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STATE REPRESENTATIVE ★ 21ST ASSEMBLY DISTRICT

AB 160: Transportation to a Private School during the 2020-21 School Year
Testimony of State Representative Jessie Rodriguez
Assembly Committee on Education
Thursday, April 22, 2021

Thank you Chairman Thiesfeldt, Ranking Member Pope and members of the Assembly Committee on Education for the opportunity to testify on Assembly Bill 160, legislation relating to transportation to a private school during the 2020-21 school year for pupils who reside in a first class city school district.

Under current law, Wisconsin pupils participating in a private school choice program are entitled to transportation provided by their resident school district, assuming certain criteria are met. This statutory requirement of school districts is meant to ensure students in grades 4K through 12 have access to transportation to their school.

It has been brought to our attention that over the course of the last year, with various modes of instruction occurring in the public school system (i.e. in-person, hybrid and virtual), that not all districts have been fulfilling this obligation during the 2020-21 school year. Many school districts that have gone fully virtual have done the right thing and have continued to pay to transport students to private schools that are offering in-person instruction.

The 2020-21 school year should not be exempt from current law, nor should certain school districts. We are not asking the Milwaukee Public School District (MPS) to do or pay for anything beyond what current law already dictates. Additionally, the Milwaukee Board of School Directors will be able to claim state transportation aid for payments made, should this bill become law.

This past year has been a challenge for many families in our communities. Some families have faced crippling financial struggles as the result of the COVID-19 pandemic. We are introducing this legislation because we want people to be reimbursed for their transportation costs this year. Families participating in a choice program should not have the cost of transporting their student added to the financial burdens of the last year.

I encourage your support for this legislation. Thank you for your time.



Assembly Bill 160: Transportation to a Private School during the 2020-21 School Year
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Chair Thiesfeldt and committee members,

Thank you for scheduling this hearing. While Representative Rodriguez is participating in the Joint Finance Committee's public hearing today, I am happy to join you to discuss an important issue impacting students in Milwaukee.

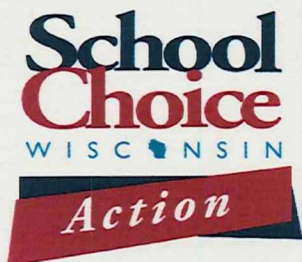
Over the last year, many students, parents, teachers and administrators worked to ensure our students can continue their education. Unfortunately, in some cases we have fallen short of that standard.

Despite receiving unprecedented levels of funding, Milwaukee Public Schools have simply refused to follow the law and cover the cost of transportation for students enrolled at private schools. Our laws are clear, MPS must pay to cover these costs if the students meet certain criteria. Inexplicably though, MPS has simply refused to do so, shifting that burden to either the private schools or the students and their families.

I certainly understand that COVID-19 presents challenges as schools bus students to and from school each day. However, other districts have continued to meet their legal obligation throughout this school year and I believe students attending private schools in Milwaukee deserve the same service as their peers in other districts.

This bill is comprised of nonstatutory provisions to compel MPS to provide the same funding in the 2020-21 school year they provided in the 2019-20 school year. This is a common sense solution for the students, families and schools being impacted by MPS' failure to follow the law.

Thank you for your time and consideration.



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April 22, 2021

Assembly Committee on Education
Public Hearing on Assembly Bill 160

Thank you, Chairman Thiesfeldt and members of the Education committee, for the opportunity to testify today in support of Assembly Bill 160 (AB 160). I am here representing School Choice Wisconsin Action (SCWA) as their Government Affairs Consultant.

Earlier this year, Milwaukee Public Schools (MPS) made a determination to deny busing and/or contract expense reimbursement to private schools and private school parents in Milwaukee. MPS schools were closed for in-person instruction while many private schools were open. We disagree with their legal interpretation on the allowability of that decision. The Wisconsin Institute for Law and Liberty will be testifying about the details surrounding that legal decision.

This legislation is before you in an attempt to undue some of the harm inflicted by that denial of service. We are not looking to get increased funding. Rather, we are looking to utilize current funding levels.

