

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.