

**1999 DRAFTING REQUEST**

**Assembly Amendment (AA-AB133)**

Received: **05/20/99**

Received By: **mlief**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Hardy**

This file may be shown to any legislator: **NO**

Drafter: **mlief**

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Subject: **Education - handicapped ed.**

Extra Copies: **PG**

**Pre Topic:**

LFB:.....Hardy -

**Topic:**

Milwaukee charter schools special education aid

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	mlief 05/24/99	chanaman 05/24/99	martykr 05/25/99	_____	lrb_docadmin 05/25/99		

FE Sent For:

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FE Sent For:

<END>



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 20, 1999

Joint Committee on Finance

Paper #787

### **Milwaukee Charter Schools Special Education Aid (DPI -- Choice and Charter Schools)**

[LFB 1999-01 Budget Summary: Page 498, #6]

#### **CURRENT LAW**

The Common Council of the City of Milwaukee (the City), the University of Wisconsin Milwaukee (UWM) and the Milwaukee Area Technical College (MATC) may establish by charter and operate, or contract with a group or individual to operate, a charter school. These schools receive state funding equal to the shared cost per member of the Milwaukee Public Schools (MPS) in the previous school year multiplied by the number of charter school pupils attending the school. Annually, state equalization aid paid to MPS is reduced by an amount equivalent to the total funding provided for these schools. For payments in 1998-99, the MPS shared cost per member is approximately \$6,050.

During the 1998-99 school year, the first year under which the City, UWM and MATC could establish charter schools, three schools were established by the City to operate as charter schools, with a total enrollment of approximately 55 students.

School districts, cooperative education service agencies (CESAs) and county children with disabilities education boards (CCDEBs) are eligible for reimbursement of certain prior year special education and special education transportation costs, based on specific reimbursement rates and the availability of funding. In 1998-99, \$275,548,700 GPR is provided for these purposes.

#### **GOVERNOR**

Provide that Milwaukee charter schools would be eligible for special education aid. This would apply to the operator of a charter school established by charter and operated by the City, UWM or MATC, or an individual or group under contract with any of these entities to operate a

charter school. The operator of one of these charter schools could receive aid if it operates a special education program and the State Superintendent is satisfied that the operator of the charter school is complying with federal special education law under the Individuals with Disabilities Education Act (IDEA) as though the operator of the charter school were a local education agency (LEA), as defined under federal law. In this case, the State Superintendent would be required to certify to the Department of Administration (DOA) a sum equal to the amount that the charter school estimates it will expend during the current school year for: (a) salaries of full-time or part-time licensed teachers; (b) licensed coordinators of special education; (c) licensed school social workers and psychologists; (d) paraprofessionals; (e) licensed consulting teachers to work with any teacher of regular education programs who has a child with a disability in a class; and (f) any other personnel, as determined by the State Superintendent. Provide that the costs certified would be eligible for reimbursement from the appropriation for special education and school age parents programs.

Provide that these charter schools would be eligible for aid on special education transportation costs. The operator of one of these charter schools could receive aid if it transports children with disabilities and the State Superintendent is satisfied that the operator of the charter school is complying with federal special education law under IDEA as though the operator of the charter school were an LEA, as defined under federal law. In this case, the State Superintendent would be required to certify to DOA a sum equal to the amount that the operator of the charter school estimates it will expend during the current school year for special education transportation as costs eligible for reimbursement from the appropriations for aid for special education and school age parents programs and aid for special education transportation.

No new funding would be provided for the addition of these Milwaukee charter schools.

## **DISCUSSION POINTS**

1. The federal Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973 require that all students with disabilities be provided with a free and appropriate public education (FAPE) based on their specific individual needs. Private schools are not always required to admit special education students if the schools would need to make more than minor adjustments to their programs to accommodate the students. In contrast, public schools cannot deny admission to any student regardless of the severity of his or her disability. While charter schools are exempt from most state education laws and regulations, they must follow applicable federal laws. In addition, state charter school law provides that charter schools cannot discriminate in admission or deny participation in any program or activity on the basis of various student characteristics, including physical, mental, emotional or learning disability.

2. Most charter schools in the state are instrumentalities of a school district, and therefore the school district is responsible for providing special education services to pupils enrolled in the district's charter schools. The Milwaukee charter schools are not school district schools. Because current state law does not explicitly state that charter schools are public schools, the

Department of Public Instruction (DPI) and the City have disagreed about whether the City or MPS is required to provide special education services to students enrolled in the City's charter schools.

