



# Amy Loudenbeck

REPRESENTING WISCONSIN'S 31<sup>ST</sup> ASSEMBLY DISTRICT

Testimony before Assembly Committee on Education  
Assembly Bill 119  
Rep. Amy Loudenbeck

Thank you, Mr. Chairman and committee members, for the opportunity to testify in favor of Assembly Bill 119 relating to applications for full-time open enrollment.

Assembly Bill 119 resolves an issue that was brought to our attention by a Wisconsin school district administrator. Under current law, a family may apply for open enrollment to a maximum of three districts within a given school year. The law does not allow for any exceptions or additional applications if a student is denied admittance into all three of the districts to which they applied.

You may recognize this bill from last session where it was passed by the Assembly and awaiting a floor vote in the Senate when Covid prevented further session days.

Virtual school options are numerous in Wisconsin, which was not the case in 1999 when the language limiting the number of open enrollment applications was put into statute. This bill removes the limit on the number of virtual charter schools a student can apply to under open enrollment.

I learned of the three application limit from the Elkhorn Area School District (EASD) which is often able to accept students from other schools, including students who have been expelled, by admitting them into their virtual school, or one of their other programs.

Unfortunately, two families were recently denied enrollment into the EASD's virtual school not because EASD didn't want to accept them, but because the law didn't allow them to. Prior to applying to Elkhorn's virtual school their children had already been denied by three other school districts, which triggered the three district maximum rule. Due to the way the statute is currently written these families had no other public school option for the remainder of the school year, even if the EASD was willing to offer acceptance and enroll the students in their virtual school.

Expulsions occur in districts across the state. We believe that students who have been expelled should continue to receive educational services in a setting that is safe and appropriate, if possible.

Assembly Bill 119 also recognizes there are many reasons, in addition to expulsion, a student could be denied open enrollment to a traditional public school including behavioral health challenges or complex medical issues. These students could also be well-served by admittance to a virtual school.

AB 119 provides an option for students who are currently being denied the opportunity to open-enroll into a virtual school due to the three application limit. It is important to note AB 119 does not

require a virtual school to accept a student and it is our understanding virtual schools are supportive of this legislation.

Thank you for your time today. We would be happy to answer any questions at this time.



**JOAN BALLWEG**

STATE SENATOR · 14<sup>TH</sup> SENATE DISTRICT

Assembly Bill 119: Application Limit for the Open Enrollment Program  
Assembly Committee on Education  
Testimony of Senator Joan Ballweg  
March 4, 2021

Good morning, members of the committee. Thank you for hearing this important piece of legislation.

Open enrollment is an excellent program that allows students, regardless of where they live, the option to attend an education program that works best for them. When a student applies to an open enrollment program, the school board of the nonresident school district may deny a student's application for various reasons, such as the pupil has been expelled or is serving an expulsion, is habitually truant, has services required under an individualized education program that are not available in the nonresident school district, or there is a lack of space at the school or in the program. DPI recently released *The Wisconsin Inter-District Public School Open Enrollment Program* report to the governor and legislature for 2019-20, which states that 9,260 applications were denied by nonresident school districts for that year.

Current law limits the number of applications a pupil may submit for full-time open enrollment to three nonresident school boards in any school year. As I just noted, many students are denied for various reasons, and sometimes they hit their three application limit. This leaves the student and family in a bind to figure out where that student can go to school for that year.

This proposal changes the law so an application to attend a virtual charter school through full-time open enrollment does not count for the purposes of the limitation on the number of applications that may be submitted. This will allow families who have been denied and hit their application limit due to the reasons I mentioned earlier to still have the option to attend a public school through virtual enrollment.

The Senate Committee on Education has already held a public hearing on the senate companion bill, and it is holding an executive session to vote on the bill this afternoon.

Thank you for your consideration of AB 119.



**JASON K. TADLOCK**  
District Administrator  
**WILLIAM TREWYN**  
District Business Manager  
**RITA GEILFUSS**  
Director of Pupil Services  
**AMY GEE**  
K-5 Director of Instruction & Gate  
**SARAH BOSCH**  
6-12 Director of Instruction  
**TRISHA SPENDE**  
Director of Online & Blended Learning  
**CHRIS TROTIER**  
Director of School to Work Opportunities

My name is Jason Tadlock, I am the District Administrator for the Elkhorn Area School District. Accompanying me today is my administrative assistant Jodi Essman, she also serves as our school district's open enrollment coordinator and has been key to helping us identify the challenge that families across Wisconsin currently face.

Getting expelled is a traumatic experience for all parties involved. The students suffer, guardians suffer, and school administrators and school board members struggle over the difficult decision to remove a student from school. Yet it is sometimes a necessary action in order to protect the interests of other students. It can also serve as a catalyst for students to get back on track if done right.

