

SENATOR JUDITH B. ROBSON
CO-CHAIRMAN



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

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**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

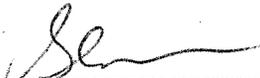
November 11, 2002

Clerk of Circuit Court
Dane County Courthouse
210 Martin Luther King, Jr. Blvd.
Madison, WI 53709-0001

James W. Mohr, Jr.
Mohr & Anderson, LLC
23 South Main Street
Hartford, WI 53207

To the Clerk of the Dane County Circuit Court and Mr. Mohr:

The Joint Committee for Review of Administrative Rules waives its right to file a brief in the case of *Hartford Union High School District v. State of Wisconsin et al*, 01 CV 983.



Representative Glenn Grothman,
Cochair, Joint Committee for
Review of Administrative Rules



Senator Judy Robson,
Cochair, Joint Committee for
Review of Administrative Rules

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

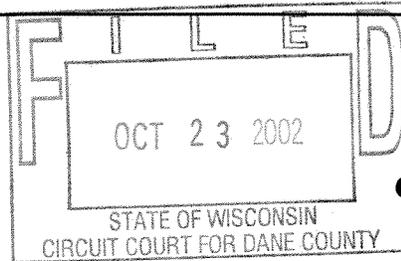
HARTFORD UNION
HIGH SCHOOL DISTRICT,

Plaintiff,

vs.

STATE OF WISCONSIN,
DEPARTMENT OF PUBLIC INSTRUCTION,
ELIZABETH BURMASTER, and
JOINT COMMITTEE FOR REVIEW OF
ADMINISTRATIVE RULES,

Defendants.



Case No. 01 CV 983

Code: 30701

THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

SECOND AMENDED SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The Second Amended Complaint, which is attached, states the nature and basis of the legal action.

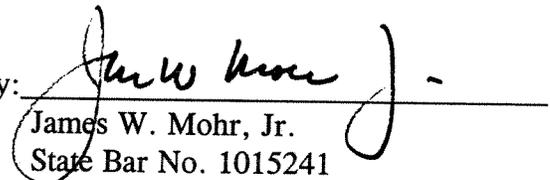
Within forty-five (45)* days of receiving this Second Amended Summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the Second Amended Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is: Clerk of Circuit Court, Dane County Courthouse, 210 Martin Luther King, Jr. Blvd., Madison, Wisconsin 53709-0001, and to James W. Mohr, Jr., plaintiff's attorney, whose address is Mohr & Anderson, LLC, 23 South Main Street, Hartford, WI 53027. You may have an attorney help or represent you.

*However, see attached Complaint and Decision concerning 20-day time period within which to file brief.

If you do not provide a proper answer within forty-five (45) days, the court may grant judgment against you for the award of money or other legal action requested in the Second Amended Complaint, and you may lose your right to object to anything that is or may be incorrect in the Amended Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 21st day of October, 2002.

MOHR & ANDERSON, LLC
Attorneys for Plaintiff

By: 
James W. Mohr, Jr.
State Bar No. 1015241

P.O. Address:

23 S. Main Street
Hartford, WI 53027
(262) 673-6400

STATE OF WISCONSIN

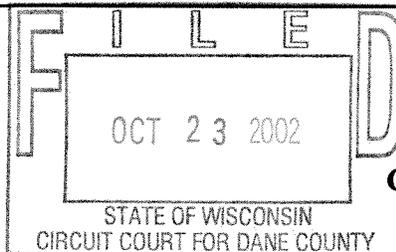
CIRCUIT COURT

DANE COUNTY

HARTFORD UNION
HIGH SCHOOL DISTRICT,

Plaintiff,

vs.



Case No. 01 CV 983

Code: 30701

STATE OF WISCONSIN,
DEPARTMENT OF PUBLIC INSTRUCTION,
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SECOND AMENDED COMPLAINT

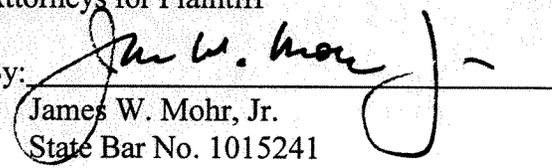
Plaintiff, by its attorneys Mohr & Anderson, LLC, as and for its Second Amended Complaint in the above matter, alleges as follows:

1. Plaintiff realleges, as if fully set forth herein, its Amended Complaint, a true copy of which is attached hereto and incorporated herein by reference.
2. Defendant Joint Committee for Review of Administrative Rules is a committee of the Wisconsin Legislature acting under the authority and for the purposes set forth in Section 227 of the Wisconsin Statutes. The Joint Committee is joined in this action pursuant to §227.40(5) *Wis. Stats.*, and for the reasons set forth by the Honorable Sarah B. O'Brien in her written Memorandum Decision and Order dated October 1, 2002, a true copy of which is attached hereto and incorporated herein by reference.

3. Pursuant to the Decision of Judge O'Brien, the Joint Committee is to submit its brief or statement of position within twenty (20) days of service hereof, or waive its right to do so, as set forth in the attached Decision.

WHEREFORE plaintiff demands Judgment as prayed for in its Amended Complaint.

