

WISCONSIN STATE  
LEGISLATURE  
COMMITTEE HEARING  
RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on  
Education  
(SC-Ed)

File Naming Example:

Record of Comm. Proceedings ... RCP

- 05hr\_AC-Ed\_RCP\_pt01a
- 05hr\_AC-Ed\_RCP\_pt01b
- 05hr\_AC-Ed\_RCP\_pt02

*Published Documents*

➤ Committee Hearings ... CH (Public Hearing Announcements)

➤ \*\*

➤ Committee Reports ... CR

➤ \*\*

➤ Executive Sessions ... ES

➤ \*\*

➤ Record of Comm. Proceedings ... RCP

➤ \*\*

*Information Collected For Or  
Against Proposal*

➤ Appointments ... Appt

➤ \*\*

➤ Clearinghouse Rules ... CRule

\*\*

➤ Hearing Records ... HR (bills and resolutions)

➤ **05hr\_sb0177\_SC-Ed\_pt01**

➤ Miscellaneous ... Misc

➤ \*\*

December 19, 2001

CAROLYN STANFORD TAYLOR  
ASSISTANT SUPERINTENDENT  
WISCONSIN DEPT OF PUBLIC INSTRUCTION  
PO BOX 7841  
MADISON WI 53707-7841

RE: IDEA Entitlement Funds

Dear Dr. Taylor:

On 09/21/01, the School District of Cambridge received an e-mail from Jack Marker, DPI Special Education Consultant, indicating that two items in the district's 2001-02 budget for the IDEA entitlement funds would not be approved. The purpose of this letter is to appeal that decision.

Specifically, the items disapproved are

- Preventative Counseling services. In the spring of 2001, a couple of our youngest EBD students appeared to be in need of intensive, preventative counseling services, including the possible need for family counseling services in order for those students to benefit from their special education programs. Therefore, the potential cost for these services was placed in the budget. Based on case law and due process hearings in which schools were ordered to pay for such services, we decided to establish a budget item in the event that an IEP team (or a hearing officer) ordered such services. To date, those services have not been needed. While we have guidance counselors, a school social worker, and school psychologists, their training and responsibilities are limited to school counseling, school social work, and school psychology services. They are not employed by the district to provide family counseling, nor are they trained to provide the intensive individual counseling that child and family therapists provide. Contracting with outside therapists for child and family counseling would fill a need not provided by public school districts, if that need should arise. These potential services would not supplant the counseling services provided by the school's guidance counselors, school social workers or school psychologists, and they would be provided only as specified by an IEP team as a related service.

- Music Therapy is a service that the School District of Cambridge has been providing to one or more students since 1998. It has been in our IDEA Entitlement Budget every year since then. It is a related service needed by some special education students, and is a service that cannot be provided by anyone else employed by the school district. Classroom music teachers provide their music curriculum, but they cannot provide music therapy. To determine when music therapy services are needed, a qualified music therapist conducts an evaluation. If the services are needed in order for the child with a disability to benefit from his or her special education program, then those services are defined in the student's IEP just as any other related service is defined in the IEP. To date, the need for this related service has been justified in order to address severe anxiety, frustrations, focusing difficulties, and other severe behaviors of students with profound cognitive disabilities and students with severe emotional/behavioral disabilities. Parents of these children and teaching staff working with these students have seen substantial differences in how some students benefit from this related service. (One student was found not to benefit from it, and the service was discontinued through the IEP).

In response to our request for a citation supporting the Department's decision to disapprove these two budget items, Mr. Marker sent a copy of Chapter 115.88(1m)(a). It states that the Department may approve a district's expenditure for "the salary portion of any authorized contract for physical or occupational therapy services," and the statute goes on to read "and other expenses approved by the state superintendent as costs eligible for reimbursement from the appropriation under s. 20.255(2)(b)."

While this statute authorizes approval of contract services for OT and PT, it does not prohibit contracting for other services. Following is a list of other contracted arrangements that have been approved by DPI as authorized contract expenditures with IDEA entitlement funds:

- Music Therapy services (budgeted under 155000) for 1998-99, 1999-2000, 2000-2001, School District of Cambridge.
- School Psychology Services for the School District of Cambridge for 2001-2002 to cover a 3-month maternity leave when two separate postings for the position failed to provide a qualified candidate; approved by the DPI School Psychology Consultant.
- SMILES recreational therapy services, approved by the DPI for several years prior to 1996 and annually since then.
- SMILES recreational therapy services, approved by the DPI for other school districts, CESAs, and other state agencies, including the Wisconsin School for the Visually Handicapped.
- Opportunities, Inc. career/vocational/transition support services approved for the School District of Cambridge, several other school districts in CESAs 1 and 2. This budget item is in our current IDEA Entitlement budget and has not been disapproved by DPI. It has been in our entitlement budget for the last three years.
- At least one district in the state is using entitlement funds to contract with Community Adolescent Programs for assistance with students with severe emotional and behavioral disabilities who are suspended, who need to complete community service, who need assistance in learning the skills to succeed in their IEP goals, and to provide

one-to-one counseling or support to individual students or their families (these words taken directly from the Information Bulletin provided to school districts by the Community Adolescent Programs). These services are not limited to court-ordered services

