

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.,  
1139 E. Knapp St.  
Milwaukee, WI 53202

Petitioner,

v.

Petition for Writ of Mandamus

Case Code: 30952

Case No. 19-CV-

WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION,  
125 S. Webster St.  
Madison, WI 53703,

Respondent.

**AFFIDAVIT OF LUCAS VEBBER**

STATE OF WISCONSIN )  
) SS  
COUNTY OF MILWAUKEE )

Lucas Vebber, being duly sworn on oath, states as follows:

1. I am Deputy Counsel and Director of Regulatory Reform and Federalism for the Petitioner in this matter, Wisconsin Institute for Law & Liberty, Inc. (“WILL”).
2. I have personal knowledge on the information set forth in this affidavit.
3. All the work described below I performed on behalf of WILL.
4. On August 29, 2018, I sent an open records request to the Respondent in this matter, Wisconsin Department of Public Instruction (“DPI”). A true and accurate copy of that request is attached as Exhibit V1.
5. On September 20, 2018, I sent an email to DPI for a status update on that record request. A true and accurate copy of that email is attached as Exhibit V2
6. On September 21, 2018, I received a status update from “DPIRecordRequests@dpi.wi.gov”. A true and accurate copy of that response is attached as Exhibit V3.
7. On November 13, 2018, DPI responded to my original open records request, partially granting and partially denying that request. A true and accurate copy of that response is attached as Exhibit V4.
8. On December 7, 2018, I sent an updated request to DPI with new, more specific search parameters. A true and accurate copy of that updated request is attached as Exhibit V5.
9. On December 13, 2018, DPI responded to my updated request acknowledging that it had been received. A true and accurate copy of that email is attached as Exhibit V6.
10. On December 28, 2018, I sent an email to DPI for a status update. A true and accurate copy of that email is attached as Exhibit V7.

11. On January 4, 2019, I received a status update in which I was told responding to my request would be a "priority." A true and accurate copy of that status update is attached as Exhibit V8.

12. I have not received any records responsive to my December 7, 2018 request.

13. DPI has not denied my request, asked for clarification, or provided a timeline for response.

Lucas J. Vebber  
LUCAS VEBBER

Subscribed to and sworn before me  
this 7<sup>th</sup> day of ~~January~~, 2019.  
Feb

Stacy A. Stueck  
Notary Public, State of Wisconsin  
My commission expires: 6/29/22



## EXHIBIT V1



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.

1139 E. Knapp Street, Milwaukee, WI 53202-2828

414-727-WILL

Fax 414-727-6385

www.will-law.org

August 29, 2018

Superintendent Tony Evers  
Wisconsin Department of Public Instruction  
125 South Webster Street  
Madison, WI 53703

Re: Open Records Request

Dear Superintendent Evers:

This letter is a request for the following records, made under Wisconsin's Open Records Law, Wis. Stats. §§19.31-19.39, for the date of January 1, 2018 through the date of this letter:

- Communications between the Department of Public Instruction (DPI) and school districts or school district officials regarding the "Every Student Succeeds Act" or "ESSA"
- Any informational or explanatory materials, or guidance documents, prepared by DPI regarding the "Every Student Succeeds Act" or "ESSA"
- All records related to DPI Proposed Rule No. "PI 42" as proposed by scope statement "SS 040-18"

Please be aware that the Open Records Law defines "record" to include information that is maintained on paper as well as electronically, such as data files and unprinted emails. Wis. Stat. §19.32(2).

If these records are stored electronically, please provide them in that electronic format via email to [lucas@will-law.org](mailto:lucas@will-law.org). Otherwise, they may be mailed to the address above.

Please also be aware that the Open Records Law "shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of access generally is contrary to the public interest, and only in an exceptional case may access be denied." Wis. Stat. § 19.32(1). If you deny my request, the law requires you to do so in writing and state what part of the law you believe entitles you to deny my request. Wis. Stat. § 19.35(4)(a).

The Open Records Law states that you may charge for "the actual, necessary and direct cost" of locating records, if this exceeds \$50, for photocopies, and for postage. Wis. Stat. § 19.35(3). Please advise me before processing this request if there will be a cost incurred.

