

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?