



"Leadership in Public School Governance"

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TO: Members, Assembly Committee on Education
FROM: Dan Rossmiller, Government Relations Director
DATE: May 3, 2011
RE: **Assembly Bill 110**, Relating to Creating a Special Needs Voucher Program

The Wisconsin Association of School Boards (WASB) **opposes** Assembly Bill 110.

Assembly Bill 110 would establish a voucher program for students with disabilities, under which a child with a disability who attended a public school, or did not attend school in this state, in the year immediately preceding could receive a voucher to attend a private school or another public school located in another school district if certain conditions are met.

Although seemingly simple and straight forward, Assembly Bill 110, as introduced, is flawed from an educational standpoint, a fairness standpoint, a school funding standpoint, a pupil rights standpoint, and an accountability standpoint. Even the mechanics described in the bill as to how a student with a disability qualifies for a voucher and how the voucher amount is calculated are poorly defined.

Given that the vouchers under the bill have no income limit for eligibility, no cap on the number of students who may qualify and could allow the payment of a voucher even a after a child might be found no longer to have a disability that creates an educational deficit, it is no surprise that many see Assembly Bill 110 as a "foot in the door" for those who seek to privatize public education through a statewide voucher system. Simply remove references to special education from the bill and you have an unlimited statewide voucher program.

Note: Because parents can already transfer their child to another public school district under open enrollment and because federal special education law would apply to another public school district under this bill, the comments herein relate mainly to private schools. That is not to say that there is not a significant conflict in requiring the home district to fund services provided in another school district. This issue potentially pits school boards and district against each other and should be closely examined.

Under AB 110, if the DPI finds specified conditions are met, upon receipt of an application, the DPI must determine the amount of the scholarship and pay it directly to the private school.

(Question: The bill does not state for how long the child with a disability must "attend" the public school nor does it define "attend." Could this be for as little as one day? Is it however long it takes for an Individualized Education Program (IEP) to be completed on the child?)

Parents are not required to give any notice to the school district under AB 110 before applying for a voucher. This effectively circumvents any incentive for parents to work formally or informally with the resident district to resolve any issues they may have. This also avoids the mediation process set up and to resolve differences.

Because parents can transfer to a private school at any time, it is very difficult for school boards to plan. A board may have hired a particular individual to work with one special needs student. If that student leaves, the district may be faced with having someone under contract that they may or may not be easily able to reassign.

Committee members are no doubt familiar with the advertising that occurs around the Open Enrollment window. With special needs voucher transfers available at any time, one might expect to see year-round advertising by private schools (or public school districts) seeking students to transfer.

The voucher amount under AB 110 is the lesser of the cost to the resident school district or the cost to the private school or the non-resident school district the child wishes to attend of providing regular instruction, instructional and support services, special education and related services, and supplementary aids and services to the child. DPI is provided little or no guidance as to how to calculate these costs under the bill as introduced.

Because this amount will be deducted from the home district's state equalization aid, boards are rightly concerned about how this amount is calculated.

(Question: In some cases, the private school will not have accepted special education students in the past. How then are costs to be calculated? What assumptions are to be made?)

Because there is nothing in the bill that explicitly requires the private school to use the voucher funding to implement an IEP—i.e., to actually provide the special education the child has been determined to need—this whole calculation is potentially a moot point. This is a serious flaw with the bill.

While the bill might enable private schools to put supports for special education students in place, the bill does not appear to require these supports to be put in place. This is a flaw the committee should examine.

Private schools are currently not required to provide the same level of special education services as public schools; private schools need not employ teachers with special education certification and can have non-DPI-licensed administrators supervise the staff who deliver special education services. Nothing in AB 110 changes this. In fact, nothing in AB 110 requires private schools that accept special needs voucher recipients to have even a single special education teacher or therapist on their staff—another serious flaw with the bill.

Under federal law, following the student's initial special education evaluation, a public school must re-evaluate the student every three years. There are minimum requirements associated with the team that convenes for this purpose. The evaluation must assess the student's condition, how his or her needs for special education services have changed and even the student's continued eligibility for special education services. Assembly Bill 110, however, is silent about whether the needs of a student with a disability must be annually or even periodically re-evaluated and, if so, who must do this.

(Questions: Does this mean that once the DPI determines the voucher amount, the a private school is entitled to continue to receive that amount on behalf of a student until that student graduates or turns 21, whichever comes first? Why doesn't the bill acknowledge that student's needs can change over time and provide for periodic review of the child's progress? Who does that review/makes that determination—the private school or the public

district? Why doesn't the bill provide a "safe harbor" provision for school districts such as a waiver of all claims against the public school district for failure to provide special education services by a parent who receives a special needs voucher and takes his/her child to a private school, which then fails to implement the IEP?)

Assembly Bill 110 could have a devastating effect on public schools already facing severe funding cuts and could impose exceptionally costly transportation mandates on public schools. It could also reduce the amount of federal IDEA and Medicaid funds that come to our state to educate special needs students. More information needs to be gathered about the potential loss of federal funds.