As a starting point, it has come to light that busing in Milwaukee, as coordinated by MPS, has private school busing and MPS busing handled separately. In short, private and public school students do not ride on the same buses. Irregardless the wisdom of that policy, it does make the separation of these expenses far easier for the purposes of this bill.

Here are a few specific examples of the impact of the denial of bus service.

1) MPS Contract with Private School for Reimbursement:

- Academy of Excellence (AOE) – A large private school in the MPCP with enrollment of 927 students located on several campuses. The majority of their students are low-income and 100% are in the Choice Program. AOE transports students at a cost of around \$800,000/year. AOE typically has a transportation contract with MPS and the school gets a reimbursement of roughly \$50,000 to help offset the cost. This year MPS said they would not provide a contract for transportation since MPS was all virtual. This is a huge blow to the AOE budget.

2) MPS Parent Contracts for Transportation:

- Nalani Gomez is the mother of 2 children that attend Blessed Sacrament in Milwaukee. Due the pandemic, Nalani has been working from home. Her children's school offered the opportunity to have in-person education and she decided that was best for her children and her family. In order to take them to school and pick them up, she made the decision to buy a car, as they don't live close enough to walk to school. Not receiving this reimbursement will stress her budget as she was counting on it when she purchased her car.
- Eastbrook Academy – Eastbrook Academy – A high-performing MPCP school on the Northeast side of Milwaukee with over 360 K-12 students, 76% Choice. The school reports that parents might not even be aware that they won't be getting their annual transportation reimbursement check this June, so it could be an unpleasant surprise in June. Those that do know have an attitude of “resigned assent”, assuming there is no recourse for them.

3) MPS Yellow Bus Service MOU:

- Salem Evangelical Lutheran School on Milwaukee's far northwest side, is located in an area designated by the City as hazardous, so no walkers are allowed. The school usually has an MOU with MPS, but MPS denied yellow bus service this year due to COVID, leaving the school no choice but to be all virtual first semester.

For second semester, the school felt it was imperative to offer in-person instruction for whoever could manage to get there (about 60% of their students) and everyone else is virtual. The school knows the students learning virtually are at a great disadvantage, but there is really nothing they can do about it; the school just does not have the resources to provide transportation.

Please consider these ramifications when considering this legislation.

Thank you,

Jim Bender
School Choice Wisconsin Action



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April 22, 2021

**TESTIMONY OF THE WISCONSIN INSTITUTE FOR LAW & LIBERTY IN
SUPPORT OF 2021 ASSEMBLY BILL 160**

Chairman Thiesfeldt and Members of the Assembly Committee on Education:

Thank you for providing us with the opportunity to testify in favor of Assembly Bill 160. I am Libby Sobic and I am an attorney at the Wisconsin Institute for Law & Liberty. WILL has provided counsel and litigated cases relating to student transportation in a variety of contexts. I am testifying today to provide a legal overview of the Wisconsin student transportation law and AB 160.

This committee is no doubt aware of the importance of safe and reliable transportation to public and private school students and their families. Wisconsin has a long history of helping ensure that schoolchildren do not have to worry about how they will get to school, and it is a history of which we should all be proud. In 1967, the Wisconsin Constitution was amended to clarify that the Legislature was authorized to provide transportation to students to ensure their safety regardless of the sector of school they attended. The Legislature then immediately crafted laws distributing transportation benefits to public and private school students alike.

The basic framework present in state statute today is relatively straightforward. School districts are generally required to provide transportation to qualifying public and private school students and in return the districts receive state aid under a formula that takes into account the number of students and distance transported.

This general transportation requirement contains an exception called the “City Option,” which provides that school districts need not transport students residing in certain types of cities. While districts are permitted to “elect[]” to transport these children, if they do so, state law requires that “there shall be reasonable uniformity in the transportation furnished to the pupils, whether they attend public or private schools.”¹ The animating principle behind Wisconsin’s transportation laws is that “the same consideration of safety and welfare should apply to public and private schools alike.”²

In practice, transportation benefits to private school students take several forms, including yellow bus service, parent reimbursement contracts, or contracts with

¹ § 121.54(1)(b).

