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**From:** Karyn Rotker [krotker@aclu-wi.org]  
**Sent:** 1/31/2014 8:25:04 PM  
**To:** Phillips, Colleen (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=cphillip]  
**CC:** Courtney Bowie [cbowie@aclu.org]; Susan Mlizer [smizer@aclu.org]; Monica Murphy [monicam@drwl.org]; Wohlenhaus, Renee (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=Mailboxes/cn=rwohlen]  
**Subject:** some more Wisconsin voucher info  
**Attachments:** dpi research on voucher 2013.pdf; Closed\_Schools\_Vouchers\_FY12\_11x17 (2).pdf; ppf 2013 research.pdf; returning students 2011-12.xlsx; arkansas disability research discussion.docx

Colleen:

I hope you are doing well.

Here is some more voucher program information.

To summarize - there are three voucher programs in Wisconsin:

- Milwaukee Parental Choice Program: No limit on how many children attend and about 20,000-25,000 do, family income can be up to 300% of poverty level. Also attached is a map from MPS which shows where MPS schools have closed and voucher schools opened - you can see that in large swaths of the city, the voucher school is de facto the neighborhood schools (it is a few years old, but gives the gist of the situation)
- Racine Parental Choice Program: No limit on how many children attend (I think about 1500 do), also income up to 300% of poverty
- Statewide Parental Choice Program: 500 slots this year, 1000 slots next year, income up to 185% of poverty level, vast majority of slots filled by students already attending voucher schools.  
(<http://www.jsonline.com/news/education/most-students-applying-for-state-voucher-program-attend-private-schools-b9976473z1-219789131.html>)

These schools are hypersegregated, and in general performing no better (and often worse) than MPS.

- attached is a report from the non-partisan Public Policy Forum looking at a number of these issues
- DPI's page with the testing data (which is relatively recent and only covers the past few years) - [http://oea.dpi.wi.gov/oea\\_mpcp\\_results](http://oea.dpi.wi.gov/oea_mpcp_results)

There are significant issues for children with disabilities.

- Attached is a DPI budget paper that, among other things, shows that 11% of parents leave voucher schools because of concerns related to special needs
- Attached is the MPS 2011-12 return data - it was more detailed that year and again shows that many children with a variety of disabilities are leaving voucher schools and going back to MPS
- There was quite a bit of reporting in 2012 alleging that more than 14% of voucher students have disabilities (based on some research by the University of Arkansas). Those assertions are misleading at best. I am attaching a short review/summary of this issue.

Please let us know if we can provide you with any other information. Note that we have reached out to MPS to try to figure out how to identify more families of children with disabilities who were denied admission to or left the voucher schools - that is likely to take a bit of time.

Thanks and have a great weekend.

Karyn

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Karyn L. Rotker  
Senior Staff Attorney  
Poverty, Race & Civil Liberties Project  
ACLU of Wisconsin Foundation  
207 E. Buffalo St. #325  
Milwaukee WI 53202  
(414) 272-4032 ext. 221  
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[www.aclu-wi.org](http://www.aclu-wi.org)

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**From:** Karyn Rotker [krotker@aclu-wi.org]  
**Sent:** 1/31/2014 8:40:01 PM  
**To:** Phillips, Colleen (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=cphillip]  
**Subject:** Re: some more Wisconsin voucher info

I'm fine, and hope you are too and enjoying DC!

Please do let me know if there's more info we can provide. I was warned by my colleagues that I tend to send overwhelming amounts of information so I tried to sort through and provide what might be most useful. ;)

Karyn

On 1/31/2014 2:37 PM, Phillips, Colleen (CRT) wrote:

Thank you, Karyn. I am doing well. How are you?

I appreciate your passing this on to assist us in the review.

Best,

Colleen

**From:** Karyn Rotker [mailto:krotker@aclu-wi.org]  
**Sent:** Friday, January 31, 2014 3:25 PM  
**To:** Phillips, Colleen (CRT)  
**Cc:** Courtney Bowie; Susan Mizner; Monica Murphy; Wohlenhaus, Renee (CRT)  
**Subject:** some more Wisconsin voucher info

Colleen:

I hope you are doing well.

Here is some more voucher program information.

To summarize - there are three voucher programs in Wisconsin:

- Milwaukee Parental Choice Program: No limit on how many children attend and about 20,000-25,000 do, family income can be up to 300% of poverty level. Also attached is a map from MPS which shows where MPS schools have closed and voucher schools opened - you can see that in large swaths of the city, the voucher school is de facto the neighborhood schools (it is a few years old, but gives the gist of the situation)
- Racine Parental Choice Program: No limit on how many children attend (I think about 1500 do), also income up to 300% of poverty

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**From:** Jeff Spitzer-Resnick [spitznick@drwi.org]  
**Sent:** 6/29/2011 6:18:12 PM  
**To:** Fischbach, Jonathan (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=MAILBOXES/CN=JONATHAN F]; krotker@aclu-wl.org; cbowle@aclu.org  
**CC:** Maisels, Amanda (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=Mailboxes/cn=amaisels]; Pellegrino, Whitney (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=Mailboxes/cn=wpelligr]  
**Subject:** Suggested questions for USDOJ to ask DPI  
**Attachments:** DOJ questions for DPI-062911.docx

Per your request, we have attached questions which we suggest that USDOJ pose to DPI.

Let us know if you have any questions about our proposed questions.

Thanks for giving us the opportunity to give you these suggestions.