Public schools rely on a mix of state, federal and local funds to provide special education services. The state funds are a mix of special education categorical aid, which currently reimburse less than 30 percent of a district's prior year costs of providing special education services, the remainder of costs not funded by federal dollars come from a mix of state general equalization aid and local property tax dollars.

Assembly Bill 110 uses a flawed approach of taking money away from districts that is subject to the revenue limit (i.e., general equalization aids) to pay for costs that are currently at least partially funded from money (i.e., categorical aids) received outside of the revenue limit.

At a time when state general equalization aid to local public school districts, the main source of state funding, is being cut by \$750 million over the next two years, this bill would fund the special education vouchers created under the bill by further and directly reducing this source of funding for districts. For districts that receive very little state general aid—and there are roughly 40 school districts that receive little or no state general aid—there is no state general aid from which to make this deduction.

(Question: Could the loss of students with disabilities to private schools mean that property taxpayers in those districts will essentially be forced to foot the bill to send these students to private schools, some of which could be located considerable distances outside the home (resident) district?)

School boards are also concerned that home school districts would also have to pay the cost of transporting those special education students to those private schools. In some cases, these students will require specialized transportation, such as specialized vans. Currently, many districts rely on special education categorical aid to pay for those specialized vans.

(Question: If students with disabilities leave the public school district for private schools, would the public school district still receive special education categorical aid to pay for services for those students?)

Section 121.54 (3) provides for transportation of children with disabilities by school districts. Under that statute, a school board shall provide transportation for children with disabilities to any special education program for children with disabilities sponsored by a state tax-supported institution of higher education, including a technical college, regardless of distance, if the request for such transportation is approved by the state superintendent.

Imagine the cost if students from Fond du Lac or Milton had to be transported round-trip to a private school sponsored by the UW-Madison Waisman Center each day in a specialized van. The public school district would essentially have to buy a specialized van and hire a full-time driver to make an hour or two-hour trip each way, then wait for the student the rest of the day. Not only will aids to public school districts go down under AB 110, costs may go up.

This bill would make it hard for public school districts to control their costs in other ways as well. As noted earlier, with the parent's ability to withdraw the child at anytime during the school year, some districts will be saddled with excess costs related to the hiring of personnel, such as special education aides hired to work only with a particular child, who subsequently leaves, or contract obligations, such as contracting physical therapy services for a child through a CESA.

If children return to the resident school district after one or more years in private school, and, undoubtedly, some will return, they are likely to be children the private school staff have not been specially trained to teach, with more severe problems, and those children will be likely to have regressed, resulting in the school district's need to provide more intensive (costly) services and staffing upon the child's return.

Assembly Bill 110 holds out the promise to parents that they could have the costs of educating a child with disabilities in a private school paid for by the government. However, those parents would give up their due process rights if they choose to send their child to a private school through the voucher program.

It is our understanding that AB 110 results in a waiver of the child's right to an appropriate education, as that is defined in the IDEA, state law, and the U.S. Supreme Court. While public schools are required by law to provide disabled students with an Individualized Education Program (IEP), services and accommodations, private schools that receive special needs vouchers under AB 110 would not be required to do any of these things.

(Question: Under the bill parents who apply for vouchers to send their children to private schools may be unknowingly giving up their child's right to be educated by special education teachers trained to design and deliver specialized instruction to children with disabilities, and the right to related services, like physical therapy, that are necessary in order for the child to benefit from his or her education. Why does the bill not require private schools to notify parents of this so their consent will be informed?)

Parents and students who use a special needs voucher to attend a private school would give up their federal and state rights to special education, including a right to a free and appropriate public education, and the right to be educated in the least restrictive environment.

The absence of a right to be educated in the least restrictive environment could open the door to the formation of private schools focused on specific populations of students with disabilities, such as autism spectrum disorder, which is completely contrary to the concept of "mainstreaming," which has been found to be beneficial to both the academic and social progress of students with disabilities and is encouraged under federal law.

Students with special needs could also become segregated by income as well because nothing in AB 110 prohibits a private school from charging tuition on top of the voucher amount calculated and paid by the DPI to the private school. Private schools would be able to charge such additional tuition, which could easily become a mechanism for keeping out low-income students with special needs while allowing in middle- and upper-income students with special needs.

Whereas students who attend independent charter schools or even voucher schools that participate in the Milwaukee Parental Choice Program must take the same state assessments that are used to measure student performance and hold schools accountable within the public school system, the same is not true for students attending private schools under the bill.

Under AB 110, students who receive special needs vouchers to attend private schools would not have to take the annual tests administered to public school students, and private schools would not be required to report information on student outcomes for voucher students. It would be virtually impossible to determine whether special needs students using these vouchers to attend private schools are faring better, worse or about the same as they had in their old public schools.

Taxpayers would have almost no knowledge of how their money is being spent and neither taxpayers nor parents would be able to know for certain whether these special needs vouchers are have a positive, negative or no effect on learning of special needs students.

We urge you to **oppose** Assembly Bill 110.