

**Assembly Committee on Judiciary  
January 19, 2017**

Thank you, Chairman Ott, Vice-Chairperson Horlacher, and members of the Committee, for this opportunity to testify today on remedial legislation. My name is Erin Fath, and I am the Policy and Budget Director and with me today is Ryan Nilsestuen, Chief Legal Counsel for the Department of Public Instruction (DPI). We are here today to testify in support of the three proposals, Assembly Bills 11, 12 and 13, concerning the DPI, in front of you today.

1. Assembly Bill 11, relating to the public school open enrollment program.

Current law under ss. 118.51 (6) and (7) (a), Wis. Stats., have been made invalid by expiration of time [sub (6)] and by Attorney General Opinion [sub (7) (a)].

Under current law [s. 118.51 (6), Wis. Stats.], school boards had the option to limit the number of its resident pupils attending a nonresident district under Open Enrollment. This authority began in the 1998-99 school year and lasted for seven subsequent school years (as specified in the statute), terminating in the 2005-06 school year. School boards are no longer able to restrict participation of their resident pupils in Open Enrollment. Therefore, the DPI proposes that subsection (6) be repealed.

Under current law [s. 118.51 (7) (a), Wis. Stats.], school districts that were eligible for special transfer aid under Subchapter VI of Chapter 121, Wis. Stats., were able to reject Open Enrollment applications into or out of the district if such an Open Enrollment transfer “would increase the racial imbalance in the school district.” In December 2007, the Wisconsin Attorney General issued an opinion stating that s. 118.51 (7) (a), Wis. Stats., “cannot be applied in a manner that is consistent with the equal protection guarantee of the United States Constitution.” This opinion was based on precedent set by a U.S. Supreme Court decision, *Parents Involved in Community Schools, et al. v. Seattle School District No. 1, et al.* Therefore, the DPI proposes that subsection (7) (a) be repealed.

Note: the DPI included a request to repeal s. 118.51 (6) and (7) (a), for the reasons identified above, in its 2017-19 biennial budget request. It is not yet known whether these changes will be included in the Governor’s 2017-19 biennial budget proposal, thus the DPI included it in its submission of requests for remedial legislation.

2. Assembly Bill 12, relating to modifying terminology regarding limited-English proficient pupils.

Current law defines a “limited-English proficient pupil” as a pupil whose ability to use the English language is limited because of the use of a non-English language in his or her family,

or in his or her daily, non-school surroundings, and who has difficulty (as defined by rule by the state superintendent) in performing ordinary classwork in English as a result of such limited English language proficiency.

The federal Every Student Succeeds Act (ESSA), signed into law in December 2015, introduced and uses the new term “English learner” exclusively to describe pupils with limited proficiency in the English language.

In order to avoid confusion surrounding terminology, the DPI proposes the term “limited-English proficient pupil” be replaced with the term “English learner” in all instances where the term appears in statute. The definition of “English learner” would be the same as the current law definition of “limited-English proficient pupil.”

3. Assembly Bill 13, relating to repealing outdated or expired reporting requirements.

The DPI proposes to repeal reporting requirements imposed on the DPI for specific reports that have expired or are outdated. The specific requirements that would be repealed include the following:

- a. **The requirement, under s. 115.28 (43)**, that the DPI, along with the Department of Justice, make a report by January 1, 2001, and January 1, 2003, of progress made in applying for and obtaining funds from the federal government for programs relating to school safety and reducing violence and disruption in schools. This report was compiled and submitted; the reporting period and deadline for report has passed. It is not an ongoing responsibility of either the DPI or the Department of Justice. The DPI has consulted with the Department of Justice; both departments agree to remove the last two sentences of s. 115.28(43), which speak to the requirement to submit a report by January 1, 2001, and January 1, 2003.
- b. **The requirement, under s. 115.33 (4)**, which directs the state superintendent to conduct a study of the physical condition and capacity of the public schools and their suitability for use as public schools, and to submit a report summarizing the results of the study to the appropriate standing committees of the Legislature [no date specified in statute]. The survey was conducted during the 1998-99 school year and a report was issued in 2000. This is not an ongoing responsibility of the DPI. Information pertaining to the survey and the report can be found on the DPI’s website:  
<http://dpi.wi.gov/sms/facilities/facility-survey>.
- c. **The requirement, under s. 118.035 (5)**, that the DPI submit a report to the appropriate standing committees of the Legislature, by July 1, 2005, that addresses the following topics: methods of encouraging the involvement of the parents or guardians of pupils enrolled in a school district in a school board's decision to require school uniforms; the ability of pupils to obtain the uniforms; and the effect of the imposition of the requirement on crime in the school, including weapons possession, assault, battery, and vandalism; and on pupil suspensions and expulsions. This report was compiled and submitted by the DPI in June 2005 (hard copy is available). It is not an ongoing responsibility of the DPI.

- d. **The requirement, under s. 118.38 (4)**, that the DPI submit a report to the Governor, and to the appropriate standing committees of the Legislature, by July 1, 2000, specifying the number of waivers requested under section s. 118.38, a description of each waiver request, the reason given for each waiver request, and the educational and financial effects on the school district of each waiver that was granted. This report was compiled and submitted by the DPI in 2000. It is not an ongoing responsibility of the DPI.
- e. **The requirement, under s. 121.91 (5)**, that the state superintendent submit to the Governor and Legislature a report summarizing the requests made by school boards, and requests granted by the state superintendent, to increase a school district's revenue limit [under s. [121.91 \(1\)](#), 1995 stats.] by the amount necessary to allow the school district to avoid increasing its level of short-term borrowing over the amount of short-term borrowing incurred by the school district in the 1992-93 school year, if the school district presents clear and convincing evidence of the need for the increase in the limit. The report pertains to a single school year. It is not an ongoing responsibility of the DPI.
- f. **Under this draft, the DPI also requests a modification to the language under s. 118.57 [Notice of educational options; accountability report performance category; pupil assessments]**, specifically, to modify s. 118.57 (2) to correct a cross reference under that section, from s. 115.385 (2) [incorrect reference] to s. 115.385 (1) (b) [correct reference].

In summary, the DPI has had the opportunity to review all three proposals and supports the changes therein. Thank you for your time. I would be happy to answer any questions you have.