In the Elkhorn Area School District we have made a commitment to the students and families of expelled students. The students may be restricted from attending the traditional high school in many cases, but they are all given a pathway to graduation. We do not wash our hands of the students. We do not cut them off from critical support at a time that they and their families need them the most.

Unfortunately, that is not the case for many students throughout the state of Wisconsin. Quite often we have found that many school districts will exercise their right to simply expel the student and offer no further educational services. Once a student is expelled in Wisconsin, other districts may reject an expelled student's enrollment request based on the expulsion order from their resident district. I have seen students that were expelled in middle school for repeated refusal to obey school rules up through age 21. Effectively enabling any school district in the state to reject the enrollment of that student.

I met with one such young man two summers ago to discuss his enrollment in our school. He was expelled in 8th grade from a Wisconsin school district for repeated refusal to obey school rules. He was given a pathway back to school after a year if he completed an online program, community service hours, and counseling for the school from which he was expelled. His mother decided to send him to his father's house in Illinois so he could attend school face to face there as they felt he would not be successful in online classes. He did so for his freshman year, but due to a number of factors outside of his control, his mother brought him back to Wisconsin to live with her.

When she attempted to enroll him back into his school she was told that he could not enroll because he did not complete the terms of his expulsion order as they had prescribed while out of state at his father's home. He did not have the proper verification forms of his counseling services.

In an attempt to get him back in school she moved to a city just north of us near her work. She did not realize that they too could refuse to enroll him due to the expulsion order that was in place from his previous school district. The young man spent his sophomore year at home depressed, disengaged and oftentimes thinking about harming himself.

When I met with him and his mother, we reviewed our educational options that he could participate in based on his prior disciplinary record and the progress he had made since his expulsion. When the young man learned that he could return to school in a face to face format he proclaimed excitedly, "Are you serious! Are you serious! No way! I can't believe that I get to go back to school." He then began to sob and shared that while taking a shower in preparation for our meeting he had prayed to God as he had never prayed before that he would be allowed to return to school. In all my years as an educator, I have never seen a student so excited to attend school.

This student is now a senior, actively involved in co-curriculars, school activities, and other events. He brings a cheerful attitude to school and is on-track to graduate this spring. He has completed several college level courses at Gateway Technical College and is focused on his post-high school plan to continue his schooling in Michigan in the field of business. This is despite experiencing significant disruption to his education and coming to Elkhorn missing his entire 10th grade year and part of his 9th grade year.

I share this experience because students and families like this young man are searching for educational opportunities. We are listed by the state as one of roughly 20 school districts willing to accept expelled students. As such we are contacted on a regular basis by families as well as social workers from around the state on behalf of students with whom they are working. Hoping that they will be able to find a public educational solution for their student.

This brings me to the reason why I am here today and why this legislation is needed. I would like to briefly review two cases that brought to light the need for a change to our current legislation.

### **Student A**

In October 2019 the Elkhorn Area School District received an Alternative Open Enrollment Application requesting our virtual charter school. It is important to note that Student A's legal guardian indicated there is no current school of attendance.

Per open enrollment policies and procedures, Elkhorn, as the non-resident district, is required to provide a copy of the application to the resident school district, in this case, Central-Westosha. At such time, Elkhorn was informed by the resident school district that Student A had submitted three prior Alternative Open Enrollment Applications to other districts, thus making this the fourth application, and making their application to Elkhorn ineligible under Wisconsin statutes and administrative code. Even though the first three applications to non-resident districts were all denied, Elkhorn, under current law, could not entertain the idea of accepting this student.

Per state statutes and administrative code, a parent can only apply to three non-resident districts per school year. The year is defined as the school year the application was submitted in, not the school year that the application was submitted for. This is important because the legal guardian of Student A applied for open enrollment for the 2019/20 school year in the 2019/20 school year (using the alternative OE procedure). Therefore, they can only apply to the initial same three nonresident districts during the upcoming regular application period (even though, in this scenario, the applications would be for a future school year) because that period is occurring during the 2019/20 school year. After July 1, 2020, the legal guardian could apply to up to three new non-resident school districts for the 2020/21 school year. Under these rules, the first opportunity the

family had to re-apply to Elkhorn is when the Alternative Open Enrollment procedure opened July 1, 2020.

When Elkhorn's open enrollment coordinator reached out to DPI to confirm the interpretation of state statute and administrative code, she was informed that Elkhorn would be breaking the law if they accepted this application. Therefore, Elkhorn denied Student A's application after serious consideration to violate the law.