MOHR & ANDERSON, LLC
Attorneys for Plaintiff

By: 

James W. Mohr, Jr.
State Bar No. 1015241

P.O. Address:

23 S. Main Street
Hartford, WI 53027
262/673-6400
Fax: 262/673-5400

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

MAR 30 1 14 PM '01

HARTFORD UNION
HIGH SCHOOL DISTRICT,

CIRCUIT COURT
DANE COUNTY, WI

Case No. 01 CV 0983

Plaintiff,

Code: 30701

vs.

STATE OF WISCONSIN,
DEPARTMENT OF PUBLIC INSTRUCTION,
and JOHN T. BENSON,

Defendants.

AMENDED SUMMONS

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DANE COUNTY CIRCUIT COURT

THE STATE OF WISCONSIN

CIRCUIT COURT

To each person named above as a defendant:

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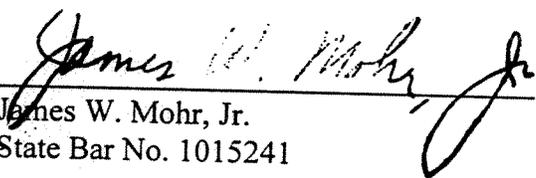
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If you do not provide a proper answer within forty-five (45) days, the court may grant judgment against you for the award of money or other legal action requested in the Amended Complaint, and you may lose your right to object to anything that is or may be incorrect in the Amended Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 25th day of April, 2001.

MOHR & ANDERSON, S.C.
Attorneys for Plaintiff

By:


James W. Mohr, Jr.
State Bar No. 1015241

P.O. Address:

1111 E. Sumner Street
P.O. Box 270670
Hartford, WI 53027-0670
(262) 673-7850

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

Apr 30 1 14 PM '01

HARTFORD UNION
HIGH SCHOOL DISTRICT,

Plaintiff,

CIRCUIT COURT
DANE COUNTY, WI

Case No. 01 CV 0983

Code: 30701

vs.

STATE OF WISCONSIN,
DEPARTMENT OF PUBLIC INSTRUCTION
and JOHN T. BENSON,

Defendants.

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COUNTY CIRCUIT COURT.
JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

AMENDED COMPLAINT

Plaintiff, by its attorneys Mohr & Anderson, S.C., complains of the above-named defendant as follows:

1. Plaintiff is a union high school district organized and existing under the laws of the State of Wisconsin with principal location at 805 Cedar Street, Hartford, Wisconsin.
2. Defendant Department of Public Instruction is a political subdivision and/or an authorized agency of the State of Wisconsin with principal office located at 125 S. Webster Street, Madison, Wisconsin.
3. Defendant John T. Benson is the State Superintendent of defendant Department of Public Instruction whose responsibility includes promulgating, interpreting, and enforcing the laws of the State of Wisconsin pertaining to public instruction, and specifically pertaining to the matters which are the subject of this Complaint.
4. This is an action for declaratory relief pursuant to §806.04 *Wis. Stats.*, and for injunctive relief, concerning the defendants' interpretation of §121.91(4)(a) *Wis. Stats.* That statute

increases the revenue limit otherwise applicable to school districts such as the plaintiff, by the amount of increased cost attributable to a service which the school district has assumed from another governmental unit. The statute provides, in subsection 2:

"If a school board increases the services that it provides by adding responsibility for providing a service transferred to it from another governmental unit in the previous school year, the limit otherwise applicable under sub. (2m) in the current school year is increased by the cost of that service, as determined by the state superintendent."

5. Plaintiff Hartford Union High School District (hereinafter "HUHS") operates and maintains a high school in Hartford, Wisconsin, for the education of students of high school age within its geographic boundaries. Such boundaries encompass portions of Washington and Dodge Counties.

6. The following public kindergarten through eighth grade (hereinafter "K-8") schools operate as separate governmental units, providing for the education of kindergarten through eighth grade age students within the same areas of Washington and Dodge Counties:

Erin School District
Friess Lake School District
Hartford J1 School District
Herman #22 School District
Neosho J3 School District
Richfield J1 School District
Rubicon J6 School District

7. The K-8 schools provide special education or limited English proficiency (hereinafter "EEN") services for which such schools receive an increase in such school's revenue limits pursuant to §121.91(4)(a) *Wis. Stats.*

8. The K-8 schools constitute separate governmental units from the plaintiff. They occupy differing geographic boundaries than the plaintiff; they are governed by separate school

boards; their separate school boards are elected by their own set of electors; they are separate taxing authorities; they separately comply with state revenue limit statutes; they contract on their own; they sue and are sued on their own; they purchase, sell and lease property on their own; they hold separate meetings; they bargain collectively with separate unions; and they separately determine public policy and implement the will of their electors within their particular district boundaries.

9. When a student at a K-8 school terminates his enrollment at that school, whether by reason of graduation, withdrawal or otherwise, and when such student thereafter enrolls at HUHS and becomes eligible for special education or limited English proficiency services, plaintiff is required to increase services which it provides by "adding responsibility for providing a service transferred to it from another governmental unit in the previous school year."