3. City officials have stated that their charter schools will accept students with disabilities and will provide basic special education services. However, they contend that because charter schools do not have the necessary resources, MPS, as the LEA, should be responsible for providing services to severely disabled students. DPI believes that charter schools are public schools and therefore, must follow federal laws relating to the provision of special education services, and has asserted that either the City or the schools themselves are obligated as the LEA to provide such services.

4. Federal law defines LEA as: (a) a public school board; (b) a public authority that performs services for public schools; or (c) any public institution or agency that has administrative control and direction of a public school. An LEA must maintain sufficient control in order to ensure complete compliance with federal special education laws in all aspects of a child's education. The City has argued that it neither exercises administrative control nor provides the schools with any services, and that state law does not include the City in its definition of an LEA. Under current state law, an LEA is: (a) the school district in which a child with a disability resides; (b) the Department of Health and Family Services (DHFS), if a child with a disability resides in a DHFS facility; or (c) the Department of Corrections, if a child with disabilities resides in a secured correctional facility. Under state law, however, this definition of LEA does not apply to charter schools.

5. MPS does not maintain any administrative control or direction of any of the City, UWM or MATC charter schools. State charter school law explicitly states that a charter school established by the City, UWM or MATC, unless established by the City and operated by a for-profit entity, is not an instrumentality of MPS and that MPS may not employ any personnel for the charter school. Further, it could be argued that permitting the City, UWM and MATC to establish charter schools was an effort to provide a school option other than MPS for children residing in the Milwaukee school district. Requiring MPS to attain administrative control and direction of the schools in order to comply with federal IDEA laws may be retreating from the spirit of the charter school law. Finally, requiring MPS to provide services to children that attend schools other than those operated by MPS would likely be an administrative and financial burden on the district.

6. Because the three Milwaukee charter schools would not agree that they were required to follow the public school regulations related to the provision of special education services under federal law, DPI withheld the full charter school payments from the schools, and instead treated the schools as if they were Milwaukee parental choice program (MPCP) schools. During the Fall of 1998, the schools received payments equivalent to the average equalization payment per pupil received by MPS in 1998-99, approximately \$4,900, rather than the \$6,050 per pupil payment granted to Milwaukee charter schools. DPI indicated that if the schools agreed to comply with federal laws related to special education for public schools, then DPI would provide the schools with the full Milwaukee charter school payment.

7. In October 1998, the State Superintendent received a letter from the U.S.

Department of Education (DOE), in response to DPI inquiries regarding this dispute and the potential loss of federal special education funding due to noncompliance with federal law. The major arguments of the DOE correspondence include:

a. *Wisconsin charter schools are public schools.* Charter schools are defined as public schools under federal law and are required to provide special education services as public schools under IDEA. Charter school laws throughout the nation treat charter schools as public schools and Wisconsin's law is structurally comparable to these laws. DOE defines the term public "as applied to an agency, organization, or institution under administrative supervision or control of a government." Based on the DOE comments, because the City has the ability to grant and revoke charters, include specific contract terms and requirements regarding evaluations and personnel, it maintains sufficient supervision and control to meet the definition of the term public. Further, the state has received federal charter school grants based on the premise that Wisconsin charter schools are public schools.

b. *State and City cannot use definition of LEA to avoid obligations under federal law.* States have great flexibility in designating LEAs, which is a concept under federal law that creates a responsible agency for receiving federal funds and meeting substantive federal program and civil rights obligations. However, for the purposes of IDEA, those obligations hinge on whether or not charter schools are public schools, which DOE asserts that they are. DOE is not responsible for interpreting state law, and as long as the state ensures compliance with federal law regarding special education, the state may designate a responsible LEA. If the state does not designate an LEA, the state would be required to provide a FAPE to children with disabilities attending Milwaukee charter schools.

c. *Noncompliance with federal law could place federal IDEA funding received by the state at risk.* In federal fiscal year 1998, Wisconsin received approximately \$80 million in federal IDEA funding. The state has general supervisory responsibility for ensuring that policies and procedures are in place for the provision of a FAPE for all eligible children with disabilities in the state, and for monitoring agencies, institutions and organizations that have responsibilities under IDEA. The state and the City must resolve the issues in a way that best serves children. However, where a designated LEA fails to make a FAPE available to eligible students with disabilities attending public charter schools, or, absent a designated LEA, where the state fails to make FAPE available, the state would be found to be out of compliance. DOE has broad discretion to utilize various enforcement options available, including, but not limited to partial or full withholding of IDEA funds.