**Jeffrey Spitzer-Resnick**

**Managing Attorney**

**Disability Rights Wisconsin**

**131 W. Wilson St.**

**Suite 700**

**Madison, WI 53703**

**608-267-0214**

**800-928-8778 (consumers and families only)**

**608-267-0368 (fax)**

1. Please provide names and contact information for all DPI staff who have responsibility for: 1) operation of the Milwaukee Parental Choice Program (MPCP) program; 2) budgeting related to the MPCP program; 3) participation of children with disabilities in the MPCP program.
2. Please provide all policy and procedural manuals as they relate to ensuring that participating MPCP schools comply with the ADA and/or Sec. 504 of the Rehabilitation Act (Sec. 504).
3. Please provide copies of any and all letters, e-mails or other communications which the Wisconsin Dept. of Public Instruction (DPI) has sent to participating MPCP schools providing guidance regarding compliance with the ADA and/or Sec. 504.
4. Please provide copies of any letters, e-mails or other documents showing any knowledge, signature or certification by MPCP schools that they will adhere to federal civil rights laws (including, but not limited to, the ADA and Sec. 504) as a condition of participation in the MPCP.
5. Please provide any documents showing any formal or informal complaints or concerns of which DPI is aware, regarding participation of children with disabilities in the MPCP program.
6. Please provide any documentation and/or research regarding participation of children with disabilities in the MPCP program, including the overall number of such children, the schools in which they have enrolled, and the nature of their disabilities.
7. Please describe whether and how DPI tracks data regarding application, enrollment, retention, disenrollment, and suspension or expulsion, of children with disabilities in MPCP schools, and provide that data for the past 3 school years.
8. Please describe whether and how DPI tracks data regarding children enrolled in MPCP who return to the public school system during the same semester they enroll in MPCP (e.g., after the third Friday count for school payment purposes), and provide the number of such children overall and the number and percentage of such children who have disabilities, for the past five years.
9. Please provide any and all information for how DPI approves, if at all, publicity, outreach and enrollment information used by DPI itself or any MPCP schools, which mentions children with disabilities and/or special education.
10. Please provide any and all documentation regarding how, when, and in what way DPI monitors the private schools participating in the voucher program for compliance with civil rights law, including, but not limited to the ADA and Sec. 504, to the extent such monitoring takes place.
11. Please review all data in the complaint filed by DRW and the ACLU and respond as to whether DPI believes the data is accurate, and if not, please provide the accurate data as well as an explanation as to why DPI believes its data is correct and complainants' data is incorrect.
12. Please provide a specific response as to whether DPI agrees with complainants' position that the reason for the increased percentage of Milwaukee Public Schools (MPS) students who qualify for special education is because the MPCP has reduced the MPS non-special education population in a disproportionate manner by serving predominantly children who do not have disabilities, and any projections of the effect on this issue that recently passed state budget and other MPCP related legislation is expected to have.

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**From:** Jeff Spitzer-Resnick [spitznick@drwi.org]  
**Sent:** 7/7/2011 10:01:08 PM  
**To:** Pellegrino, Whitney (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=Mailboxes/cn=wpelligr]; krotker@aclu-wi.org; cbowle@aclu.org  
**CC:** Maisels, Amanda (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=Mailboxes/cn=amaisels]; Devine, Kathleen S (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=Mailboxes/cn=kdevine]; Zenner, Elie (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=EZENNER]; Fischbach, Jonathan (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=MAILBOXES/CN=JONATHAN F]  
**Subject:** RE: WI Vouchers -- Tomorrow's call

Thanks a lot for your thoughtful questions. In preparation for tomorrow's call, I have a few questions:

1. How long do you guys have set aside for tomorrow's call. I can go for 2 hours, but I wasn't sure if everyone has that amount of time available.
2. Were you expecting answers to some or all of your questions during tomorrow's call or were you simply looking for feedback about whether we agree that these are the questions you should be asking?

We look forward to talking to you tomorrow.

**Jeffrey Spitzer-Resnick**

**Managing Attorney**

**Disability Rights Wisconsin**

**131 W. Wilson St.**

**Suite 700**

**Madison, WI 53703**

**608-267-0214**

**800-928-8778 (consumers and families only)**

**608-267-0368 (fax)**

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**From:** Pellegrino, Whitney (CRT) [mailto:Whitney.Pellegrino@usdoj.gov]  
**Sent:** Thursday, July 07, 2011 3:56 PM

**To:** Jeff Spitzer-Resnick; krotker@aclu-wi.org; cbowie@aclu.org  
**Cc:** Maisels, Amanda (CRT); Devine, Kathleen S (CRT); Zenner, Elie (CRT); Fischbach, Jonathan (CRT)  
**Subject:** WI Vouchers -- Tomorrow's call

All,

In anticipation of tomorrow's call, attached please find questions about the voucher program that we would like to discuss. It's a rather lengthy list, but please take that as an indication that we have been thinking about the complaint and we are looking forward to hearing more about what information you have gathered to date. We have reviewed everything that you have provided to us and we apologize in advance if any of the answers are found in the exhibits to the complaint. Please feel free on the call to direct us to answers that are already in our materials.

We are looking forward to a productive call tomorrow.

Thanks,

Whitney

Whitney M. Pellegrino

U.S. Department of Justice, Civil Rights Division

Educational Opportunities Section

Ph: (202) 616-9939 | Fx: (202) 514-8337



**U.S. Department of Justice  
Civil Rights Division  
Educational Opportunities Section**

AB:KD:JF:WMP  
DJ 169-85-23

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Patrick Henry Building, Suite 4300  
Washington, DC 20530  
Overnight Mail: 601 D Street, NW  
Suite 4300  
Washington, DC 20004  
Telephone: (202) 616-9939  
Facsimile: (202) 314-8337

August 17, 2011

**By U.S. Mail**

Tony Evers  
State Superintendent  
Wisconsin Department of Public Instruction  
P.O. Box 7841  
Madison, WI 53707-7841

Dear Mr. Evers,

We have received a complaint that the Wisconsin Department of Public Instruction ("DPI") operates a state program, the Milwaukee Parental Choice Program ("MPCP" or "voucher" program), that discriminates against students with disabilities in violation of Title II of the Americans with Disabilities Act of 1990 ("Title II"), 42 U.S.C. §§ 12131-12134. The complaint alleges that students with disabilities in the Milwaukee Public School District ("MPS") are denied access to aids, services, and benefits associated with participation in the voucher program in violation of Title II's anti-discrimination mandates. Specifically, the complaint asserts that students with disabilities in MPS are: (1) deterred by DPI and participating voucher schools from participating in the voucher program, (2) denied admission to voucher schools when they do apply, and (3) expelled or constructively forced to leave voucher schools as a result of policies and practices that fail to accommodate the needs of students with disabilities.