10. Pursuant to §121.91(4)(a)(2) *Wis. Stats.*, HUHS is entitled to an increase in its revenue limit for its school year based upon the costs of the service which HUHS must provide.

11. Plaintiff has applied for and requested that defendant Department allow plaintiff to increase its revenue limit in accordance with §121.91(4)(a)(2) *Wis. Stats.*, above. A true copy of a meeting summary dated March 2, 1998, reflecting such request is attached hereto and incorporated herein by reference. Defendant Department denied plaintiff such request as set forth in the exhibit.

12. Plaintiff renewed its request to increase its revenue limit in a letter to defendant Department dated February 10, 2000, a true copy of which is attached hereto and incorporated herein by reference.

13. By letter dated March 13, 2000, defendant Department denied plaintiff's request. A true copy of the March 13, 2000 letter is attached hereto and incorporated herein by reference.

14. A justiciable controversy exists between plaintiff and defendants concerning the interpretation of §192.91(4)(a) *Wis. Stats.* Plaintiff contends and believes that it is entitled to an increase in its revenue limit for the costs of such services transferred to it from another district; the defendants deny that plaintiff is entitled to such increase. The matter is ripe for a judicial determination.

WHEREFORE plaintiff demands Judgment against defendants as follows:

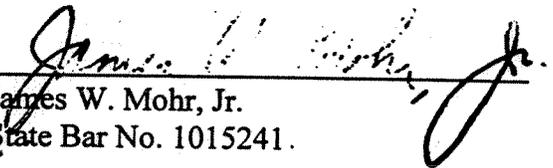
A. Declaring that transfers of EEN students from K-8 schools to plaintiff for which plaintiff must add responsibility for providing EEN services constitute transfers of services from other governmental units, allowing plaintiff to increase its revenue limits by the cost of the services provided;

B. Declaring that plaintiff's revenue limits have been eligible for such increases since at least the 1997-1998 school year when request therefor was made to defendants; or, if appropriate, for earlier school years when such transfers actually occurred, services were rendered, and increased costs incurred;

C. Enjoining defendant Benson, his successors or subordinates, from denying plaintiff its request for increases to its spending limits under §121.91(4)(a)(2) *Wis. Stats.*;

D. For such other and further declaratory and/or injunctive relief which the Court deems just and equitable.

MOHR & ANDERSON, S.C.
Attorneys for Plaintiff

By: 
James W. Mohr, Jr.
State Bar No. 1015241.

P.O. Address:

1111 E. Sumner Street
P.O. Box 270670
Hartford, WI 53027-0670
262/673-7850

Memorandum

STATE OF WISCONSIN
DEPARTMENT OF PUBLIC INSTRUCTION



DATE: March 2, 1998

TO: Union High School and K-8 School District Administrators

FROM: Jerry Landmark, Consultant, School Financial Services
Jim McIntosh, Director, School Financial Services

SUBJECT: Summary of Feb. 20 meeting relating to transfer of service

C Board
Frank
Jerry Schiut
Paul C.

The meeting was attended by Richard Zimmerman and Frank Mastaw, Hartford; Gary Swalve, Maple Dale-Indian Hill; Jeff Gruber, Hartland-Lakeside J3; John Von Tish, Erin; Jeff Dellutri, Nicolet; Cora Acor, Herman #22. A letter from George Shiroda, Lakeland, was discussed at the meeting. Phone calls were also received by DPI prior to the meeting from Bill Pollard, Woodruff, James Kranpitz, Minocqua, and Richard Vought, Lac du Flambeau.

Mr. Zimmerman indicated the reasons for his district's concerns about high-cost EEN students as they relate to the revenue limit. They were reinforced by a letter from George Shiroda (attached). Mr. Zimmerman thought relief through the transfer of service exemption was appropriate, but stated he didn't want to have K-8 districts subsequently decreased. Discussion of if this could occur followed.

DPI indicated the reason for UHS not being eligible for the transfer of service exemption from K-8 District transfers was that the students involved were residents of the high school district. It was the department's interpretation that they should thus be treated like K-12 districts, with no exemption allowed between 8th and 9th grades for resident pupils. Other authorities, including Legislative Fiscal Bureau and Department of Administration, agree with the interpretation. DPI believes it is beyond its current authority to allow an exemption for students transferring from K-8 districts without a subsequent reduction in the revenue limit of the K-8's.

Participants considered the following scenario: A student transfers to a K-8 from another district, and the K-8 receives a transfer of service exemption for its increased costs. When the student transfers to the UHS, the amount of the exemption transfers along with the student, assuming the UHS also has increased costs. The K-8 revenue limit decreases by the amount of the exemption while the UHS revenue limit increases by their increase in costs. Is this possible? Discussion points included the fact that the UHS would be allowed to "keep" the increase when the student graduated, while the K-8 had to give it up. Allowing the K-8 to "recapture" the increase when the student graduated from the UHS would mean the UHS would then have to decrease its revenue limit. DPI indicated it could check into whether this is possible, but expressed concern over the administration and legality under the current law.

Another option discussed was a 66.30 agreement between the K-8 and UHS.. Mr. Zimmerman suggested he would look into this option.