As you can see, consistency in approval/disapproval for contracted services does not exist. If some of these expenses are approvable, then it would seem that all of them are approvable. They are related services that individual students may need in order to benefit from their special education programs. Should a parent seek a due process hearing over the failure of a district to provide one of these services, a district may be ordered to provide it. Yet, if the only way to access these services is by contracting for them, DPI's disapproval of that contracting would prevent a district from providing a required service.

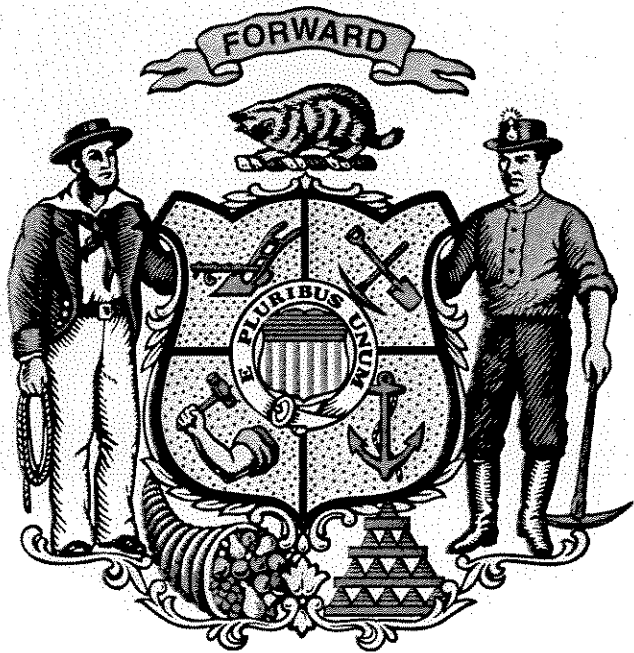
In addition, it is my understanding that other states permit contracting with providers of services such as these, and that their approvals extend to district use of federal entitlement funds to pay for these contracted services.

In light of this information, we are requesting that you re-consider the disapproval of our 2001-2002 IDEA Entitlement budget, and permit our children with disabilities to continue to receive the services they need as identified by their IEP teams.

Sincerely;

Donita G. O'Donnell  
Director of Special Education  
School District of Cambridge

Copies: Jack Marker, DPI Consultant  
Ron Dayton, District Administrator, School District of Cambridge





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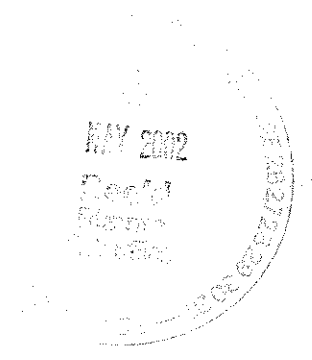
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May 17, 2002

**VIA HAND DELIVERY**

Dr. Stephanie J. Petska  
Director of Special Education  
Wisconsin Department of Public Instruction  
P.O. Box 7841  
Madison, Wisconsin 53707-7841



**RE: IDEA Flow-Through Funding for Outside Related Service Contracts**

Dear Dr. Petska:

We have been retained by the Edgerton School District ("District") to assist them in reviewing the Wisconsin Department of Public Instruction's ("DPI") allocation of Individuals with Disabilities Education Act ("IDEA") Part B flow-through grants. In particular, the concern relates to DPI's position that only the related services of occupational therapy, physical therapy and nursing services may be funded with IDEA flow-through funding when outside vendors are used by the local educational agency ("LEA"). It is our understanding that DPI has denied requests to use federal flow-through funding for other vendor services, such as private speech and language and private counseling.

Based upon DPI documentation, it is our understanding that DPI bases its position solely upon state law. To be specific, it appears that DPI relies upon the provisions of § 115.88(1) and 115.1m(a), Wis. Stats. Section 115.88(1), Wis. Stats., states:

"The board may contract with private or public agencies for physical or occupational therapy services on the basis of demonstrated need."