The Department is authorized to enforce the federal statutes that protect the rights of students with disabilities in public schools, including Title II. We stress, however, that we have reached no conclusion as to whether a violation of any federal law has occurred. The purpose of this letter is to request information that will assist us in evaluating the allegations in the complaint to determine what further action, if any, is warranted. We therefore request that DPI provide the following information and documents:

1. Please provide names, titles and contact information for all DPI staff members who have responsibility for: (a) operation of the voucher program; (b) budgeting related



to the voucher program; and (c) participation of children with disabilities in the voucher program.

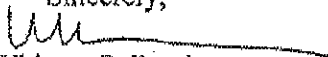
2. Please explain the role of DPI in administering the voucher program, and describe in detail the extent to which DPI is involved in the operation of individual MPCP schools.
3. Please explain how the voucher schools are funded, and indicate the specific federal programs through which voucher schools receive federal funds.
4. Please provide copies of all policies or procedures that reference the obligation of participating MPCP schools to comply with Title II, Section 504 of the Rehabilitation Act ("Section 504"), and/or the Individuals with Disabilities Education Act ("IDEA"). If DPI has made changes to any such policies since the inception of MPCP, please describe those changes.
5. Please provide copies of all letters, e-mails and other documents or materials DPI has sent to participating MPCP schools referencing or discussing access to and/or participation in MPCP schools for students with disabilities.
6. Please provide copies of all letters, e-mails and other documents or materials DPI has sent to participating MPCP schools related to compliance with or obligations under Title II, Section 504, or the IDEA specifically.
7. Please provide copies of all letters, e-mails and other documents or materials reflecting an understanding or agreement that, as a condition of participation in the voucher program, MPCP schools must adhere to federal civil rights laws generally, including but not limited to Title II, Section 504, and the IDEA, specifically.
8. Please provide all documents and other materials reflecting formal or informal complaints or concerns (either oral or written) regarding the participation of children with disabilities in the voucher program.
9. Please describe whether and how DPI tracks data regarding application, enrollment, retention, outreach, disenrollment, transfer, and suspension or expulsion, of children with disabilities in MPCP schools.
10. For each school that participated in the voucher program during the 2010-11 school year, please provide the total number of students in the school, the total number and the percentage of students with disabilities in the school (e.g., 45 students; 10% of the student body), the number of students in each disability category represented at the school (e.g., 10 students with specific learning disabilities, 3 students with emotional disturbance, 2 students with conduct disorders, etc.).

11. Please describe whether (and if so, how) DPI tracks data regarding students enrolled in MPCP who return to the public school system during the same semester they had enrolled in MPCP (e.g., after the third Friday count for school payment purposes), including whether DPI tracks the basis for the student's withdrawal from the MPCP school. For the past three school years (2008-09, 2009-10, 2010-11) please provide, by MPCP school, the number of such students overall, and the number and percentage of such students who have disabilities (e.g., in fall 2008, 10 students withdrew from x school; 3 of them were students with disabilities).
12. Please identify the DPI staff responsible for approving publicity, outreach and enrollment information used by DPI that refers to children with disabilities and/or special education students. If DPI does not have a process for approving of such materials, please so indicate. Please also describe whether (and if so, how) DPI approves of similar materials developed by MPCP schools.
13. Please explain how DPI informs parents and students about the voucher program generally, and the services available to students with disabilities in MPCP schools specifically. Please also provide copies of any documents used to convey this information.
14. Please describe DPI's understanding of its obligation to ensure that students with disabilities are not discriminated against in the context of the voucher program, and provide copies of all documents and other materials that reflect this understanding.
15. Please provide any and all documentation regarding how, when, and in what way DPI monitors the schools participating in the voucher program for compliance with civil rights laws, including, but not limited to Title II, 504, and the IDEA, to the extent such monitoring takes place. Please also identify the DPI staff responsible for monitoring compliance.
16. Please indicate whether the voucher program is anticipated to expand due to new state legislation or other circumstances. If so, please explain the timing and scope of the anticipated expansion.
17. Please indicate whether any MPCP school has been involuntarily removed from the MPCP program. If so, please provide the name of the school, the date the school was removed from the program, and the reason the school was removed from the program.
18. Please indicate whether voucher schools are deemed to have a contractual relationship with either the local school district or the State of Wisconsin. If so, please describe the nature of this contractual relationship, indicate how the parties' contractual obligations are memorialized, and provide copies of any documents the schools are required to sign in order to participate in the MPCP program.

19. Please describe the type of student-specific information available to voucher schools during the admissions and enrollment process. Please state specifically what information voucher schools are entitled to gather about a student's disability status prior to the student's admission to and enrollment in the school.
20. Please describe how DPI and/or voucher schools assess what services will be provided to students with disabilities in a voucher school and how those services may differ from services provided in a traditional public school. Please also describe how that information is communicated to parents of students with disabilities who have been admitted to a voucher school.
21. Please describe how students in voucher schools are referred for special education evaluations, who conducts such evaluations, and who is designated to take account of those evaluations in each voucher school. Please also describe what records voucher schools are required to maintain regarding identifying and serving students with disabilities who have applied to and/or are enrolled in their schools.
22. Please describe how students with disabilities receive special education services, related services, and/or other disability-related services in voucher schools (e.g., do they receive services on-site, who provides the services, are they referred to other voucher schools or public schools, etc.). Please indicate whether voucher schools are presumed or expected to partner with public schools and/or other service providers to ensure that students with disabilities enrolled in the school receive appropriate services.

We request that you send responsive materials on or before September 22, 2011. We would appreciate, to the extent possible, receiving responsive documents in electronic format if they are available in such a format. If you have any questions, concerns, or would like to discuss this matter, please contact Whitney Pellegrino by phone, 202-616-9939, or by email at [whitney.pellegrino@usdoj.gov](mailto:whitney.pellegrino@usdoj.gov). Thank you in advance for your cooperation.

Sincerely,



Whitney Pellegrino

Jonathan Fischbach

Trial Attorneys

Educational Opportunities Section

Amanda Maisels

Acting Deputy Chief

Disability Rights Section

Cc: Janet Jenkins, Esq.