The point was raised of the actual impact of the EEN transfer students on a district's budget. Currently, the transfer students are counted for membership for revenue limit and equalized aid purposes because they become members of the district. This increases the amount of money a district receives under the revenue limits and state aid. A portion of the cost is also shared by EEN categorical aid, which also increases revenue to the district. Thus, the actual cost of an EEN student to the district is reduced by those factors. New this year, however, is a provision that any increase in a district's revenue limit due to transfer of service be reduced by the amount of EEN categorical aid a district will receive for a student's costs. For example, if a district has \$20,000 in additional costs due to a transfer, its allowable revenue limit increase would be reduced by 35%, or \$7,000. This \$7,000 amount will be received next year as EEN categorical aid. Thus, the amount of \$14,000 is the allowable revenue limit increase. And, as indicated above, this \$14,000 cost to the district is reduced by the addition to membership.

As the discussion closed, it was very apparent that this is a complicated issue with no easy solution. It was agreed to continue discussion of the issue and potential solutions, and to discuss proposing legislative changes to accommodate the special relationship between K-8 and UHS districts. In order to allow districts to proceed with their budget planning, DPI indicated there would be no change in the way the transfer of service exemption would be calculated for the 1998-99 school year but left open the possibility of changes in the future.

This was prepared by Jerry Landmark, with notes and memory of discussion at the meeting. If participants at the meeting have different or additional recollections, please let me know so they can be distributed as well.

**To: Jim McIntosh, Director of School Financial Services
Jerry Landmark, Financial Consultant**
Re: Comments for the Transfer of Service Credit Meeting
Date: February 20, 1998

Gentlemen:

Thank you for holding the meeting and for providing the opportunity to comment on the Transfer of credit issue. I have called the Department over recent years on several occasions to register my concern over the Department's determination NOT to allow for Transfer of Credit for handicapped student transfers between Union High School Districts and their attached Grade School Districts. My concern over the propriety of the decision continues to be based on the same rationale.

A keystone principle on which we must all base our administration of the rules, regulations and policies under our direction is the principle of equity. Rules must be evenhandedly and fairly administered. Lakeland Union High School and our four attached Grade School Districts are all separate entities under the law. Each district:

**has a duly elected Board of Education having all of the duties and responsibilities of every other district in the State.
levies and collects taxes.
is audited separately.
enters into 66.30 Agreements between each other.
must comply with the revenue limit statute.**

In the event that a high cost handicapped child who requires special assistance such as a signer for a hearing impaired child, or for a personally assigned aide for safety or special assistance reason, that high cost and directly attributed expense has not been counted as an approved exception under the revenue limit by the Department. Assuming this to be a \$ 20,000 to \$30,000 cost the credit for the expense under the revenue cap stays with the Grade School District while the expense moves to the Union High School District. In at least two occasions in our situation the actual aide moved with the child from the Grade District payroll to the Union High District payroll yet Transfer of Service Credit was not allowed.

If any one of our districts would administer our rules in this fashion we would without doubt lose an appeal to the Department of Public Instruction, or in the courts or any other jurisdictional Agency. These comments are not made in rancor but only to appeal for a fair administration of the rules.

The new provisions in the Statute which provide for no loss of the revenue cap exception for those districts where staff or expense is not reduced makes good sense. In many cases the High School District can "absorb" the service requirement without extensive extra cost such as in an LD student case. In these cases no revenue cap exception is requested.

Let me present some specific examples for our district. Actual names and audited figures can be provided.

	95-96	96-97	97-98
Case # 1 Student: N.K. deaf student transferred from MHLT (Minocqua) Grade District			
Interpreter(signer)	32,200		
Speech clinician	1,914		
			34,114
Case # 2 Student: J.W. deaf student transferred from NL (Boulder Jt.) Grade District. Total for interpreter, speech clinician assistive tech.			
	29,183	35,537	35,614
Case # 3 Student: W.P. blind student transferred from Arbor Vitae - Woodruff Vision impaired teacher, orientation and mobility, assistive tech.			
		27,477	28,858
Case # 4 Student: R.L. multiple handicapped from NL District homebound aide, speech and occupational therapy, physical therapy, teacher			
		26,721	26,488
	<u>29,183</u>	<u>89,753</u>	<u>125,074</u>

This is just a sampling to illustrate the impact. I feel that the totals accumulate since the "lost" revenue cap "room" could have been used for other programs. We know of two "high Cost" 9th grade transfers from the Grade Districts for 1998-99 with a total cost estimate to exceed \$ 40,000.00 Please give us some relief.

Tank you for "listening".

Hartford Union High School

MAIN OFFICE • 262-673-8950 • FAX 262-673-8943
BUSINESS OFFICE • 262-673-8380 • FAX 262-673-8384
<http://www.huhs.org>

ATTENDANCE OFFICE • 262-673-8945
805 Cedar Street, Hartford, WI 53027-2399



February 10, 2000

David Carlson
Wisconsin Department of Public Instruction
Director, School Financial Services
P O Box 7841
Madison WI 53707-7841

Dear Mr. Carlson:

The purpose of this letter is to relate to you our school district's request for the Department of Public Instruction to review the Transfer of Service provision of state law 121.91(4)(a) as it relates to our ability to fund programs for EEN students who transfer in from other districts, specifically from the area K-8 "feeder" schools. A few years ago the department informed Hartford Union High School District that it interpreted the law in such a way that K-8 and Union High Schools be treated as K-12 with respect to the transfer of service.

