients would have already been attending the private school – leaving local taxpayers to foot the bill for pupils who had not ever been enrolled in the local public school to continue to attend a private school.

- Finally, this change occurred very late in the process, as the Joint Committee on Finance was concluding deliberations on the budget; this significant change in policy was never debated in public.

**For these reasons, I ask you to veto these provisions entirely. If you are not willing to veto the provisions entirely, I ask that you partially veto the language** permitting a private school to include in the financial statement of actual costs, the language “*related services agreed to by the private school and the child's parent that are not included in the child's IEP or services plan,*” to ensure a degree of restraint and to mitigate the fiscal impact on school districts and local taxpayers.

## **2. Wisconsin Parental Choice Program (WPCP) – Expanded Eligibility Provisions**

The budget bill increases the income eligibility threshold under the WPCP, from 185% under current law, to 220% of the federal poverty limit (FPL). The bill further expands the program by: 1) permitting pupils who were placed on a district cap-imposed waiting list to enter the WPCP at any grade; 2) permitting pupils in the Milwaukee or Racine parental choice programs to enter the WPCP with no verification of the family’s income; and 3) permit private schools that are not currently in a choice program to merge with an existing private school in the WPCP or the Racine parental choice program and be immediately eligible to accept pupils who receive a voucher.

Quite simply, the costs of increased participation in the WPCP will be borne by local tax payers, as the public schools will utilize the revenue limit exemption for WPCP pupils in their districts, in order to not jeopardize resources for the pupils who are attending the public schools. The state cannot afford two school systems: one for pupils in public schools, for whom the state has a *constitutional obligation* to educate, and one for pupils in private schools, for which the state does not have that same obligation. The state should not be forcing local tax payers to pay for the expansion of the private school voucher program.

**For these reasons, I ask you to veto these provisions entirely.**

## **3. Provisions that include private schools and pupils in private schools in state funded programs.**

As noted above, the state is struggling to support both its constitutional obligation to pupils in public schools and the current law commitments to pupils in private schools under the state’s parental choice programs and SNSP. The state continues to expand private school choice options on the backs of school districts and tax payers. This budget bill takes an additional step, including private schools and pupils in state programs, with the following provisions that:

- Permit pupils in all private schools to participate in the Early College Credit Program (ECCP), and make the private school attended by those pupils eligible for state reimbursement of costs under the program;
- Permit all private schools to participate in the Teacher Development Program (TDP), and by extension, allow the staff in those private schools to be eligible for state financial aid; and
- Permit all private schools to claim state aid under the new personal computing devices grant program in the bill (\$125 per 9<sup>th</sup> grade pupil, provided local match requirement is met).

Private schools are not prohibited under current law from entering into such agreements with institutions of higher education; they could accomplish the same outcomes as intended under the proposed ECCP and TDP under current law. Including private schools in these programs simply has the effect of diminishing state resources for pupils and staff in public schools.

**For these reasons, I ask you to veto all of these provisions entirely.**

#### **4. Independent Charter School Authorizers**

Once again, the budget bill is being used as a vehicle to significantly expand independent charter schools. Under 2015 Act 55, five new authorizing entities were created: the Office of Educational Opportunity (OEO) within the UW System, the Executive of Waukesha County, the Gateway Technical College District Board, the College of the Menominee Nation, and the Lac Courte Oreilles Ojibwa Community College. This budget bill continues that expansion, authorizing the Chancellor of any UW System institution, and any technical college district board, to establish an independent charter school. Additionally, the bill removes the current law provisions that: 1) restrict the OEO to establishing a charter school only in districts with 25,000 or more pupils; and, 2) restrict the location, district of residence of attending pupils, and programming that must be provided by a charter school authorized by the Gateway Technical College District Board.

As with the charter school authorizers that were created under Act 55, the new authorizers in this budget bill would receive state aid, paid for directly with a reduction to public schools' state aid payments, with far less accountability than is required of our state's public schools.

The funding mechanism allows the resident school district to count these pupils for revenue limit and general aid purposes, but reduce the districts' general aid payments to fully pay for the state aid to the independent charter schools for these pupils. This is simply a bad deal for our public schools. The additional amount of aid generated for a district resulting from including the charter school pupils as "members" for state aid purposes will not come close to the amount the district will have to pay out on behalf of those pupils. Further, any "bonus" of additional resources comes with a cost to the local taxpayer.