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**From:** Hopkins, Jacqueline O (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=MAILBOXES/CN=JHOPKINS]  
**Sent:** 7/19/2011 9:14:25 PM  
**To:** Pellegrino, Whitney (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=Mailboxes/cn=wpelligr]  
**Subject:** RE: Milwaukee Voucher Program disability discrimination

I will print them tomorrow morning

**From:** Pellegrino, Whitney (CRT)  
**Sent:** Tuesday, July 19, 2011 5:03 PM  
**To:** Hopkins, Jacqueline O (CRT)  
**Subject:** FW: Milwaukee Voucher Program disability discrimination

Jackie,

Can you print these documents for me (double sided if they are long) and staple them? I need to read them tomorrow afternoon.

Thank you!

Whitney M. Pellegrino

U.S. Department of Justice, Civil Rights Division

Educational Opportunities Section

Ph: (202) 616-9939 | Fx: (202) 514-8337

**From:** Courtney Bowie [mailto:cbowie@aclu.org]  
**Sent:** Tuesday, July 19, 2011 4:35 PM  
**To:** Pellegrino, Whitney (CRT); Maisels, Amanda (CRT); Fischbach, Jonathan (CRT); Devine, Kathleen S (CRT); Zenner, Elie (CRT)  
**Cc:** Jeff Spitzer-Resnick; krotker@aclu-wl.org; Aziz Ahmad  
**Subject:** Milwaukee Voucher Program disability discrimination

Dear DOJ Team,

This follows our e-mail and call with you on July 8, 2011. We will continue to send you information as we have it available. The following information supplements what we already sent to you and should address many of the information gaps we discussed during our call.

- A memo regarding requirements that apply to public schools, but not voucher schools;
- A two-part memo regarding programs offered at voucher schools;
- A map showing closed MPS schools and open private schools accepting vouchers;
- A short memo regarding reductions and closures, plus four news articles citing the cut-backs in the public schools and the expansion of the voucher program to Racine.

During our call on the 8<sup>th</sup>, we discussed a follow-up call this month. Please let us know when this may be scheduled or if you need additional specific data from us.

Thanks in advance for your attention to the issues raised in the complaint.

Sincerely,

Courtney A. Bowie

Attorney

Racial Justice Program

American Civil Liberties Union Foundation

125 Broad St., 18<sup>th</sup> Floor

New York, NY 10008

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**From:** Fischbach, Jonathan (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=MAILBOXES/CN=JONATHAN F]  
**Sent:** 8/22/2011 6:50:06 PM  
**To:** 'Jeff Spitzer-Resnick' [spitznick@drwi.org]; Maisels, Amanda (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=Mailboxes/cn=amaisels]; Pellegrino, Whitney (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=Mailboxes/cn=wpelligr]  
**CC:** 'Courtney Bowie' [cbowie@aclu.org]; 'krotker@aclu-wi.org' [krotker@aclu-wi.org]; Fischbach, Jonathan (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=Mailboxes/cn=Jonathan F]  
**Subject:** RE: Questions for MPS

Thanks very much, we really appreciate this input.

Best,

Jonathan

**From:** Jeff Spitzer-Resnick [mailto:spitznick@drwi.org]  
**Sent:** Friday, August 19, 2011 1:56 PM  
**To:** Fischbach, Jonathan (CRT); Maisels, Amanda (CRT); Pellegrino, Whitney (CRT)  
**Cc:** 'Courtney Bowie'; krotker@aclu-wi.org  
**Subject:** Questions for MPS

Thank you for the opportunity to suggest questions for USDOJ to ask MPS as it proceeds with its investigation of our complaint.

Here are our suggestions:

Please provide:

- 1) Disability return/data: existing data that shows how many children of those returning from voucher schools in a given year are in special education, and/or (if possible) receiving 504 plans.
- 2) Special ed scatterplot - of where students in need of special ed services reside. Also of which schools have larger concentrations of special education students.
- 3) Special ed effects on other programming - if there are staff (at central office or at school level) aware of the effect of increasing percentage of special ed students, on general programming and/or ability for inclusion, that would be helpful. It would be helpful to know what kinds of programs that help children at risk are being cut in MPS due to the categorical program reductions and also the overall budget reductions.

- 4) MPS Layoffs (by position): eg, number of teachers, paraprofessionals, other staff, etc. due to the recent budget passage as well as MPS Layoffs for each of the last three years and by school (again by position).
- 5) Family stories that the MPS Parent Center may have collected about how the budget cuts caused by diversion of resources to the voucher schools are hurting children in MPS.
- 6) Bar chart (or other data) showing what % of MPS local tax levy goes to MPS itself, to voucher schools, and to other charters (e.g., out of \$10,000 in MPS taxes, how much would a taxpayer pay for each)?
- 7) Information/data on the relationship between MPS and voucher schools related to serving students with disabilities, (e.g., how services are provided, financial issues, number of students with disabilities MPS is serving in voucher schools, etc).
- 8) Specific information regarding the cost of providing services to students with disabilities in the voucher schools, the number of students with disabilities with services plans using vouchers to attend private schools (where available), the number of requests for services MPS receives from private schools to provide services to students with disabilities and the nature of those requests (i.e. types of services requested), and the location (by name of school) of students receiving service plans from MPS while attending voucher schools.
- 9) For the past 3 years, indicate the nature (i.e. by type) and amount of federal funding which MPS controls that it sends to private voucher schools either directly or through goods or services which are federally funded.

Finally, in case you haven't seen it, we wanted to let you know that the following legislative audit was just released on the voucher program:

[http://legis.wisconsin.gov/lab/reports/11-schoolchoice\\_ltr.pdf](http://legis.wisconsin.gov/lab/reports/11-schoolchoice_ltr.pdf)

It is a statutorily required report that is nonpartisan and contains a little bit of disability information.