Respectfully, we have and continue to disagree with the department's position. We view this selective interpretation as detrimental to the educational program of our district. This year we enrolled fifty one students who are classified as EEN while only nineteen EEN students exited from our programs. Of the 51 that enrolled, 49 were from area K-8 feeder schools. This year in order to deliver the necessary program to EEN students because of the increase in enrollment, Hartford Union High School added one EEN teacher and one full time equivalent EEN aide to our staff. These additions totaled nearly \$60,000. Over the last three years, we have increased our operational budget by \$150,000 to fund staff additions due to EEN enrollments.

To view K-8's and Union High School Districts as K-12 when it comes to transfer of service but not when it involves other educational aspects is unfair to Union High Schools. When EEN students move from K-8 schools to UHS, there is no authority on the part of UHS's to correspondingly move resources such as teachers and aides. Nor can UHS's encumber any funds of the K-8's because of these transfers. The UHS is expected to draw from its total operational budget to fund the EEN enrollments. Unless EEN students enroll from school districts other than K-8 feeder schools, there is no relief that UHS's can seek save the categorical aid in the subsequent school year.

DISTRICT ADMINISTRATOR/PRINCIPAL

Richard A. Zimmerman

BUSINESS MANAGER

Frank R. Mastaw

ADMINISTRATIVE COORDINATOR

Sandra R. Smith

DIRECTOR OF CURRICULUM & INSTRUCTION

Donna L. Behn Ph.D.

ASSOCIATE PRINCIPALS

Paul M. Cappoferri

Joseph C. Frinzi

Thomas E. Steiner

CO-CURRICULAR DIRECTOR

John M. Grandine

BOARD OF EDUCATION

Shirley A. Reis, President

Ralph E. Roethle, Vice President

Crystal A. Berg, Clerk

Gerald W. Edwards, Treasurer

David A. Kling, Member

It is not the intent of our district to initiate any action that will have a negative effect on area K-8 budgets. However, given the circumstance of the present climate of fiscal constraints, we feel compelled to make this request. We would appreciate your consideration in this matter and would like a response at your earliest convenience before we seek other avenues of relief.

Sincerely


Richard Zimmerman
District Administrator

c Board of Education
Local Public K-8 Districts
James Mohr, District Legal Counsel



State of Wisconsin Department of Public Instruction

Mailing Address: P.O. Box 7841, Madison, WI 53707-7841
125 South Webster Street, Madison, WI 53702
(608) 266-3390 TDD (608) 267-2427 FAX (608) 267-1052
Internet Address: www.dpi.state.wi.us

John T. Benson
State Superintendent

Steven B. Dold
Deputy State Superintendent

March 13, 2000

Richard Zimmerman, District Administrator
Hartford Union High School
805 Cedar Street
Hartford, WI 53027-2399

*C ✓ Frank
Board
Jim Mohr*

Dear Mr. Zimmerman,

This is in response to your letter dated February 10, 2000 requesting the Department of Public Instruction to review its administration of the transfer of service provision of the revenue limit statute as it relates to special education students who transfer in from K-8 school districts and union high school districts' ability to claim a transfer of service exemption. After a review and discussion with representatives from other state agencies, the department's interpretation of disallowing such claims does not change.

Students transferring from an underlying K-8 to a Union High School District are residents of its underlying taxing jurisdiction. Therefore, these students should be treated the same as students in a K-12 district. While the Department realizes the inherent differences between K-8, UHS and K-12 districts, the taxing jurisdictions are the same and that is the determining factor.

I encourage you to seek legislative support should you wish to pursue this matter further. The department will administer any change to the revenue limit transfer of service provision approved through the legislative process.

Please contact me should you have additional questions.

Sincerely,

David Carlson, Director
School Financial Services Team

DANIEL R. MOESER
CIRCUIT COURT, BR. 11

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

APR 11 1 13 PM '01

HARTFORD UNION
HIGH SCHOOL DISTRICT,

Plaintiff,

01CV0983 CIRCUIT COURT
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Code: 30701

vs.

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SUMMONS

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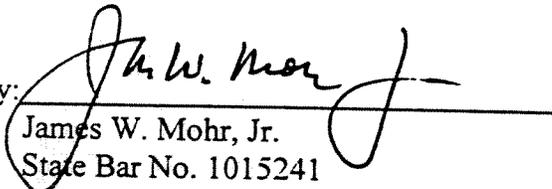
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Dated this 9th day of April, 2001.

MOHR & ANDERSON, S.C.
Attorneys for Plaintiff

By:


James W. Mohr, Jr.
State Bar No. 1015241

P.O. Address:

1111 E. Sumner Street
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(262) 673-7850

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

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HARTFORD UNION
HIGH SCHOOL DISTRICT,

01CV0983

Case No.