As you know, the law requires you to respond to this request "as soon as practicable and without delay." Wis. Stat. § 19.35(4)(a).

If you are not the records custodian for this information, please forward this request to the appropriate person.

Also, please contact me if I can help clarify or refine this request.

Sincerely,

Lucas Vebber  
Deputy Counsel and Director of Regulatory Reform & Federalism

## EXHIBIT V2

**Lucas Vebber**

---

**From:** Lucas Vebber  
**Sent:** Thursday, September 20, 2018 11:17 AM  
**To:** 'Samantha.Morrison@dpi.wi.gov'; 'Molly.McNab@dpi.wi.gov'  
**Cc:** 'ryan.nilsestuen@dpi.wi.gov'  
**Subject:** FW: Open Records Request  
**Attachments:** Open Records Request - August 29 - DPI.pdf

Good Afternoon,

I am following up on the open records request, attached for your reference, submitted on August 29th. Can I please receive a status update on this request?

As you know, the Wisconsin Attorney General recommends 10 business days to comply with a request and my request has been pending for longer than 10 business days.

Sincerely,

Lucas T. Vebber  
Deputy Counsel & Director of Regulatory Reform and Federalism  
Wisconsin Institute for Law & Liberty  
1139 E. Knapp St.  
Milwaukee, WI 53202  
(414) 727-WILL  
(414) 727-7415 (direct)  
(414) 467-1408 (cell)  
(414) 727-6385 (fax)

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---

**From:** Lucas Vebber  
**Sent:** Wednesday, August 29, 2018 1:34 PM  
**To:** 'Samantha.Morrison@dpi.wi.gov' <Samantha.Morrison@dpi.wi.gov>; 'Molly.McNab@dpi.wi.gov' <Molly.McNab@dpi.wi.gov>  
**Subject:** Open Records Request

Good Afternoon,

Please find attached an Open Records Request as a PDF document. Please let me know if you have any questions.

Sincerely,

Lucas T. Vebber

Deputy Counsel & Director of Regulatory Reform and Federalism  
Wisconsin Institute for Law & Liberty  
1139 E. Knapp St.  
Milwaukee, WI 53202  
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**Lucas Vebber**

EXHIBIT V3

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**From:** DPI Records Requests <DPIRecordsRequests@dpi.wi.gov>  
**Sent:** Friday, September 21, 2018 2:36 PM  
**To:** Lucas Vebber  
**Subject:** RE: Open Records Request

Good afternoon, Mr. Vebber:  
We are in receipt of your request and it is currently in-progress.  
Thank you.

---

**From:** Lucas Vebber <lucas@will-law.org>  
**Sent:** Thursday, September 20, 2018 11:17 AM  
**To:** Morrison, Samantha M. DPI <Samantha.Morrison@dpi.wi.gov>; McNab, Molly F. DPI <Molly.McNab@dpi.wi.gov>  
**Cc:** Nilsestuen, Ryan D. DPI <Ryan.Nilsestuen@dpi.wi.gov>  
**Subject:** FW: Open Records Request

Good Afternoon,

I am following up on the open records request, attached for your reference, submitted on August 29th. Can I please receive a status update on this request?

As you know, the Wisconsin Attorney General recommends 10 business days to comply with a request and my request has been pending for longer than 10 business days.

Sincerely,

Lucas T. Vebber  
Deputy Counsel & Director of Regulatory Reform and Federalism  
Wisconsin Institute for Law & Liberty  
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---

**From:** Lucas Vebber  
**Sent:** Wednesday, August 29, 2018 1:34 PM  
**To:** 'Samantha.Morrison@dpi.wi.gov' <Samantha.Morrison@dpi.wi.gov>; 'Molly.McNab@dpi.wi.gov' <Molly.McNab@dpi.wi.gov>  
**Subject:** Open Records Request

Good Afternoon,

Please find attached an Open Records Request as a PDF document. Please let me know if you have any questions.