Section 115.88(1m)(a), Wis. Stats., goes on to set forth that funding may be provided to a school district:

"... for a sum equal to the amount expended by the county, agency and school district during the preceding year for salaries of personnel enumerated in sub. (1), including the salary portion of any authorized contract for physical or occupational therapy services, and other expenses approved by the state

Dr. Stephanie Petska  
May 17, 2002  
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superintendent as costs eligible for reimbursement from the appropriation under s. 20.255 (2) (b).” (emphasis added).

In recent correspondence to the Cambridge School District, DPI indicated that it is “longstanding department interpretation that only the related services of occupational therapy, physical therapy and nursing services may be funded with IDEA flow-through funding.” (Emphasis added). Since § 115.88, Wis. Stats., specifically refers to physical therapy and occupational therapy, it is clear that school districts may use flow-through funding for those services provided by outside vendors. However, what seems unclear is why DPI views the above statutory provisions as limiting the use of flow-through funds to only outside vendors performing occupational therapy, physical therapy and nursing service.

First, § 115.88(1m)(a), Wis. Stats., specifically establishes that “other expenses” may be approved by the State Superintendent. This language provides the State Superintendent broad discretion in determining what “other expenses” may be approved. Since the services in question are provided in order to ensure that a child with a disability receives a free and appropriate public education, utilization of flow-through funds is appropriate under § 20.255(2)(b), Wis. Stats. Further, § 115.88(1), Wis. Stats., does not say that a school district may contract with outside vendors for occupational and physical therapy only. The DPI interpretation of the statutory language in § 115.88, Wis. Stats., seems unduly restrictive.

Second, the statutory language in § 118.255(4), Wis. Stats., specifically allows the State Superintendent to approve funding for certain health treatment services.

“If the state superintendent is satisfied that the health treatment services program has been maintained during the preceding school year in accordance with law, the state superintendent shall certify to the department of administration in favor of each school board, cooperative educational service agency and county children with disabilities education board maintaining such health treatment services, an amount equal to the amount expended for items listed in s. 115.88 (1m) by the school board, cooperative educational service agency and county children with disabilities education board during the preceding year for these health treatment services as costs eligible for reimbursement from the appropriation under s. 20.255 (2) (b).” (emphasis added).

As defined, health treatment services under § 118.255(4) includes treatment for speech and language disability along with other disabilities, regardless of whether those services are provided by school district employees or private vendors. § 118.255(1), Wis. Stats. Hence, absent the restrictive DPI interpretation of § 115.88(1m), Wis. Stats., private vendor services for speech and language and other health treatment services could be paid for with flow-through funding.

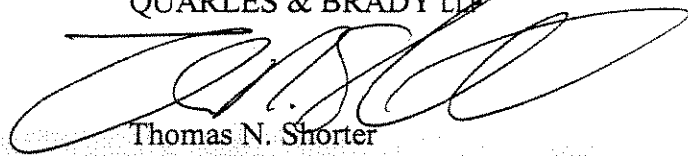
Dr. Stephanie Petska  
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On behalf of the District, we are requesting that DPI reevaluate the interpretation of §§ 115.88(1) and 115.88(1m), Wis. Stats., and allow the District to use flow-through funding for outside vendors of services necessary to provide FAPE. Specifically, the District is requesting that the use of flow-through funding be allowed for private speech and language therapist, preventative family counseling and private tutoring. In the event DPI will not reverse the prior determination on these items for the District, we would request that DPI address in more detail the rationale for the current position, including: (1) confirmation that this is a state law issue only; (2) why DPI views the language of § 115.88, Wis. Stats., as only allowing flow-through funding for outside occupational therapy and physical therapy vendors; and (3) how DPI interprets the language in § PI 11.24(1), Wis. Admin. Code regarding this issue.

I look forward to your response in this matter. In the event you require additional information from the District regarding this matter, please do not hesitate to contact me.