8. Since last fall, agreements have been reached regarding the responsibilities of the charter schools. Two of the three Milwaukee charter schools sent a letter to DPI agreeing to comply with the public school requirements to provide a FAPE to children with disabilities. In turn, DPI has agreed to provide the full charter school payments to the schools, retroactive to the start of the school year. The third school has not agreed to comply with the public school requirements and has decided to remain a MPCP school.

9. In an effort to ensure that the cost of complying with federal law would not hinder the ability of these charter schools to operate successfully, the State Superintendent took the following steps: (a) authorizing the federal IDEA flow-through funding in this year, one year prior to normal eligibility; (b) requesting in the DPI biennial budget that these charter schools be eligible for state categorical aid; (c) providing technical assistance, training and assistance to these schools in complying with federal law; (d) accepting proposals that may qualify for IDEA discretionary funding in this year; and (e) directing staff to seek other federal funding for which these schools may qualify as public schools.

10. In March, 1999, the federal DOE released its final regulations related to the 1997 reauthorization of IDEA, which have several provisions specifically related to charter schools. Under these regulations, an LEA is further defined as, "any other public institution or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under state law." The regulations also define charter schools as public schools, require that children with disabilities attending charter schools be served in the same manner as children with disabilities in other public schools, and state that children with disabilities who attend public charter schools and their parents retain all rights under IDEA.

11. The Committee may wish to require, under state law, that these charter schools be the LEAs and provide special education services to pupils who attend those schools, as required under federal law. This requirement could better ensure that these charter schools are fulfilling the federal laws requiring a FAPE for all children with disabilities. In addition, this would likely better prevent these schools from violating state and federal non-discrimination laws, and only accepting certain students, while school districts are required to educate all students who reside in the district, regardless of disability.

12. Under the Governor's recommendation, Milwaukee charter schools would be eligible for special education categorical aid funding based on current year, estimated special education costs. The bill does not include a provision that would permit DPI to audit actual costs at the end of the school year and reduce aid if appropriate, in order to ensure that only eligible costs are aided. School districts would continue to receive special education aid based on prior year, actual costs, and be subject to DPI cost audits to ensure eligibility.

13. Milwaukee charter school officials have argued that it is necessary to aid these schools based on current year, estimated costs because, unlike school districts, the charter schools do not have the fiscal capacity to provide expensive special education services prior to being reimbursed for costs. However, in 1998-99, the special education categorical aid provided funding to cover approximately 34% of total special education costs. Therefore, these charter schools would be required to fund most special education costs from the per pupil aid received from the state.

14. Arguably, because these charter schools are established and operated by, or under contract with large, well-established organizations, the City, UWM or MATC could assist in funding special education costs that have yet to be covered by state aid. During the current fiscal year, the City, UWM and MATC have total estimated all-fund budgets of approximately \$900

million, \$300 million and \$200 million respectively. While MPS's 1998-99 all-funds budget is approximately \$875 million, most school districts have much more modest budgets. Based on the 1998-99 revenue limit calculations, school district local property tax and state general aid revenues ranged from a low of approximately \$550,000 to a high of over \$700 million for MPS. Of the 426 school districts, 67% have local property tax and state general aid totals below \$10 million in 1998-99.

15. In order to provide special education categorical aid funding to Milwaukee charter schools in a manner consistent with the aid distribution to school districts, the Committee may wish to provide special education aid to these schools based on reported prior-year, actual costs. Additionally, it may be prudent to permit DPI to audit the reported costs in order to ensure that only eligible costs are aided by the state.

16. Under AB 133, no new funding would be provided for special education aid even though additional entities would become eligible for such aid. In order not to reduce special education aid to school districts, CESAs and CCDEBs, the Committee may wish to provide additional funding for this purpose. Charter school officials in Milwaukee estimate that 500 pupils in 1999-00 and 1,800 pupils in 2000-01 will be enrolled in these charter schools. Of these pupils, it can be assumed that approximately 50% would have been MPS pupils had they not enrolled in charter schools. Based on 1997-98 enrollment and cost data, 12.8% of statewide public school enrollment is made up of children with disabilities, with average per pupil special education costs of approximately \$7,600. In 1998-99, the state categorical aid funding covered approximately 34% of total eligible special education costs. Based on these figures, the Committee could provide \$82,700 GPR in 1999-00 and \$297,700 GPR in 2000-01 to cover the estimated current year special education costs for these charter schools or \$82,700 GPR in 2000-01 to cover actual prior year costs. In order to maintain two-thirds funding of partial school revenues, the Committee could provide a corresponding reduction in general school aids of \$27,600 GPR in 1999-00 and \$99,200 GPR in 2000-01, or \$27,600 GPR in 2000-01 respectively.