**For these reasons, I ask you to veto these provisions entirely.**

#### **5. Independent Charter School Authorizer Duties**

The budget bill changes the requirement that independent charter school authorizers adhere to the principles and standards for quality charter schools established by the National Association of Charter School Authorizers (NACSA), to simply considering those principles and standards. I can see no defensible reason for not requiring independent charter schools to adhere to principles and standards of their professional organization. We require public school districts to comply with standards set forth in state law, for the benefit of the pupils in our public schools – why would we choose to not do this for our pupils attending independent charter schools?

**For these reasons, I ask you to veto these provisions entirely.**

## 6. Virtual Charter School Funding Study

The budget bill requires the Department to prepare a report comparing the amount paid by the state for pupils attending a virtual charter school through the open enrollment program to the actual educational costs of pupils attending those schools. This study would provide little or no useful information. Pupils attending a virtual charter school through open enrollment are funded by a transfer from the resident school district. The transfer amount, by definition, comes from the resident district's state general aid, or if that is insufficient, state categorical aid; thus, the transfer amount is the state aid provided for those pupils. An accounting of the educational costs for pupils attending a virtual charter school is not available, as current law requires the Department to gather revenue and expenditure data on a district basis, rather than an individual school.

**For these reasons, I ask you to veto these provisions entirely.**

## 7. Energy Efficiency Revenue Limit Exemption

The budget bill prohibits school boards from approving a resolution to utilize the current law Energy Efficiency exemption under revenue limits between January 1 and December 31 of 2018. This exemption provides school boards with a tool to address facility needs in a manner that improves the efficiency of the district's operations. Removing the ability for a school board to use the option, even for one year, takes away the flexibility that school boards have in this area in an otherwise inflexible revenue limit environment.

**For these reasons, I ask you to veto this provision entirely.**

## 8. Scheduling of School District Referenda

The budget bill restricts school boards to holding referenda to just the dates of regularly scheduled primary and general elections, plus one date in November of odd-numbered years (in which there is no regularly scheduled general elections). Further, under the bill, a school board would be limited to holding two referenda per calendar year. While the bill creates an exception for school districts that have experienced a natural disaster, this prohibition on school board practice removes a tool that has been crucial to the survival of school districts during the past several years, a time of little or no increases in the allowable revenue limit. The fact that school boards have been holding, and passing, operating referenda at record rates in the past few years is a testament to the importance of this tool. The concern about a few dollars increase in the tax bill for a "median home" in the state should not take precedence to local control.

**For these reasons, I ask you to veto these provisions entirely.**

## 9. Opportunity Schools Partnership Program [OSPP]

The budget bill contains several provisions surrounding the OSPP that will impact the Racine Unified School District (RUSD). In summary, those provisions:

- Create new eligibility criteria to qualify as an "eligible unified school district" for the creation of the OSPP;

- Provide a mechanism that would delay the process for creating the OSPP (related to demonstration of compliance with specific provisions of 2011 Act 10);
- Permit the village boards of villages located in the eligible unified school district to voluntarily consider a resolution to create new school districts within the existing eligible unified school district;
- Provide for a mandatory process by which the village boards of the villages located in the eligible unified school district must consider a resolution to create new school districts within the existing eligible unified school district;
- Require, upon passage of said resolution by the village boards, that the resolution to be forwarded to the School District Boundary Appeals Board (SDBAB) and specify the actions to be taken by the SDBAB.
- Specify the timeframe for a referendum on the creation of new school districts and the responsibilities of the village board(s) and the eligible unified school district upon passage of the referendum. (The bill also specifies that the school district creation process under current law would not apply to a school district created under the process described above.)

In short, under current law, the RUSD could be determined eligible for creation of the OSPP in the fall of 2017. The bill provides an avenue for delaying the determination for one year (until fall 2018). However, upon designation of the RUSD as an eligible unified school district, the bill's impact would be to allow, and eventually force, the village boards located in the RUSD to act on a resolution to create new school districts separate from the existing RUSD.

The Department does not seek to change the current law provisions around the OSPP, but does support the mechanism included in the bill that would result in a delay in the determination of the RUSD as an eligible district for creation of the OSPP. The change in RUSD's report card score is largely related to changes in the report card metrics adopted by the legislature in 2015 Act 55.

As for the remaining provisions of the bill, it is my belief that such important decisions about school district reorganization be left to those who must live with those decisions – the local citizens; the state should not be dictating whether and under what timeline a village board should consider resolutions with as long lasting impacts as school district reorganization.