Sincerely,

Lucas T. Vebber  
Deputy Counsel & Director of Regulatory Reform and Federalism  
Wisconsin Institute for Law & Liberty  
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## EXHIBIT V4

Tony Evers, PhD, State Superintendent

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November 13, 2018

Lucas Vebber  
Wisconsin Institute for Law & Liberty, Inc.  
139 E. Knapp St.  
Milwaukee, WI 53202-2828  
Sent via email to: [lucas@will-law.org](mailto:lucas@will-law.org)

Dear Mr. Vebber:

I am responding to your public records request, dated August 29, 2018.

Your first request is for all communications between the DPI and school districts “regarding the ‘Every Student Succeeds Act’ or ‘ESSA.’” The request pertains to January 1, 2018, through August 29, 2018.

The ESSA is the primary federal legislation governing K-12 education. It contains eight separate titles. Title I alone contains 74 different sections. Most of the provisions of ESSA place requirements on state education agencies (SEAs) to implement the provisions with local school districts. The DPI is Wisconsin’s SEA. The ESSA concerns topics as varied as homeless youth, students with disabilities, civil rights, pupil assessments, state and local reporting, and students in poverty. At least 18 of the DPI’s 28 teams implement or do work related to some part of the ESSA. Your request would require each employee on these teams to review all correspondence received from or sent to Wisconsin’s 423 school districts to determine whether the particular communication is “regarding” the ESSA.

In short, your request covers a very broad subject matter, it covers a very large number of DPI employees, and it covers a very large number of recipients. All of this would make it difficult, if not impossible, for the DPI to respond to this request. Therefore, the DPI is denying this request because it is not reasonably specific, it requires the DPI to guess what records you are seeking, it would unreasonably burden the DPI, and it would impair the DPI’s ability to normally function. *See Schopper v. Gehring*, 210 Wis. 2d 208, 213 (Ct. App. 1997) (request for tape and transcript of three hours of 911 calls on 60 channels is not reasonably specific); *Gehl v. Connors*, 2007 WI App 238, ¶ 23 (Request overly burdensome because it seeks virtual every email passed between five county offices and 34 other individuals).

Your second request seeks “any informational or explanatory materials, or guidance documents, prepared by DPI regarding the” ESSA. The request pertains to January 1, 2018, through August 29, 2018. The DPI provided what it considers “guidance documents.” The DPI was able to do this because these documents were labeled “guidance.” Please note that these materials are available on the department’s website: <https://dpi.wi.gov/esea>. The DPI is denying your request for “any informational or explanatory materials” for the same reasons given for denying the first request. In addition to those reasons, it is not clear what you mean by “informational or

explanatory materials.” For example, it appears this would require each employee to review every email he or she sent and received to determine whether the content of the email contains information about ESSA or explains ESSA.

The third, and final, part of your request is for “All records related to DPI Proposed Rule No. ‘PI 42’ as proposed by scope statement ‘SS 040-18.’”

These records can be found here:

<https://www.dropbox.com/sh/u109yorb1rzwcp0/AADLiSngADZuGxkQkRoIdeb2a?dl=0>

Pursuant to Wis. Stat. § 19.35(4)(b), the department’s decision to deny your request as described above is subject to review by mandamus under Wis. Stat. § 19.37(1), or upon application to the attorney general or to your local district attorney.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sm', is positioned below the word 'Sincerely,'.

**Samantha Morrison**

Office of the State Superintendent  
Wisconsin Department of Public Instruction  
125 S. Webster Street, PO Box 7841  
Madison, WI 53707-7841  
Phone: (608) 267-9219  
Fax: (608) 266-5188  
Email: [Samantha.Morrison@dpi.wi.gov](mailto:Samantha.Morrison@dpi.wi.gov)

EXHIBIT V5



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.  
1139 E. Knapp Street, Milwaukee, WI 53202-2828  
414-727-WILL  
Fax 414-727-6385  
www.will-law.org

December 7, 2018

Superintendent Tony Evers  
Wisconsin Department of Public Instruction  
125 South Webster Street  
Madison, WI 53703

Re: Open Records Request

Dear Superintendent Evers:

This letter is following up on an earlier request for records from the Department. On November 13, 2018 you denied portions of that earlier request for being “not reasonably specific.” In response, we are requesting the following records, made under Wisconsin’s Open Records Law, Wis. Stats. §§19.31-19.39, for the date of January 1, 2018 through the date of this letter:

- All informational or explanatory materials, or guidance documents, prepared by the DPI regarding the federal accountability system required under the Every Student Succeeds Act, 20 U.S.C. § 6311(c) (Sec. 1111(c) (2015), including the annual state report card required by Sec. 1111(h)(1).