**Jeffrey Spitzer-Resnick**

**Managing Attorney**

**Disability Rights Wisconsin**

**131 W. Wilson St.**



**U.S. Department of Justice  
Civil Rights Division  
Educational Opportunities Section**

AB:KD:WMP:JF  
DJ 169-85-23

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Overnight Mail: 601 D Street, NW  
Suite 4300  
Washington, DC 20004  
Telephone: (202) 616-9939  
Facsimile: (202) 514-8337

February 14, 2012

**By U.S. Mail**

Dr. Gregory E. Thornton  
Superintendent, Milwaukee Public Schools  
5225 West Vliet Street  
Milwaukee, WI 53208

Dear Dr. Thornton,

On June 7, 2011, we received a complaint ("Complaint") alleging that the Wisconsin Department of Public Instruction ("DPI") operates a state program, the Milwaukee Parental Choice Program ("MPCP" or "voucher" program), that discriminates against students with disabilities in violation of Title II of the Americans with Disabilities Act of 1990 ("Title II"), 42 U.S.C. §§ 12131-12134. The Complaint specifically asserts that students with disabilities in the Milwaukee Public School District ("MPS") are denied access to aids, services, and benefits associated with participation in the voucher program in violation of Title II's anti-discrimination mandate. Complainants believe that students with disabilities in MPS are: (1) deterred by DPI and participating voucher schools from participating in the voucher program, (2) denied admission to voucher schools when they do apply, and (3) expelled or constructively forced to leave voucher schools as a result of policies and practices that fail to accommodate the needs of students with disabilities. We have enclosed a copy of the Complaint with this letter, though our understanding is that complainants previously provided a copy of the Complaint to MPS.

MPS is not the subject of our investigation. However, complainants allege that discrimination against students with disabilities in the MPCP program directly impacts MPS in several ways. They assert, for example, that discriminatory practices by voucher schools in Milwaukee have the effect of concentrating a disproportionate number of students with disabilities in MPS schools. See Complaint at 4-5, 23-27. Complainants further suggest that students with disabilities who gain admission to a voucher school may be at heightened risk of being suspended, expelled, or otherwise compelled to leave the school and return to MPS in the middle of an academic year. See *id.* at 15-16.



We stress that we have reached no conclusion as to whether a violation of any federal law has occurred. The purpose of this letter is to request information that will assist us in evaluating the allegations in the Complaint to determine what further action, if any, is warranted. We therefore request that MPS provide the following information and documents:

1. For the previous five school years (*i.e.*, from the 2007-2008 school year to the present) please provide the overall percentage of students in MPS who have a disability, and disaggregate this percentage by school and by type of disability if possible (*e.g.*, 15% of the students at a school have a disability, including 7% with behavior or conduct disorders, 3% with severe learning disabilities, and 5% with speech or language impairments).
2. Please indicate whether the percentage of students with a disability in MPS has fluctuated significantly since the MPCP program was established in 1990. If the percentage has fluctuated, please explain whether you attribute this fluctuation in whole or in part to student enrollment patterns in the MPCP program.
3. Please indicate whether particular MPS schools have a percentage of students with disabilities that is sufficiently high as to (a) result in segregated classroom environments, and/or (b) impact educational programming at the school (if so, please explain how).
4. Please indicate which days of the current academic year are designated "head count days" for purposes of determining the amount of any local, state, or federal funds provided to MPS. For the previous five school years, please also provide the number of students with disabilities who have transferred from voucher schools to MPS after "head count days."
5. Please indicate whether MPS provides, pursuant to an IEP or Section 504 plan, services to students with disabilities who attend a voucher school. If so, please indicate (a) the number of students who receive such services from MPS by voucher school, (b) the manner in which these services may be provided, and (c) whether, and if so to what extent, policies and practices at particular voucher schools either enhance or impede the ability of MPS to provide special education or related aids and services to students with disabilities enrolled in voucher schools.
6. Please indicate whether MPS is aware of any policies, practices, or programs at particular voucher schools that (a) discourage students with disabilities from applying to the school, (b) reduce or eliminate the likelihood of a student with disabilities being admitted to the school, and/or (c) increase the likelihood that a student with disabilities will be expelled, suspended, or otherwise compelled to leave the school.
7. Please explain whether, and if so how, funding provided to families who participate in the MPCP program impacts the annual budget for MPS.

Dr. Gregory E. Thornton  
Superintendent, Milwaukee Public Schools  
February 14, 2012

8. Please provide any additional information that you will believe will assist our evaluation of the aforementioned allegations in the Complaint.

We request that you send responsive materials on or before March 21, 2012. We would appreciate, to the extent possible, receiving responsive documents in electronic format if they are available in such a format. If you have any questions, concerns, or would like to discuss this matter, please contact Whitney Pellegrino by phone, 202-616-9939, or by email at [whitney.pellegrino@usdoj.gov](mailto:whitney.pellegrino@usdoj.gov). Thank you in advance for your cooperation.

Sincerely,

Whitney Pellegrino  
Jonathan Fischbach  
Educational Opportunities Section

Cc: Grant Langley, Esq.

---

**From:** Joshua David Riegel [jriegel@aclu.org]  
**Sent:** 3/16/2012 8:53:32 PM  
**To:** Fischbach, Jonathan (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=MAILBOXES/CN=JONATHAN F]; Pellegrino, Whitney (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=Mailboxes/cn=wpelligr]; Maisels, Amanda (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=Mailboxes/cn=amaisels]  
**CC:** Courtney Bowie [cbowie@aclu.org]; Karyn L. Rotker [krotker@aclu-wi.org]; Jeff Spitzer-Resnick [spitznick@drwi.org]  
**Subject:** MPS disability re-enrollment data  
**Attachments:** MPS Disability Enroll 2011 2012.xlsx

We hope this finds you and your team well. Attached, please find an Excel spreadsheet provided by MPS, which demonstrates how many students with disabilities were forced to return to MPS. To date, 266 students with disabilities have returned to MPS schools from private voucher schools during the 2011-2012 school year. We have asked MPS for re-enrollment data from previous years and will let you know if such data is available.

Because of FERPA, MPS cannot release to us the names of the parents who have returned. However, we continue to search for individuals through our outreach, and we know you may be able to obtain this information from MPS directly.

We look forward to updating you about our outreach efforts and, again, thank you for all your work on this complaint investigation.