**For these reasons, I ask you to retain the provisions of the bill that create the mechanism to allow a delay in the determination of the RUSD as an eligible district for the OSPP, but to veto the remaining provisions in the bill, including the requirement that the Department contract for a study of the impacts of creating new school districts.**

## 10. Whole Grade Sharing Report

The budget bill requires the Department, by February 1, 2019, to report to the Joint Committee on Finance the following information: 1) the number of school boards that applied for the newly created Whole Grade Sharing (WGS) aid for FY19; 2) the number of school boards that are approved to receive this aid in FY19; 3) for each school board approved to receive aid, the name of the board, the number of grades and specific grades subject to the agreement; and 4) as of January 1, 2019, how much of the aid entitlement for FY19 has been encumbered and how much has been expended.

In addition, the budget bill modifies dates under the WGS so as to provide school boards sufficient time to take all the steps required to enter into a WGS agreement by FY19. While it is possible that some school boards will take advantage of the modified deadlines under the bill to begin the process of creating a WGS agreement, the number of districts doing so is likely to be very small. The Department would have all of the information required of the WGS report specified in the bill; but it is not necessary to formally require the Department to submit such a report, as the Department could easily provide the information upon request.

**For these reasons, I ask you to veto the required WGS report provisions entirely.**

### ***TEACHER LICENSURE***

Wisconsin has the best educators in the country. The Department has and will continue to work diligently to ensure multiple pathways to licensure remain available for highly qualified educators. We are willing and able to provide assistance to school districts as we continue to ensure Wisconsin students have the most qualified teachers in the country. Our state does face critical teaching shortages, but the answer is not to lower the standards; rather, we should raise the education profession so it is once again a highly desirable career path.

#### **11. Alternative Teacher Preparation Program**

The budget bill requires the Department to grant an initial teaching license to an individual who possesses a bachelor's degree, passes a background check, and who has successfully completed an alternative teacher certification program operated by an alternative preparation program provider that is a non-profit organization, that operates in at least five states, has been in operation for at least ten years, and that requires the candidate to pass a subject area exam and the pedagogy exam known as the Professional Teaching Knowledge exam, to receive a certificate under the program.

Wisconsin has existing alternative pathways, including recognizing out-of-state licenses and reciprocity based on licensure in another state. This particular provision in the bill is, unfortunately, a backdoor way to lower standards for an online licensing factory – one that refuses to meet the minimum standards set by the legislature and Department. That is disappointing.

Should this provision become law, individuals who pursue this path will not have to meet the same basic requirements as do our Wisconsin educators – specifically, student teaching experience, passing the Foundations of Reading Test, or learning about the history of Wisconsin's eleven federally-recognized American Indian nations, would not be required.

The proposal is an affront to the process the Department has been using to develop legitimate solutions to the teacher shortage problem in Wisconsin. Our focus has been on working with stakeholders in a very public process to streamline licensure without compromising quality. Slipping policy into the budget at this stage, without any public debate or review, is a dangerous and bad way to make policy.

**For these reasons, I ask you to veto these provisions entirely.**

## 12. Online Teacher Reciprocity

Under the budget bill, an individual would be permitted to teach an online course in a subject and level in a public school, including a charter school, *without a license or permit from the Department*, if that individual holds a valid license or permit to teach the subject and level in the state from which the online course is provided. Additionally, the bill requires that an individual who holds such a license or permit (in the state from which the online course is provided) be *considered appropriately licensed* to teach that subject and level in a virtual charter school. The school district of the virtual charter school in which the online course is taught would be responsible for verifying the individual's credentials.

Current law provides for reciprocity based on licensure in another state by requiring the Department to issue a license to an individual who currently holds the equivalent license granted by the proper authority of another state and is in good standing with the proper authority of another state, has taught or worked as an administrator under the license granted by another state for at least one year, and has received an offer of employment from a school located in Wisconsin. While the budget bill repeals this last requirement (offer of employment), the individual still must meet the licensure requirements of the state that issues the license and requires the Department to *verify those requirements prior to issuing a Wisconsin license*.

The online teacher reciprocity provision in this bill, however, includes no such review or issuance of an actual license by the Department. Pupils in virtual charter schools are just as deserving of highly qualified teachers as are pupils attending a brick and mortar school building. The state should not be watering down requirements for teachers in virtual charter schools.

**For these reasons, I ask you to veto these provisions entirely.**

I have an obligation to uphold the constitutional provisions of the office and take very seriously my responsibility to all pupils, their families, and the citizens that elected me to this office. I have significant concerns about the policy implications for many of the changes included in the budget bill – policies that are just bad for children in public schools.

Thank you for your consideration of these veto recommendations. My staff and I are ready to answer any questions you may have.

cc: Waylon Hurlburt, DOA  
Sara Hynek, DOA