² *Cartwright v. Sharpe*, 40 Wis. 2d 494, 506, 162 N.W.2d 5 (1968).

private schools for transportation. But regardless of the form they take, these benefits are crucial to our students, families, and schools. According to the Legislative Fiscal Bureau, for example, 415 school districts transported over 448,000 public school students and around 27,000 private school students in the 2018-2019 school year alone.³ And in the City of Milwaukee, home to the state's largest school district and the highest number of private schools in the state, 38,825 public school students and 6,563 private school students received benefits. For the school year 2019-2020, Milwaukee Public Schools received over 9% of total state transportation aid, representing over \$2 million, to cover the costs of providing transportation benefits to these students.⁴

But despite Wisconsin's tradition of providing these benefits and widespread reliance on them, over the past school year we have seen students denied the transportation aid this Legislature gave them in violation of state law. In August of 2020, while private schools were already facing the substantial challenge of reworking their approaches in the face of the COVID-19 pandemic, MPS announced that it simply would not be providing transportation benefits to private school students until further notice. In its view, because MPS' own program would be virtual and thus the district would not be transporting its own students, it did not need to transport private school children to their in-person classes.

The district's position resulted in at least 6,000 private school families without access to transportation to school, many of which were open and safely providing in-person education for some of their students. Yet the district received \$2 million in transportation aid in 2019-2020 and the state has continued to fund districts meeting their legal obligations for providing transportation.

In our view, MPS has failed to meet its legal obligations under Wisconsin's transportation law.

* * *

Because students within MPS generally fall within the city option, MPS does not have to transport them. But it has long chosen to do so anyway. And that choice triggers its obligation under state law to ensure "reasonable uniformity" in the transportation it provides, regardless of whether students attend public or private school. The same considerations of safety and welfare apply no matter what kind of school a child is attending.

³ Russ Kava and Christa Pugh, Legislative Fiscal Bureau, *State aid to school districts 25* (Jan. 2021), available at

https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2021/0027_state_aid_to_school_districts_informational_paper_27.pdf.

⁴ See Wisconsin Department of Public Instruction, *Final-4-June-2020 PTA Payment 6-9-2020* (June 2020), <https://dpi.wi.gov/sfs/aid/categorical/pupil-transportation-aid>.

There is a modest body of law regarding what this “reasonable uniformity” provision requires. Relevant here, both a 1979 Court of Appeals decision⁵ and a 1972 opinion of the Attorney General⁶ make clear that a district otherwise providing transportation to public and private school students generally must transport private school students on days that the public school district is not in session. The Court of Appeals decision just referenced additionally relied on Wis. Stat. § 121.56 for this principle, which states that “the transportation of public and private school pupils shall be effectively coordinated to insure the safety and welfare of the pupils.” In the Court’s view, this statutory provision is meant “to prevent discriminatory treatment of pupils attending private schools in the transportation provided them.”⁷

So, for example, if a city option district that has elected to transport students closes its schools for holiday break, it has to keep providing transportation to private schools if they remain in session. This makes perfect sense. If the private schools were closed for holiday break, there’s no doubt that the public school would keep transporting its own students, so the reverse should also hold true. That is reasonable uniformity.

In sum there are two basic rules at play: if a city option district chooses not to provide transportation to its own students at all, it need not transport private school students. On the other hand, if the district does provide transportation, it cannot simply withhold benefits on days that its schools are closed.

MPS is using the occasion of the COVID-19 pandemic to skirt its obligations to private school students. It is acting like it is a district that does not provide transportation at all, even to its own students, in order to justify its decision to withhold benefits from private school students. But of course, it does provide transportation; it has long provided transportation; it has a published transportation policy, available online;⁸ it accepts millions in state funds to offer these services. In fact, it is our understanding that now that MPS is resuming in-person instruction of its students, it is likewise resuming transportation of those students. But if MPS is willing to transport its own students on in-person days even if a private school chooses to remain virtual due to COVID-19, reasonable uniformity demands that it should have been providing benefits on days that it was virtual but private schools were in person. MPS had every right to decide to hold classes virtually during this pandemic. But private schools also had the right to make the opposite decision, and MPS cannot use its ministerial authority over the flow of transportation dollars to penalize private schools that opened to in-person instruction earlier than the district did.