Sincerely,  
Joshua

**Madison, WI 53703**

**608-267-0214**

**608-267-0368 (Fax)**

**800-928-8778 (for consumers and families only)**

**From:** Courtney Bowie [mailto:cbowie@aclu.org]

**Sent:** Friday, May 04, 2012 1:41 PM

**To:** Fischbach, Jonathan (CRT); Pellegrino, Whitney (CRT); Maisels, Amanda (CRT)

**Cc:** Jeff Spitzer-Resnick; krotker@aclu-wi.org; Joshua David Riegel

**Subject:** Wisconsin Voucher Program Disability Discrimination

Dear DOJ Team,

We look forward to our conference call with you on Monday at 11 AM EST/10 AM CST. We are especially interested in hearing about your developments in the last few months and sharing with you our progress on these issues. We propose the following agenda:

- 1) Update from Dept. of Justice regarding MPSs response to DOJ's request for information and DOJ's next steps
- 2) Update from ACLU-DRW regarding outreach (with Jeff to provide specific details of new families following this e-mail)
- 3) Discussion regarding Racine Voucher Programs emerging discrimination issues
- 4) Proposal regarding in-person meeting when we are in Washington D.C. June 5-6.

Again, we look forward to speaking to you.

Sincerely,

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**From:** Jeff Spitzer-Resnick [spitznick@drwi.org]  
**Sent:** 5/4/2012 6:54:04 PM  
**To:** 'Courtney Bowie' [cbowie@aclu.org]; Fischbach, Jonathan (CRT)  
[O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=MAILBOXES/CN=JONATHAN F]; Pellegrino, Whitney (CRT)  
[O=USDOJ/OU=CRT/cn=Recipients/cn=Mailboxes/cn=wpelligr]; Maisels, Amanda (CRT)  
[O=USDOJ/OU=CRT/cn=Recipients/cn=Mailboxes/cn=amaisels]  
**CC:** krotker@aclu-wi.org; Joshua David Riegel [jriegel@aclu.org]  
**Subject:** RE: Wisconsin Voucher Program Disability Discrimination

I had previously provided you with information about 1 new case. Here is the information Courtney alluded to in the e-mail she just sent you with our agenda for Mondays phone conference about 2 more new cases:

(b)(6) is the mother of (b)(6) and (b)(6). Their story is pretty simple and is as follows.

They have attended the Mother of Good Council voucher school all year. They have been struggling academically, so the principal asked (b)(6) to request a special education evaluation from MPS. The evaluation found (b)(6) eligible for special education and an IEP was developed for her providing her reading services. The evaluation did not find (b)(6) eligible for special education. The principal then told (b)(6) that her school could not provide reading services to either child and though the children could stay this year, they are not welcome back next year.

(b)(6) has given me permission to share this story with you and is willing to talk to you and/or meet with you. Needless to say, she would like counsel present during any such interview.

We are looking forward to hearing how USDOJ intends to proceed with our complaint when we talk on Monday.

**Jeffrey Spitzer-Resnick**

**Managing Attorney**

**Disability Rights Wisconsin**

**131 W. Wilson St.**

**Suite 700**

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**From:** Jeff Spitzer-Resnick [spitznick@drwi.org]  
**Sent:** 5/21/2012 2:00:36 PM  
**To:** Pellegrino, Whitney (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=Mailboxes/cn=wpelligr]; Fischbach, Jonathan (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=MAILBOXES/CN=JONATHAN F]  
**Subject:** Tomorrow's interview

I will be on the phone via cell. Please call me @ (b)(6) I believe I gave you my client's phone # already, but if not, let me know, and I'll send it to you.

**Jeffrey Spitzer-Resnick**

**Managing Attorney**

**Disability Rights Wisconsin**

**131 W. Wilson St.**

**Suite 700**

**Madison, WI 53703**

**608-267-0214**

**608-267-0368 (Fax)**

**800-928-8778 (for consumers and families only)**

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**From:** Jeff Spitzer-Resnick [spitznick@drwi.org]  
**Sent:** 5/22/2012 5:57:08 PM  
**To:** Pellegrino, Whitney (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=Mailboxes/cn=wpelligr]; Fischbach, Jonathan (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=MAILBOXES/CN=JONATHAN F]  
**Subject:** RE: Reschedule?

Thanks. Let me know which dates you're looking at in June, whenever you're ready.

Jeff

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**From:** Pellegrino, Whitney (CRT) [Whitney.Pellegrino@usdoj.gov]  
**Sent:** Tuesday, May 22, 2012 1:54 PM  
**To:** Jeff Spitzer-Resnick; Fischbach, Jonathan (CRT)  
**Subject:** Re: Reschedule?

Yes - no problem.

----- Original Message -----

**From:** Jeff Spitzer-Resnick [mailto:spitznick@drwi.org]  
**Sent:** Tuesday, May 22, 2012 01:42 PM  
**To:** Pellegrino, Whitney (CRT)  
**Subject:** Reschedule?

I just got an email from my client stating that she woke up sick and has no voice and would like to reschedule. Is that ok?

Jeff

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**From:** Fischbach, Jonathan (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=MAILBOXES/CN=JONATHAN F]  
**Sent:** 5/22/2012 5:54:51 PM  
**To:** Pellegrino, Whitney (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=Mailboxes/cn=wpelligr]  
**Subject:** Wisconsin vouchers -- Let me know if you're joining 2:00 call (b)(6)  
**Attachments:** Wisconsin Voucher Interview Outline.docx

Jonathan Fischbach

U.S. Department of Justice

Civil Rights Division

Educational Opportunities Section

950 Pennsylvania Ave., NW

PHB, Suite 4300

Washington, DC 20530

phone: (202) 305-3753

fax: (202) 514-8337

email: jonathan.fischbach@usdoj.gov



November 25, 2013

**By Electronic and U.S. Mail**

Renee Wohlenhaus  
Educational Opportunities Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Patrick Henry Building, Suite 4300  
Washington, DC 20530

Dear Ms. Wohlenhaus:

On behalf of the Wisconsin Department of Public Instruction (DPI), I am responding to your April 9, 2013 letter to State Superintendent Tony Evers. In this letter, I will first address general concerns the DPI has. I will then address the DPI's response to the specific requirements outlined in your April 9, 2013 letter.

The DPI is fully committed to ensuring that its administration of the Choice program does not discriminate against persons with disabilities. The DPI is not aware of any discriminatory policy or practice that it employs in respect to its administration of the Choice programs. For example, in your April 9, 2013 letter, you state that advocacy groups in Wisconsin have alleged that students with disabilities in the Milwaukee Public Schools are "deterred by DPI and participating voucher schools from participation in the school choice program." The DPI has no policy or practice of deterring students with disabilities from participating in the Choice programs.