Please be aware that the Open Records Law defines “record” to include information that is maintained on paper as well as electronically, such as data files and unprinted emails. Wis. Stat. §19.32(2).

If these records are stored electronically, please provide them in that electronic format via email to [lucas@will-law.org](mailto:lucas@will-law.org). Otherwise, they may be mailed to the address above.

Please also be aware that the Open Records Law “shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of access generally is contrary to the public interest, and only in an exceptional case may access be denied.” Wis. Stat. § 19.32(1). If you deny my request, the law requires you to do so in writing and state what part of the law you believe entitles you to deny my request. Wis. Stat. § 19.35(4)(a).

The Open Records Law states that you may charge for “the actual, necessary and direct cost” of locating records, if this exceeds \$50, for photocopies, and for postage. Wis. Stat. § 19.35(3). Please advise me before processing this request if there will be a cost incurred.

As you know, the law requires you to respond to this request “as soon as practicable and without delay.” Wis. Stat. § 19.35(4)(a).

If you are not the records custodian for this information, please forward this request to the appropriate person.

Also, please contact me if I can help clarify or refine this request.

Sincerely,

Lucas Vebber  
Deputy Counsel and Director of Regulatory Reform & Federalism

**Lucas Vebber**

EXHIBIT V6

---

**From:** DPI Records Requests <DPIRecordsRequests@dpi.wi.gov>  
**Sent:** Thursday, December 13, 2018 10:10 AM  
**To:** Lucas Vebber  
**Subject:** RE: Open Records Request

Your below request has been received. A response will be provided as soon as practicable and without delay.

In accordance to Section 19.35(3) of the Wisconsin Statutes, the Department of Public Instruction can charge for the costs of copying, mailing, and/or locating the records due to open records requests. Section 19.35(3)(f) allows the Department to require prepayment for these costs if the total amount exceeds \$5.00. An estimate will be sent and if pre-payment is required, no action will be taken until payment is remitted. If, upon completing the response to this request, it is determined the estimated amount is insufficient to cover the actual costs of copying, mailing, and/or locating the requested records, you will be asked to pay the remainder before they are sent to you.

If your request for records is denied, you will receive a letter with the rationale. Pursuant to Wis. Stat. § 19.35(4)(b), the Department's decision to deny your request is subject to review by mandamus under Wis. Stat. § 19.37(1), or upon application to the attorney general or to your local district attorney.

In the meantime, please feel free to contact me with any questions you might have.

Thank you.

---

**From:** Lucas Vebber <lucas@will-law.org>  
**Sent:** Friday, December 7, 2018 9:11 AM  
**To:** DPI Records Requests <DPIRecordsRequests@dpi.wi.gov>  
**Subject:** Open Records Request

Good Morning,

Please see the attached open records request.

Let me know if you have any questions.

Thanks,  
Lucas

Lucas T. Vebber  
Deputy Counsel & Director of Regulatory Reform and Federalism  
Wisconsin Institute for Law & Liberty  
1139 E. Knapp St.  
Milwaukee, WI 53202  
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## EXHIBIT V7

**Lucas Vebber**

---

**From:** Lucas Vebber  
**Sent:** Friday, December 28, 2018 10:58 AM  
**To:** 'DPI Records Requests'  
**Subject:** RE: Open Records Request

Hi,

As of today it has been three weeks since this request was made.

Can you please provide me with an update as to the current status and when records may be expected?

Thank you.