⁵ *Hahner v. Board of Education*, 89 Wis. 2d 180, 278 N.W.2d 474 (1979).

⁶ 61 OAG 240, 244 (1972).

⁷ *Hahner*, 89 Wis. 2d at 191.

⁸ Milwaukee Public Schools, *Administrative Policy 4.04* (March 3, 2009), available at <https://mps.milwaukee.k12.wi.us/MPS-English/COO/Transportation/AdministrativePolicy4.04.pdf>.

MPS has violated its legal obligations at its own peril, because under Wis. Stat. § 121.58(2)(am), “[n]o state aid of any kind may be paid to a school district . . . which willfully or negligently fails to transport all pupils for whom transportation is required under s. 121.54.” They have put their own state aid in jeopardy.

The bill this committee is considering addresses this issue in a simple and effective way. It ensures transportation benefits are provided to private students on the same terms as in the previous school year and authorizes school districts to obtain state aid for payments made. This is a good compromise that places the safety and welfare of our children first.

Thank you for your time. I would be happy to answer any questions you may have regarding my testimony.

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TO: Members, Assembly Education Committee

FROM: Sharon L. Schmeling, Executive Director

DATE: April 22, 2021

RE: AB 160 – Transportation
CR 21-01 – Criteria related to learning disabilities
AB 261 – DPI waiver authority

Thank you for this opportunity to provide input on how these proposed bills may impact Wisconsin's private school children and staff. We represent 100,000 students in over 600 K-12 schools, the vast majority of which have provided in-person instruction during the Pandemic.

AB 160 – Transportation to private schools. Many parents entitled to transportation aid sent their children to school when MPS shut down for the Pandemic and ceased providing transportation. The state's transportation law requires public schools to transport private school children even if the public schools are not in session. This should include students served by parent contracts, which the law provides. This bill simply clarifies MPS's responsibility to provide transportation during the pandemic via parent contracts, and gives the district access to state transportation aid. **We urge you to support this bill.**

CR 21-011 – Criteria related to learning disabilities. We generally support efforts to make state process and procedures around special education and learning disabilities more current with research-based best practices because the federal IDEA is terribly outdated.

However, we question the elimination of a portion of PI 11.36 (6) (h) that says, *"If a child with a specific learning disability performs to generally accepted expectations in the general education classroom without specially designated instruction, the IEP team shall determine whether the child is no longer a child with a disability."*

We are concerned with the work of IEP teams because the Special Needs Scholarship Program is based on a student having an operative IEP. Under the proposed language change to remove this section, a child's IEP could become inoperative without the overt decision of the IEP team.

An unintended consequence of eliminating this language could be that a child

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would be found without an operative IEP, which would eliminate eligibility for the state SNSP. **We would caution that the language needs to be clear that this rule change cannot be used to withhold an IEP, thus eliminating a child's access to the SNSP.**

AB 261 – DPI Waiver Authority. We support this much-needed authority but suggest it be granted for at least the balance of the Fall 2021 school term (to 12/31/21), if not the whole school year, instead of just to 10/31/21. For example, the USDA just announced this week that it will continue free lunch for all students, not just low income, in the upcoming school year. Stateside, this confuses eligibility documentation for the Choice programs. While that announcement might be timely enough for DPI to address with this waiver authority, it exemplifies the kind of federal changes that can be announced at a moment's notice that impact private schools, which DPI will need to address through the school year.

There is much that is unknown about how the Pandemic will affect education in the fall and winter months and DPI needs the ability to respond nimbly to what is occurring in other programs, rules, and private schools, which have been leaders in pivoting to provide in-person education. **We urge you to support this bill with modification.**

Thank you for your time and consideration.