While the DPI is not aware of any discriminatory policy or practice that it employs in respect to the Choice program, the DPI acknowledges this does not mean that individual Choice schools do not engage in discriminatory practices. As such, the DPI will work with the United States to eliminate discrimination to the extent the DPI has the statutory authority to do so. As previously indicated to the United States in correspondence and in our December 12, 2012 meeting, the DPI has significant concerns about the DPI's authority to ensure that Choice schools do not discriminate against students with disabilities. Further, as will be discussed below, the DPI has concerns regarding its authority to comply with the specific requirements outlined in the April 9, 2013 letter.

As discussed in previous correspondence, the Choice program is a state program, funded

solely with state dollars, that provides financial assistance (i.e., vouchers) to low-income families in order to allow eligible children to attend a participating private school of their choice at no cost. In order to be eligible for the Choice program, a pupil must be a member of a family whose income is at or below 300% of the federal poverty limit. Wis. Stat. § 119.23(2)(a)1.a.<sup>1</sup> Schools are required to select pupils on a random basis and may only reject an eligible pupil if it has reached its capacity. Wis. Stat. § 119.23(3)(a). A school may only give preference to a pupil if the pupil previously attended the same school or if one of the pupil's siblings attends the same school. *Id.*

In order to participate in the Choice program, private schools must comply with various statutory and administrative rule requirements. These requirements are primarily concerned with financial reporting and accountability requirements. *See e.g.*, Wis. Stat. § 119.23(7)(am) (Participating schools are required to submit to the DPI specific financial reports). While state law and regulations place various requirements on participating schools, the Wisconsin Supreme Court has consistently held that participating schools remain private, not public schools. *See Davis v. Grover*, 166 Wis. 2d 501, 280 N.W.2d 460 (1991); *Jackson v. Benson*, 218 Wis. 2d 835, 578 N.W.2d 602 (1998).

The DPI has only limited statutory authority in administering the Choice program. It is well-settled law in Wisconsin that state agencies only have those powers which are expressly conferred or necessarily implied from the statutory provisions under which it operates. *See e.g. Brown Cnty. v. Dep't of Health & Soc. Servs.*, 103 Wis. 2d 37, 43, 307 N.W.2d 247, 250 (1981); *Adams v. State Livestock Facilities Siting Review Bd.*, 2012 WI 85, ¶ 62, 342 Wis. 2d 444, 478. As such, the DPI only has those powers expressly conferred or necessarily implied from the statutes enacted by the Wisconsin Legislature.<sup>2</sup> The DPI's authority in regards to the Choice program is set forth in Section 119.23 of the Wisconsin Statutes. *See* Wis. Stat. § 119.23. The DPI implements these statutory requirements through its administrative rules. *See* Wis. Admin. Code PI § 35.

The state superintendent is authorized to take specific action against a Choice school only in specified, limited circumstances. With few exceptions, none of which are relevant herein, the specific actions the DPI can take and the circumstances in which the DPI can take them are set forth in Wis. Stat. § 119.23(10) and in Wis. Admin. Code §§ PI 35.05(10) and (12). As mentioned above, this oversight is primarily related to ensuring accountability with voucher

<sup>1</sup> Section 119.23 of the Wisconsin Statutes governs the Milwaukee Parental Choice Program. Section 118.60 of the Wisconsin Statutes governs the Parental Private School Choice Program in Racine, Wisconsin. Because the statutory language between Wis. Stat. §§ 118.60 and 119.23 is almost identical, this letter will only cite Wis. Stat. § 119.23. You should also be aware that the Wisconsin Legislature and Governor revised the Choice school law under Wis. Stat. § 118.60 to enable choice schools to operate anywhere in the state, thus establishing the Wisconsin Parental Choice Program. There is a 500 student cap on this new program for the for the 2013-2014 school year and a 1000 student cap for the 2014-2015 school year. There are also provisions regarding which schools can participate in the new program and how students are selected to attend those schools. The department can provide additional information if requested.

<sup>2</sup> The state superintendent also has powers conferred by the Wisconsin Constitution. *See* Wis. Const. art. X, § 1. However, these powers are in regards to the supervision of public schools. *See Thompson v. Craney*, 199 Wis. 2d 674, 683, 546 N.W.2d 123, 128 (1996).

payments. As a result, the DPI is concerned that it does not have the authority under state law to take many of the actions outlined in the US DOJ's April 9, 2013 letter.

The DPI is also concerned that federal law does not provide the DPI with necessary authority to take the required actions. The DPI's concerns are amplified by the guidance provided in the US DOJ's ADA Title II Technical Assistance Manual. Specifically, the manual provides, "A public entity may not discriminate on the basis of disability in its licensing, certification, and regulatory activities." ADA Title II Technical Assistance Manual, II-3.7200 Licensing. The manual further clarifies that a state "is not accountable for discrimination in employment or *other practices* of XYZ company, if those practices *are not the result of requirements or policies established by the State.*" *Id.* (Emphasis added). The DPI is not aware of any discriminatory practices engaged in by individual Choice schools which are the "result of requirements or policies established by" the DPI. As such, the DPI is concerned that, under Title II, it does not have the authority to take action against, nor is it responsible for, discriminatory practices by private Choice schools which are not the result of requirements or policies established by the DPI or state law.

Similarly, the DPI is concerned that the cases cited by the United States do not provide the DPI with the authority to take the requested actions. For example, the United States cited *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1066 (9th Cir. 2010), among other cases, as support for the assertion that "the State cannot, by delegating the education function to private voucher schools, place MPCP student beyond the reach of federal laws that require Wisconsin to eliminate disability discrimination in its administration of public programs." Again, the DPI is not aware of any discriminatory practice or policy it employs in the administration of the Choice program. Further, *Armstrong* involved the contracting of a government service (i.e., housing state prison inmates) with another entity (i.e., county jails). *Armstrong*, 622 F.3d at 1062. The Ninth Circuit reasoned that California could not avoid its Title II obligations towards state prisoners by contracting with counties to house the inmates. *Id.* at 1069. The Choice program is fundamentally different. With the Choice program, the DPI does not contract out educational services it would normally provide. Rather, the DPI provides financial assistance (i.e., vouchers) to eligible parents, each of whom is free to choose an eligible private school of their choice. Absent the Choice program, neither the State nor the DPI would provide such assistance.