In retrospect, I wish we had violated the law and done what was in the best interest of the child.

**Student B**

Virtually the same situation for Student B, except this student was expelled from Central/Westosha for being in possession of a THC vape pen until their 21st birthday. Student B was given no pathway to return to school.

Again, Elkhorn was the fourth non-resident district this student applied to, and therefore the application was ineligible under state statutes and Elkhorn had to deny.

The legislation being proposed would allow parents to continue looking for public education options for their expelled student, even if they have been denied by three districts. It would also allow districts willing to help these students and families do so, without violating state statutes. During the current pandemic, we have seen a significant increase in open enrollment requests and open enrollment denials as families seek the best learning structures for their students. The need to approve this new legislation and rectify this oversight has only grown since we first brought it up last spring.

Thank you for your time and consideration.

Sincerely,

Jason Tadlock  
District Administrator  
Elkhorn Area School District



A-2. No, there is no statutory requirement for a school to identify itself as a virtual charter school. However, it may not then accept open enrolled students unless it requires students to physically attend within the geographic boundaries of the district each day school is in session.

Q-5. Is a school district prohibited from allowing open enrolled students to take online courses in a school that is not a virtual charter school?

A-5. No. However, the school must require students to physically attend school within the school district during the days and hours that school is in session.

### **Wisconsin Department of Public Instruction - Carolyn Stanford Taylor, State Superintendent** **Clarification of Virtual Instruction - 12/15/2020**

The Department of Public Instruction (DPI) knows that many districts and independent charter schools have implemented new virtual learning options for students and families this school year in response to the COVID-19 pandemic. We also understand that districts, independent charter schools, and parents may be interested in continued access to these virtual education options in the 2021-22 school year and beyond.

Given the changes to the education landscape resulting from COVID-19, the DPI has identified paths available for a district or independent charter school seeking to offer virtual options to its students in the 2021-22 school year. The paths available to a district are based on whether the district wants to provide an option which combines in-person and virtual instruction (hybrid model) or provide completely virtual instruction and whether or not students will be physically present within their school district's boundaries when class is in session.

#### **Fully-Virtual Option**

- A district may opt to provide a completely virtual option for resident students but can't accept non-resident students through open enrollment into this option unless they operate a virtual charter school.
- If a district wants to offer a fully-virtual option and open enrolled students will be participating in the option without being physically present in the district each day school is in session, the district must create a virtual charter school.

The need for the proposed nonstatutory language is essential to protect the needs and health of OE-In students and parents. Thank you for considering this important request.

Respectfully,  
Patricia F Deklotz, PhD,  
Superintendent



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Patricia F Deklotz, PhD,  
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Director of Online & Blended Learning  
**CHRIS TROTTER**  
Director of School to Work Opportunities

Good morning,

My name is Jodi Essman and I am the Open Enrollment Coordinator for the Elkhorn Area School District.

In my role, I work with families who are often at the end of their rope, so to say, with trying to find a school district that will accept their student who has been expelled from school. These conversations are usually filled with emotion as the parent is desperate for someone to take a chance on their child, to give them an opportunity at a future. When we can provide that hope that the family so desperately needs, you can feel the weight being lifted off of their shoulders.

Unfortunately, due to the current rules restricting families to only three open enrollment applications, we've had to have several tough conversations. To tell a family that if it weren't for Elkhorn being their fourth open enrollment application we would accept their student is disheartening. In light of COVID, I believe that most will agree that kids need stability and an education that fits their specific needs.

The legislation being proposed would provide a pathway for families to find the school that best fits their student's needs without the fear of becoming ineligible based on how many "tries" it takes.

Thank you for your time and consideration.

Sincerely,

Jodi Essman  
Open Enrollment Coordinator  
Elkhorn Area School District



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March 4, 2021

Chairman Thiesfeldt and members of the Assembly Education Committee,

Thank you for the opportunity to submit testimony in support of Assembly Bills 59, 118 and 119. The Wisconsin Institute for Law & Liberty (WILL) believes that every student in Wisconsin deserves access to a high quality education and these bills advance that principle by removing barriers in the Open Enrollment and Wisconsin Parental Choice Programs.

### **Assembly Bill 59**

Too many Wisconsin students' educational options are limited by their zip code. AB 59 addresses this barrier by expanding access to both the Open Enrollment and Wisconsin Parental Choice Programs.

The Open Enrollment Program is the state's largest school choice program with over 65,000 students choosing to attend a public school outside of their residential district last year. Our research<sup>1</sup> found that demand and utilization of this program has grown over the past 20 years. In fact, overall participation increases each year 3-6% (or approx. 2,000-4,000 students). However, over 9,000 applications (24%) were denied in the 2019-2020 school year by districts and the overwhelming reason for denial was space.