## **ALTERNATIVES**

### **A. Local Education Agency Designation and Charter Schools as Public Schools**

1. Approve the Governor's recommendation.
2. Modify the Governor's recommendation to require that under state charter school law, that these charter schools must be the designated local education agencies and provide special education services to pupils who attend those schools, as required under federal law.

### **B. Milwaukee Charter School State Aid Eligibility**

1. Approve the Governor's recommendation to provide that the calculation of special education aid to Milwaukee charter schools would be based on a sum equal to the amount that the charter school estimates it will expend during the current school year.



To w/ Ruth - 5/21  
aid beginning in and year of biennium

2. Modify the Governor's recommendation to provide that the calculation of special education aid to Milwaukee charter schools would be based on a sum equal to the amount of actual expenditures during the prior school year.

3. In addition to either Alternative B1 or B2 above, permit DPI to audit the costs reported by these charter schools and adjust the special education aid provided to these schools in order to ensure that the final aid amounts reimburse only eligible, actual costs.

**C. Special Education Categorical Aid Funding Level**

1. Provide \$82,700 GPR in 1999-00 and \$297,700 GPR in 2000-01 to cover the estimated current year special education costs for these charter schools. Reduce general school aids by \$27,600 GPR in 1999-00 and \$99,200 GPR in 2000-01 to adjust state two-thirds funding.

Alternative C1	GPR
1999-01 FUNDING (Change to Bill)	\$253,600

2. Provide \$82,700 GPR in 2000-01 to cover actual prior year costs special education costs for these charter schools. Reduce general school aids by \$27,600 GPR in 2000-01 to adjust state two-thirds funding.

Alternative C2	GPR
1999-01 FUNDING (Change to Bill)	\$55,100

Alts A2  
B2+B3  
C2 ← 16-0

Prepared by: Ruth Hardy



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb0366/1

MJL:.....

cmM

SOON - to editing 5/24

LFB:.....Hardy - Milwaukee charter schools special education aid

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

1 At the locations indicated, amend the bill as follows:

2 1. Page 986, line 12: after that line insert:

3 "SECTION 2055m. 115.775 of the statutes is created to read:

4 115.775 Duties of operators of certain charter schools. An operator of a  
5 charter school under s. 118.40 (2r) is a local educational agency, as defined in 20 USC  
6 1401 (15), and shall comply with 20 USC 1400 to 1491o."

7 2. Page 987, line 9: delete the material beginning with "as" and ending with

8 "(15)" line 11. on

9 3. Page 987, line 13: delete the material beginning with "estimates" and  
10 ending with "current" on line 14 and substitute "expended during the previous".

1 4. Page 987, line 20: after "(b)." insert "The state superintendent may audit  
2 costs under this paragraph and adjust reimbursement to cover only actual, eligible  
3 costs." >>.

4 5. Page 988, line 17: delete the material beginning with "as" and ending with  
5 "(15)" on line 18.

6 6. Page 988, line 20: delete the material beginning with "estimates" and ending  
7 with "current" on line 21, and substitute "expended during the previous".  
8 *add colon*

9 7. Page 988, line 23: ~~delete that line and substitute~~ insert "The state superintendent may audit  
9 costs under this subsection and adjust reimbursement to cover only actual, eligible  
10 costs." >>.

11 8. Page 1456, line 15: after "REIMBURSEMENT" insert "(a)".

12 9. Page 1456, line 17: after that line insert:

13 *initial app.* "(b) The treatment of sections 115.88 (1m) (am) and (2m) of the statutes first  
14 applies to state aid paid in the 2000-01 school year." >>.

15 (END)

*initial app.*  
delete "The treatment of sections" and substitute :  
"(a) The treatment of sections".



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb0366/1  
MJL:cmh:km

LFB:.....Hardy – Milwaukee charter schools special education aid

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