CIRCUIT COURT
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vs.

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and JOHN T. BENSON,

Defendants.

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JULIA A. GILBERT

CIRCUIT COURT

COMPLAINT

Plaintiff, by its attorneys Mohr & Anderson, S.C., complains of the above-named defendant as follows:

1. Plaintiff is a union high school district organized and existing under the laws of the State of Wisconsin with principal location at 805 Cedar Street, Hartford, Wisconsin.
2. Defendant Department of Public Instruction is a political subdivision and/or an authorized agency of the State of Wisconsin with principal office located at 125 S. Webster Street, Madison, Wisconsin.
3. Defendant John T. Benson is the State Superintendent of defendant Department of Public Instruction whose responsibility includes promulgating, interpreting, and enforcing the laws of the State of Wisconsin pertaining to public instruction, and specifically pertaining to the matters which are the subject of this Complaint.
4. This is an action for declaratory relief pursuant to §806.04 *Wis. Stats.*, and for injunctive relief, concerning the defendants' interpretation of §121.91(4)(a) *Wis. Stats.* That statute

)

increases the revenue limit otherwise applicable to school districts such as the plaintiff, by the amount of increased cost attributable to a service which the school district has assumed from another governmental unit. The statute provides, in subsection 2:

"If a school board increases the services that it provides by adding responsibility for providing a service transferred to it from another governmental unit in the previous school year, the limit otherwise applicable under sub. (2m) in the current school year is increased by the cost of that service, as determined by the state superintendent."

5. Plaintiff Hartford Union High School District (hereinafter "HUHS") operates and maintains a high school in Hartford, Wisconsin, for the education of students of high school age within its geographic boundaries. Such boundaries encompass portions of Washington and Dodge Counties.

6. The following public kindergarten through eighth grade (hereinafter "K-8") schools operate as separate governmental units, providing for the education of kindergarten through eighth grade age students within the same areas of Washington and Dodge Counties:

Erin School District
Friess Lake School District
Hartford J1 School District
Herman #22 School District
Neosho J3 School District
Richfield J1 School District
Rubicon J6 School District

7. The K-8 schools provide special education or limited English proficiency (hereinafter "EEN") services for which such schools receive an increase in such school's revenue limits pursuant to §121.91(4)(a) *Wis. Stats.*

8. The K-8 schools constitute separate governmental units from the plaintiff. They occupy differing geographic boundaries than the plaintiff; they are governed by separate school

boards; their separate school boards are elected by their own set of electors; they are separate taxing authorities; they separately comply with state revenue limit statutes; they contract on their own; they sue and are sued on their own; they purchase, sell and lease property on their own; they hold separate meetings; they bargain collectively with separate unions; and they separately determine public policy and implement the will of their electors within their particular district boundaries.

9. When a student at a K-8 school terminates his enrollment at that school, whether by reason of graduation, withdrawal or otherwise, and when such student thereafter enrolls at HUHS and becomes eligible for special education or limited English proficiency services, plaintiff is required to increase services which it provides by "adding responsibility for providing a service transferred to it from another governmental unit in the previous school year."

10. Pursuant to §121.91(4)(a)(2) *Wis. Stats.*, HUHS is entitled to an increase in its revenue limit for its school year based upon the costs of the service which HUHS must provide.

11. Plaintiff has applied for and requested that defendant Department allow plaintiff to increase its revenue limit in accordance with §121.91(4)(a)(2) *Wis. Stats.*, above. A true copy of a meeting summary dated March 2, 1998, reflecting such request is attached hereto and incorporated herein by reference. Defendant Department denied plaintiff such request as set forth in the exhibit.

12. Plaintiff renewed its request to increase its revenue limit in a letter to defendant Department dated February 10, 2000, a true copy of which is attached hereto and incorporated herein by reference.

13. By letter dated March 13, 2000, defendant Department denied plaintiff's request. A true copy of the March 13, 2000 letter is attached hereto and incorporated herein by reference.

14. A justiciable controversy exists between plaintiff and defendants concerning the interpretation of §192.91(4)(a) *Wis. Stats.* Plaintiff contends and believes that it is entitled to an increase in its revenue limit for the costs of such services transferred to it from another district; the defendants deny that plaintiff is entitled to such increase. The matter is ripe for a judicial determination.

WHEREFORE plaintiff demands Judgment against defendants as follows:

A. Declaring that transfers of EEN students from K-8 schools to plaintiff for which plaintiff must add responsibility for providing EEN services constitute transfers of services from other governmental units, allowing plaintiff to increase its revenue limits by the cost of the services provided;

B. Declaring that plaintiff's revenue limits have been eligible for such increases since at least the 1997-1998 school year when request therefor was made to defendants; or, if appropriate, for earlier school years when such transfers actually occurred, services were rendered, and increased costs incurred;

C. Enjoining defendant Benson, his successors or subordinates, from denying plaintiff its request for increases to its spending limits under §121.91(4)(a)(2) *Wis. Stats.*;

D. For such other and further declaratory and/or injunctive relief which the Court deems just and equitable.

MOHR & ANDERSON, S.C.
Attorneys for Plaintiff

By: *James W. Mohr Jr.*
James W. Mohr, Jr.
State Bar No. 1015241

P.O. Address:

1111 E. Sumner Street
P.O. Box 270670
Hartford, WI 53027-0670
262/673-7850

Memorandum

STATE OF WISCONSIN
DEPARTMENT OF PUBLIC INSTRUCTION



DATE: March 2, 1998

TO: Union High School and K-8 School District Administrators

FROM: Jerry Landmark, Consultant, School Financial Services
Jim McIntosh, Director, School Financial Services

SUBJECT: Summary of Feb. 20 meeting relating to transfer of service

C Board
Frank
Jerry Schmitt
Paul C.