Sincerely,

Lucas T. Vebber  
Deputy Counsel & Director of Regulatory Reform and Federalism  
Wisconsin Institute for Law & Liberty  
1139 E. Knapp St.  
Milwaukee, WI 53202  
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---

**From:** DPI Records Requests [mailto:DPIRecordsRequests@dpi.wi.gov]  
**Sent:** Thursday, December 13, 2018 10:10 AM  
**To:** Lucas Vebber <lucas@will-law.org>  
**Subject:** RE: Open Records Request

Your below request has been received. A response will be provided as soon as practicable and without delay.

In accordance to Section 19.35(3) of the Wisconsin Statutes, the Department of Public Instruction can charge for the costs of copying, mailing, and/or locating the records due to open records requests. Section 19.35(3)(f) allows the Department to require prepayment for these costs if the total amount exceeds \$5.00. An estimate will be sent and if pre-payment is required, no action will be taken until payment is remitted. If, upon completing the response to this

request, it is determined the estimated amount is insufficient to cover the actual costs of copying, mailing, and/or locating the requested records, you will be asked to pay the remainder before they are sent to you.

If your request for records is denied, you will receive a letter with the rationale. Pursuant to Wis. Stat. § 19.35(4)(b), the Department's decision to deny your request is subject to review by mandamus under Wis. Stat. § 19.37(1), or upon application to the attorney general or to your local district attorney.

In the meantime, please feel free to contact me with any questions you might have.

Thank you.

---

**From:** Lucas Vebber <[lucas@will-law.org](mailto:lucas@will-law.org)>  
**Sent:** Friday, December 7, 2018 9:11 AM  
**To:** DPI Records Requests <[DPIRecordsRequests@dpi.wi.gov](mailto:DPIRecordsRequests@dpi.wi.gov)>  
**Subject:** Open Records Request

Good Morning,

Please see the attached open records request.

Let me know if you have any questions.

Thanks,  
Lucas

Lucas T. Vebber  
Deputy Counsel & Director of Regulatory Reform and Federalism  
Wisconsin Institute for Law & Liberty  
1139 E. Knapp St.  
Milwaukee, WI 53202  
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**Lucas Vebber**

EXHIBIT V8

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**From:** Jones, Benjamin R. DPI <Benjamin.Jones@dpi.wi.gov>  
**Sent:** Friday, January 04, 2019 3:30 PM  
**To:** Lucas Vebber  
**Cc:** DPI Records Requests  
**Subject:** RE: Open Records Request

Hi Lucas,

We are still processing the request, the holidays and departures related to the election have made responding to even routine requests more difficult. I will make this a priority and will check in with you as appropriate.

If you have any questions, please contact me directly. Thanks,

Ben

Ben Jones  
Attorney  
Office of Legal Services  
Wisconsin Department of Public Instruction  
(608) 266-9332

---

**From:** Lucas Vebber <[lucas@will-law.org](mailto:lucas@will-law.org)>  
**Sent:** Friday, December 28, 2018 10:58 AM  
**To:** DPI Records Requests <[DPIRecordsRequests@dpi.wi.gov](mailto:DPIRecordsRequests@dpi.wi.gov)>  
**Subject:** RE: Open Records Request

Hi,

As of today it has been three weeks since this request was made.

Can you please provide me with an update as to the current status and when records may be expected?

Thank you.

Sincerely,

Lucas T. Vebber  
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**From:** DPI Records Requests [<mailto:DPIRecordsRequests@dpi.wi.gov>]  
**Sent:** Thursday, December 13, 2018 10:10 AM  
**To:** Lucas Vebber <[lucas@will-law.org](mailto:lucas@will-law.org)>  
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In the meantime, please feel free to contact me with any questions you might have.

Thank you.

---

**From:** Lucas Vebber <[lucas@will-law.org](mailto:lucas@will-law.org)>  
**Sent:** Friday, December 7, 2018 9:11 AM  
**To:** DPI Records Requests <[DPIRecordsRequests@dpi.wi.gov](mailto:DPIRecordsRequests@dpi.wi.gov)>  
**Subject:** Open Records Request

Good Morning,

Please see the attached open records request.

Let me know if you have any questions.

Thanks,  
Lucas

Lucas T. Vebber  
Deputy Counsel & Director of Regulatory Reform and Federalism  
Wisconsin Institute for Law & Liberty  
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