Very truly yours,

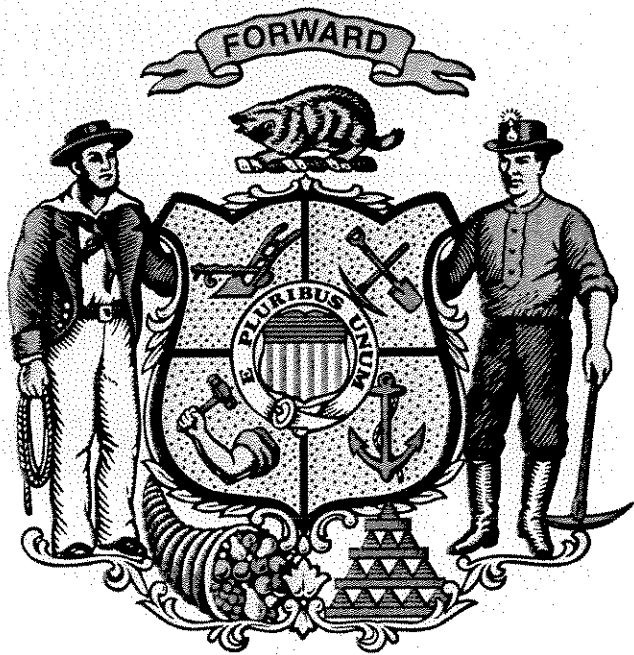
QUARLES & BRADY LLP



Thomas N. Shorter

cc: Ms. Marie Dorie  
Ms. Margaret McMurray





## Smith, Heather

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**From:** Kammerud, Jennifer DPI  
**Sent:** Tuesday, September 06, 2005 8:17 AM  
**To:** Smith, Heather  
**Cc:** Langan, Casey  
**Subject:** RE: question

Heather,

We have been meeting with WEAC in an attempt to see if there isn't some common ground on the need to contract out some special education services. Our last meeting was last week. At this point we are just waiting to hear back from WEAC as to whether they are in agreement with us on those areas. I don't think there is anything left to really discuss so we just are waiting on some decision points from them. I'll contact them and see if we can't get back to you and Casey prior to the 15th.

- Jennifer

Jennifer Kammerud  
Legislative Liaison  
Department of Public Instruction  
125 South Webster Street  
Madison, WI 53707  
Ph: 608/266-7073  
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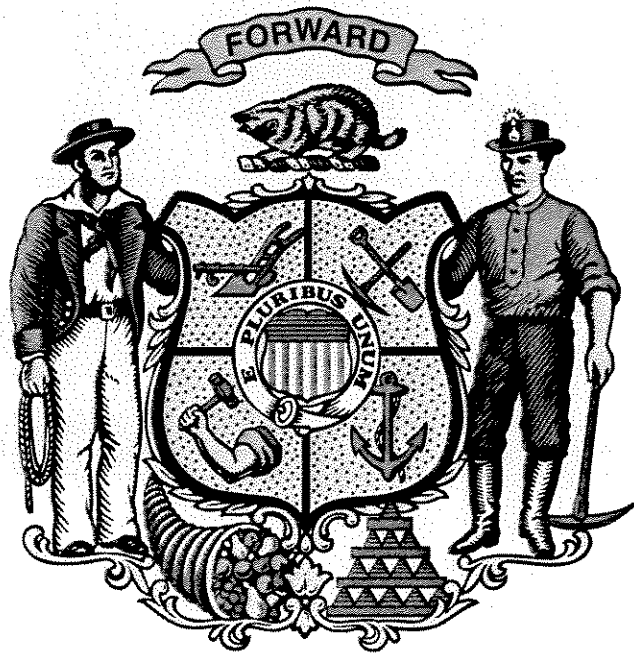
-----Original Message-----

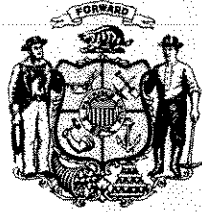
**From:** Smith, Heather [<mailto:Heather.Smith@legis.state.wi.us>]  
**Sent:** Friday, September 02, 2005 3:50 PM  
**To:** Kammerud, Jennifer DPI  
**Subject:** question

I am hearing from Debi Towns' office that there is some amendment to the SB 177 (the special ed services bill) that DPI and/or WEAC is drafting. Do you by chance know what that might be about? Since we're hearing the bill on the 15th, I just am curious whether we should figure out what it is and take it up, or how to proceed.

Thanks,

Heather





## Wisconsin State Legislature

September 13, 2005

### Senate Committee on Education Testimony for SB 177 from State Senator Luther Olsen

This is another bill I've authored that relates to provision of special education services in schools.

IEP require certain services - No opp  
Currently, schools can contract with a public or private agency for physical therapy or occupational therapy services. State special education aids can be used to cover those costs.

This bill would authorize districts to contract for additional services including:

- Orientation and mobility services
- Interpreters
- Audiologists
- Pupil transition

Any other other services determined by the board to be necessary, IEP  
State special education funds could be used to cover the cost of contracting for these services.

The bill further allows for speech therapy services to be contracted out, and, if districts are unable to employ a speech therapist, those costs could be covered by state special education aid funds.

The bill basically allows school districts to provide services in their special education programs in the best way available to them, and have these costs covered by special education aids. It's an unfair burden on these schools to have to pay out of their own pockets for these services, which they are required to provide.

What do  
we need to  
do to support  
this?

STATE CAPITOL

P.O. Box 7882 • Madison, Wisconsin 53707-7882