The meeting was attended by Richard Zimmerman and Frank Mastaw, Hartford; Gary Swalve, Maple Dale-Indian Hill; Jeff Gruber, Hartland-Lakeside J3; John Von Tish, Erin; Jeff Dellutri, Nicolet; Cora Acor, Herman #22. A letter from George Shiroda, Lakeland, was discussed at the meeting. Phone calls were also received by DPI prior to the meeting from Bill Pollard, Woodruff, James Kranpitz, Minocqua, and Richard Vought, Lac du Flambeau.

Mr. Zimmerman indicated the reasons for his district's concerns about high-cost EEN students as they relate to the revenue limit. They were reinforced by a letter from George Shiroda (attached). Mr. Zimmerman thought relief through the transfer of service exemption was appropriate, but stated he didn't want to have K-8 districts subsequently decreased. Discussion of if this could occur followed.

DPI indicated the reason for UHS not being eligible for the transfer of service exemption from K-8 District transfers was that the students involved were residents of the high school district. It was the department's interpretation that they should thus be treated like K-12 districts, with no exemption allowed between 8th and 9th grades for resident pupils. Other authorities, including Legislative Fiscal Bureau and Department of Administration, agree with the interpretation. DPI believes it is beyond its current authority to allow an exemption for students transferring from K-8 districts without a subsequent reduction in the revenue limit of the K-8's.

Participants considered the following scenario: A student transfers to a K-8 from another district, and the K-8 receives a transfer of service exemption for its increased costs. When the student transfers to the UHS, the amount of the exemption transfers along with the student, assuming the UHS also has increased costs. The K-8 revenue limit decreases by the amount of the exemption while the UHS revenue limit increases by their increase in costs. Is this possible? Discussion points included the fact that the UHS would be allowed to "keep" the increase when the student graduated, while the K-8 had to give it up. Allowing the K-8 to "recapture" the increase when the student graduated from the UHS would mean the UHS would then have to decrease its revenue limit. DPI indicated it could check into whether this is possible, but expressed concern over the administration and legality under the current law.

Another option discussed was a 56.30 agreement between the K-8 and UHS.. Mr. Zimmerman suggested he would look into this option.

The point was raised of the actual impact of the EEN transfer students on a district's budget. Currently, the transfer students are counted for membership for revenue limit and equalized aid purposes because they become members of the district. This increases the amount of money a district receives under the revenue limits and state aid. A portion of the cost is also shared by EEN categorical aid, which also increases revenue to the district. Thus, the actual cost of an EEN student to the district is reduced by those factors. New this year, however, is a provision that any increase in a district's revenue limit due to transfer of service be reduced by the amount of EEN categorical aid a district will receive for a student's costs. For example, if a district has \$20,000 in additional costs due to a transfer, its allowable revenue limit increase would be reduced by 35%, or \$7,000. This \$7,000 amount will be received next year as EEN categorical aid. Thus, the amount of \$14,000 is the allowable revenue limit increase. And, as indicated above, this \$14,000 cost to the district is reduced by the addition to membership.

As the discussion closed, it was very apparent that this is a complicated issue with no easy solution. It was agreed to continue discussion of the issue and potential solutions, and to discuss proposing legislative changes to accommodate the special relationship between K-8 and UHS districts. In order to allow districts to proceed with their budget planning, DPI indicated there would be no change in the way the transfer of service exemption would be calculated for the 1998-99 school year but left open the possibility of changes in the future.

This was prepared by Jerry Landmark, with notes and memory of discussion at the meeting. If participants at the meeting have different or additional recollections, please let me know so they can be distributed as well.

**To: Jim McIntosh, Director of School Financial Services
Jerry Landmark, Financial Consultant**
Re: Comments for the Transfer of Service Credit Meeting
Date: February 20, 1998

Gentlemen:

Thank you for holding the meeting and for providing the opportunity to comment on the Transfer of credit issue. I have called the Department over recent years on several occasions to register my concern over the Department's determination NOT to allow for Transfer of Credit for handicapped student transfers between Union High School Districts and their attached Grade School Districts. My concern over the propriety of the decision continues to be based on the same rationale.