Furthermore, the COVID-19 pandemic highlighted families' interest and need for additional educational options. Without a doubt, more families are looking for the best educational options for their student outside of their assigned public school. The program must be amended to respond to the increased demand. But the Open Enrollment Program limits applications to only 3 non-residential districts per year, which restricts families' options even further. AB 59 expands options for families by removing the three application limit for the 2021-2022 school year so families can find the school that best meets the educational needs of their child.

The Open Enrollment Program also allows students to apply outside of the traditional enrollment window by submitting an "alternative application" under certain circumstances, including "best interest for the child." Just last year, 14,000 of the 15,000 alternative applications were submitted for that reason. AB 59 prohibits a child's resident school district from denying a student transfer to a nonresidential district if both the parents and nonresidential district agree it's in the best interest of the child. This will help families seeking alternative education options from being denied access to a nonresidential public school.

AB 59 also increases access to the Wisconsin Parental Choice Program (WPCP) by raising the income threshold from 220% to 300%. Under the current WPCP, a family of four must have a

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<sup>1</sup> Public School Choice in Wisconsin: A work in progress, January 2021, <https://www.will-law.org/wp-content/uploads/2021/01/publicschoolchoicev7.pdf>



yearly income of \$57,640 or less. By raising the income limit to 300%, families of four making \$78,600 will be eligible for the WPCP. Expanding access to the parental choice program will help more families access private schools' education, which is especially important for Wisconsin families navigating the fallout of the economic downturn due to the pandemic.

Interest in the WPCP continues to grow as more private schools join the program and the program is able to respond to the increased demand. In 2019-2020, 307 schools participated in the program, educating nearly 10,000 students and growing participation in the program by more than 30%. AB 59 will help more students access the WPCP and attend a school of their choice.

### **Assembly Bill 118**

The COVID19 pandemic has resulted in families looking at new educational options that best fit their child's needs. The Open Enrollment Program allows Wisconsin families to stay in public schools while attending a nonresident public school, either in person or online. AB 118 creates a vital opportunity for families by expanding the virtual school options available to students.

The pandemic resulted in more families having access to virtual learning, which has expanded the demand for fulltime virtual education. WILL research found that more families were seeking out virtual options over the past school year. In fact, school districts with virtual charter schools had an increase of approximately 4.5% in enrollment relative to other districts in the 2019-2020 school year.<sup>2</sup> This trend is likely to continue as districts and schools navigate providing educational options both in person and virtually.

AB 118 expands the Open Enrollment Program for the 2021-22 school year by allowing students to use the program to attend a fully virtual option offered by a nonresident school district or charter school. This will expand educational options for families across the state, particularly those families located in regions where additional educational options are not easily accessible for in-person instruction.

Given the complexities that families and students are navigating, AB 118 provides more educational options to families to find the best school for their child.

### **Assembly Bill 119**

The Open Enrollment Program is an important resource for more than 65,000 families who attend a public school outside of their resident district. As educational options expand, and more families look to transition to virtual learning, AB 119 removes a barrier for families seeking these virtual options.

As a result of the pandemic, more school districts across the state are offering virtual options. In 2020-2021, the state has more than 50 virtual charter schools that operated across 45 districts. Most of these schools existed prior to the pandemic but many of these districts saw an increase

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<sup>2</sup> Opting Out: Enrollment Trends in Response to Continued Public School Shutdowns, December 2020, <https://www.will-law.org/wp-content/uploads/2020/12/2020-12-10-reopening-and-enrollment-trends1.pdf>



of 4.5% in enrollment compared to other districts.<sup>3</sup> Parents are paying attention to the types of educational options available to their students and virtual education is here to stay as an important option for families.

But the Open Enrollment Program currently limits student applications to three nonresident districts each year. But this can be a barrier for families who are looking at both in-person and virtual options for the students. Such families are limited to applying to a total of three options. AB 119 removes that barrier by allow families to apply to an unlimited number of virtual options while maintaining the limit on the number of applications for in-person learning at a nonresident district. This will expand options available for Wisconsin students who are looking to attend a school that meets their needs.

The landscape of education is changing and Wisconsin should be a leader in providing educational options for all students, regardless of where they live or what type of educational model they are looking for.

Thank you,

Libby Sobic  
Education Policy Director  
[libby@will-law.org](mailto:libby@will-law.org)

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<sup>3</sup> Opting Out: Enrollment Trends in Response to Continued Public School Shutdowns, December 2020, <https://www.will-law.org/wp-content/uploads/2020/12/2020-12-10-reopening-and-enrollment-trends1.pdf>