

Unanswered Administrative and Policy Questions
Senate Bill 486
February 28, 2012

Aids to Participating Schools

1. Which program gets first draw off of equalization aid if there isn't enough to take – open enrollment or special education vouchers?
2. When is DPI supposed to make the payments to schools for the vouchers? Under open enrollment, DPI makes general state aid reductions in June to help determine any necessary proration. Under the choice program we make quarterly payments.
3. Is money received by nonresident school districts under the bill considered to be under or outside the revenue limit cap?
4. The bill allows currently participating choice students to reenroll, if they qualify, for a special education voucher. Thus private schools participating in the choice program could receive almost twice what they currently receive to educate the same student. Was this intended?

Costs to School Districts

1. School districts will be unable to recoup any lost equalization aid on the levy. Is that the intent?
2. What happens when there is no general equalization aid to take from a public school district to put into the general fund? (In 2010-11, 19 districts received less than \$100,000 while 10 received less than \$50,000).
3. What about the costs school districts incur for staff they must continue to pay for 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.
4. To what extent will school districts be paying twice for a student?
A child attending a private school with a voucher would be entitled to equitable participation in special education and related services. As such, the school district where the private school is located may also be responsible for expending Individuals with Disabilities in Education Act (IDEA) funds on these students, whether or not they are residents of the district. A resident district thus might be paying twice for some services a child receives – once via the reduction in state aid for the voucher, and once again via equitable services.
5. To what extent would districts be required to continue maintenance of effort spending requirements for special education under federal law?

6. What is the impact of the voucher payment date on the ability of a school district to meet maintenance of effort requirements?

Costs to the State General Fund

1. Given that the appropriation to pay the vouchers is sum sufficient, is the general fund liable to pay any difference between the amount owed and equalization aid dollars available?
2. What will the impact of a loss of school based services claims be on 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.
3. Funding for DPI staff will be needed (see number one in the following section).

Inability for DPI to Implement the Program as Described

1. The department is unable to implement the bill without additional staff. *The current DPI special education staff is 100 percent federally funded. Managing this program is outside the activities funded by federal IDEA funds so this work would have to be funded with GPR dollars.* DPI estimates needing 2 education consultants and 2 education specialists to administer the program at a cost of \$343,900 for salaries, fringe benefits, fixed costs, and supplies and services.

The following additional duties will be imposed:

- a) Implementing the program (creating applications, forms, etc.);
 - b) Calculating a lesser voucher amount based on the cost to implement services for each student.
 - c) Notifying school districts of student applications and requiring them to provide IEPs within three days;
 - d) Reviewing potentially thousands of IEPs annually;
 - e) Obtaining information from public school districts, both as a resident and non-resident district, and private schools to complete calculations for each voucher (including doing so on a prorated basis);
 - f) Notifying potentially thousands of parents annually of the voucher amount and providing an explanation of the calculation to each one;
 - g) Determining whether private schools are eligible to participate in this specific program and reviewing the private school's annual financial reports.
 - h) Tracking acknowledgement of rights by parents;
 - i) Tracking procurement of surety bonds and the need for those bonds;
 - j) Paying and processing the voucher to each public school, school district and private school;
 - k) Handle any potential appeals;
 - l) Ensuring all calculations to the \$4.6 billion general school aid formula are conducted accurately and in a timely manner.
2. Is there a time-frame during which schools will have to notify of their intent to participate or is there a year-round process?
 3. It appears that the department is to award the voucher prior to determining the scholarship amount. This language is not possible to implement. How are we to award a voucher amount without

knowing the lesser cost (formula vs. cost to educate)?

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? There are no provisions to return the money to the state.
5. How is the department to reconcile the random selection process in the bill with the first come, first served provisions of the voucher? A random selection process would not allow immediate attendance upon acceptance.
6. How can you have language giving siblings already attending the private school preference if they don't have a disability?

Lack of Appeal Processes

1. How are appeals related to the amount of the voucher, who receives a voucher, which schools can participate, and other matters to be handled by the department?
2. The current choice program contains an appeal process with the school for parents who are denied enrollment. Why doesn't this program mirror the same process?
3. Is the department supposed to follow Chapter 227 in regards to due process? Each contested case hearing will cost at least \$2,000 GPR for the hearing officer and significant staff and attorney costs.

Lack of Enforcement Authority

1. Under the bill private schools have a number of duties. The language providing for enforcement guts the ability of the department to ensure compliance. The words intentionally, substantially, and routinely should be removed from the penalties section if we are to provide any level of enforcement regarding a number of provisions including compliance with health and safety laws, valid certificates of occupancy, compliance with federal nondiscrimination requirements, compliance with criminal background checks, provision of information on the special education program, or implementation of services agreed to.
2. Why are schools in this program allowed to choose when they need the protection of a surety bond? In the current choice program the state determines the schools that need the bond based on financial information submitted.
3. Provisions under the current choice program that exist to provide additional accountability and safeguards that are not mirrored in the bill, such as bad actor provisions, requirements for four-year degreed teachers, preaccreditation, state tests, and hours of instruction.

Removal of Legal Protections for Students

1. What about the removal of all avenues available to parents for dispute resolution with a school?

There is no language created in the bill to mirror the IDEA dispute resolution options for parents who disagree with decisions made by their child's public school district or individualized education plan (IEP) team. These options include mediation, facilitated IEPs, state IDEA complaints, and due process hearings. With very minor and narrow exceptions, these dispute resolution options are not available to parents of children with disabilities parentally placed in private schools.

2. What about nondiscrimination protections under state law?

AB 110 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 additionally protects 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?

Lack of Recourse for Parents and School Boards

1. There are no requirements in the bill that private schools offer the services outlined in the IEP as a condition of receiving the full voucher amount.
2. There are no requirements that the private school have certified staff to provide special services.
3. 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.
4. Do school districts ever get a chance to revisit the voucher awarded?
If a student moves out of their resident district the district is still the one paying. There is never a requirement to revisit whether special education services are still needed, whether services are appropriate, or if associated costs are still relevant, until the student graduates or turns 21.
5. Different states have different eligibility requirements for special education. Shouldn't the new resident school district have the ability to review or revise the IEP based on Wisconsin's criteria for eligibility and provision of services?
6. What happens if the private school never implements the IEP or agreement as modified? Neither the department or the resident school district or parent have the ability to enforce any agreement with the private school or ensure compliance.

Additional Issues

1. What about segregation?
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.
2. What about tuition? Unlike the choice program the bill does not prohibit schools from charging tuition above the voucher amount.

3. What about income limits? Under the choice program there are income limits, currently set at 300 percent of the federal poverty level.
4. What about students of military families who were not able to be in one school district the full academic year?
5. What about the interaction of the bill as it relates to open enrollment?
 - Different amounts per student under open enrollment and SB 486.
 - Potentially different treatment of the dollars as it relates to the revenue limit.
 - Limited denial language under open enrollment that does not exist for vouchers. Are school districts required to take students regardless of the cost to the district?
 - Can districts accept voucher students but say they don't have space under open enrollment?