A keystone principle on which we must all base our administration of the rules, regulations and policies under our direction is the principle of equity. Rules must be evenhandedly and fairly administered. Lakeland Union High School and our four attached Grade School Districts are all separate entities under the law. Each district:

- has a duly elected Board of Education having all of the duties and responsibilities of every other district in the State.**
- levies and collects taxes.**
- is audited separately.**
- enters into 66.30 Agreements between each other.**
- must comply with the revenue limit statute.**

In the event that a high cost handicapped child who requires special assistance such as a signer for a hearing impaired child, or for a personally assigned aide for safety or special assistance reason, that high cost and directly attributed expense has not been counted as an approved exception under the revenue limit by the Department. Assuming this to be a \$ 20,000 to \$30,000 cost the credit for the expense under the revenue cap stays with the Grade School District while the expense moves to the Union High School District. In at least two occasions in our situation the actual aide moved with the child from the Grade District payroll to the Union High District payroll yet Transfer of Service Credit was not allowed.

If any one of our districts would administer our rules in this fashion we would without doubt lose an appeal to the Department of Public Instruction, or in the courts or any other jurisdictional Agency. These comments are not made in raucor but only to appeal for a fair administration of the rules.

The new provisions in the Statute which provide for no loss of the revenue cap exception for those districts where staff or expense is not reduced makes good sense. In many cases the High School District can "absorb" the service requirement without extensive extra cost such as in an LD student case. In these cases no revenue cap exception is requested.

Let me present some specific examples for our district. Actual names and audited figures can be provided.

	95-96	96-97	97-98
Case # 1 Student: N.K. deaf student transferred from MHLT (Minocqua) Grade District			
Interpreter(signer)	32,200		
Speech clinician	1,914		34,114
Case # 2 Student: J.W. deaf student transferred from NL (Boulder Jt.) Grade District. Total for interpreter, speech clinician assistive tech:			
	29,183	35,537	35,614
Case # 3 Student: W.P. blind student transferred from Arbor Vitae - Woodruff Vision impaired teacher, orientation and mobility, assistive tech.			
		27,477	28,858
Case # 4 Student: R.L. multiple handicapped from NL District homebound aide, speech and occupational therapy, physical therapy, teacher			
		26,721	26,488
	<u>29,183</u>	<u>89,753</u>	<u>125,074</u>

This is just a sampling to illustrate the impact. I feel that the totals accumulate since the "lost" revenue cap "room" could have been used for other programs. We know of two "high Cost" 9th grade transfers from the Grade Districts for 1998-99 with a total cost estimate to exceed \$ 40,000.00 Please give us some relief.

Tank you for "listening".

Hartford Union High School

MAIN OFFICE • 262-673-8950 • FAX 262-673-8943
BUSINESS OFFICE • 262-673-8380 • FAX 262-673-8384
<http://www.huhs.org>

ATTENDANCE OFFICE • 262-673-8945
805 Cedar Street, Hartford, WI 53027-2399



February 10, 2000

David Carlson
Wisconsin Department of Public Instruction
Director, School Financial Services
P O Box 7841
Madison WI 53707-7841

Dear Mr. Carlson:

The purpose of this letter is to relate to you our school district's request for the Department of Public Instruction to review the Transfer of Service provision of state law 121.91(4)(a) as it relates to our ability to fund programs for EEN students who transfer in from other districts, specifically from the area K-8 "feeder" schools. A few years ago the department informed Hartford Union High School District that it interpreted the law in such a way that K-8 and Union High Schools be treated as K-12 with respect to the transfer of service.

Respectfully, we have and continue to disagree with the department's position. We view this selective interpretation as detrimental to the educational program of our district. This year we enrolled fifty one students who are classified as EEN while only nineteen EEN students exited from our programs. Of the 51 that enrolled, 49 were from area K-8 feeder schools. This year in order to deliver the necessary program to EEN students because of the increase in enrollment, Hartford Union High School added one EEN teacher and one full time equivalent EEN aide to our staff. These additions totaled nearly \$60,000. Over the last three years, we have increased our operational budget by \$150,000 to fund staff additions due to EEN enrollments.

To view K-8's and Union High School Districts as K-12 when it comes to transfer of service but not when it involves other educational aspects is unfair to Union High Schools. When EEN students move from K-8 schools to UHS, there is no authority on the part of UHS's to correspondingly move resources such as teachers and aides. Nor can UHS's encumber any funds of the K-8's because of these transfers. The UHS is expected to draw from its total operational budget to fund the EEN enrollments. Unless EEN students enroll from school districts other than K-8 feeder schools, there is no relief that UHS's can seek save the categorical aid in the subsequent school year.

DISTRICT ADMINISTRATOR/PRINCIPAL

Richard A. Zimmerman
BUSINESS MANAGER

Frank R. Mastaw

ADMINISTRATIVE COORDINATOR

Sandra R. Smith

DIRECTOR OF CURRICULUM & INSTRUCTION

Donna L. Behn Ph.D.

ASSOCIATE PRINCIPALS

Paul M. Cappoferri

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It is not the intent of our district to initiate any action that will have a negative effect on area K-8 budgets. However, given the circumstance of the present climate of fiscal constraints, we feel compelled to make this request. We would appreciate your consideration in this matter and would like a response at your earliest convenience before we seek other avenues of relief.

Sincerely


Richard Zimmerman
District Administrator

c Board of Education
Local Public K-8 Districts
James Mohr, District Legal Counsel