Based on the DPI's commitment to ensuring that its administration of the Choice program is free of discrimination, desire to provide disabled, but otherwise eligible, students the opportunity to participate in the Choice program, and its concerns regarding its limited authority, the DPI provides the following responses to the specific requirements of the April 9, 2013 letter:

**(1) DOJ Requirement: State's ADA Title II Obligation**

Pursuant to Title II, DPI must eliminate discrimination against students with disabilities or students whose parents or guardians have disabilities in its administration of the Milwaukee Parental Choice Program ("MPCP"), the school voucher program in Racine, and school voucher programs established in any other locality. The private or religious status of individual voucher schools does not absolve DPI of its

obligation to assure that Wisconsin's school choice programs do not discriminate against persons with disabilities as required under Title II.

**DPI Response:**

The DPI is fully committed to ensuring that its administration of the Choice program does not discriminate against persons with disabilities. The DPI is not aware of any discriminatory policy or practice it employs in respect to its administration of the Choice program. For example, in your April 9, 2013 letter, you state that advocacy groups in Wisconsin have alleged that students with disabilities in the Milwaukee Public Schools are "deterred by DPI and participating voucher schools from participation in the school choice program." The DPI has no policy or practice of deterring students with disabilities from participating in the Choice program. Moreover, the DPI has no knowledge of any facts supporting an allegation that it deters any students with disabilities from participating in the choice school programs.

The DPI respectfully requests that the United States tell the DPI what aspects of the DPI's legislatively circumscribed administration of the Choice program results in any violation of Title II.

**(2) DOJ Requirement: Complaints**

DPI must establish and publicize a procedure for individuals to submit complaints to DPI alleging disability-related discrimination in the school choice program. DPI will furnish copies of these complaints to the United States on December 15, 2013 and June 15, 2014. The United States will independently review these complaints and DPI's response thereto, to ensure that complaints are being appropriately addressed.

**DPI Response:**

The DPI will establish and publicize a complaint procedure for individuals to submit complaints to the DPI regarding disability-related discrimination in the Choice programs. The DPI will provide copies of the complaints and the DPI's response to the complaints to the United States.

The DPI is concerned about (1) the nature of any DPI response to the complaints and (2) the United States' review of such responses. As mentioned above, the DPI has limited statutory authority to sanction Choice schools. Specifically, Wis. Stat. § 119.23(10) authorizes the DPI to bar Choice schools or withhold state payments to Choice schools in very specific situations. Further, the DPI only has authority to address allegations of discrimination in two specific situations. First, the DPI has the authority to ensure that Choice schools accept pupils on a random basis and only reject pupils if the Choice school has reached capacity or if pupils do not meet residency or income requirements. Wis. Stat. § 119.23(3)(a). As such, the DPI has the authority to withhold payments to a Choice school if the school denied a student admission based on the student having a disability. Wis. Stat. § 119.23(10)(d). Second, the

DPI has the authority to ensure that Choice schools comply with 42 U.S.C. 2000d. Wis. Stat. § 119.23(2)(a)4. As such, the DPI can withhold funds under Wis. Stat. § 119.23(10)(d) if a Choice school discriminates against a student based on the student's race, color, or national origin.

Because the DPI only has limited statutory authority to address discrimination against Choice students, the DPI is concerned it only can address complaints of disability discrimination in relation to the admission of pupils. The DPI does not have the statutory authority to address disability discrimination in other contexts.

**(3) DOJ Requirement: Additional Data Collection and Reporting.**

DPI must, by the dates indicated below, gather and produce to the United States in written format information that will enable the United States to determine how and to what extent students with disabilities are being served by voucher schools. The information should be disaggregated by school and include the following: (1) by September 30, 2013, the number of students with disabilities enrolled in voucher schools for the 2013-2014 school year, disaggregated by grade level and type of disability; (2) by September 30, 2013, the number of students with disabilities denied admission to a voucher school for the 2013-2014 school year; (3) by June 15, 2014, the number of students with disabilities who left a voucher school at any time during the 2013-2014 school year to return to the local public school system; and (4) by June 15, 2014, the number of students with disabilities suspended or expelled from a voucher school, disaggregated by grade level and type of disability. The United States will review these reports and take appropriate action, pursuant to the ADA and consistent with Department practice, if the information reported reveals actual or potential unlawful discrimination. See 28 C.F.R. § 35.176.

**DPI Response:**

The DPI welcomes the opportunity to work with the United States in determining the types and extent of discrimination by Choice schools against persons with disabilities. However, the DPI is concerned that it currently lacks the statutory authority to force Choice schools to submit the information required for items requested. For example, the DPI lacks the statutory authority to require Choice schools to submit to the DPI "the number of students with disabilities suspended or expelled from a voucher school, disaggregated by grade level and type of disability." While the DPI will ask Choice schools for this information, the DPI does not believe it can require Choice schools to submit this data or face some sanction if they do not. In the most recent Wisconsin biennial budget (2013 Act 20, ss. 1732M to 1734), the Wisconsin Legislature mandated that the DPI collect graduation rates and achievement gap data from Choice schools, as well as all other schools, categorized by various populations, including students with

disabilities.<sup>3</sup>

However, this provision does not become effective until a statewide student information system is established. After the system's establishment, schools have five years to participate in that system or develop another system that is interoperable with the DPI system. Once this occurs, the department likely can provide the information requested in numbers (1) and (4) above.

Additionally, the DPI is concerned that this requirement might violate the principle established by *Printz v. United States*, 521 U.S. 898, 925 (1997), and *New York v. United States*, 505 U.S. 144, 174-77 (1992). Specifically, the U.S. Supreme Court has made it clear that "the Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs." *Printz*, 521 U.S. at 925. The DPI is concerned that the United States is asking the DPI to help the United States implement or enforce the ADA against third parties (i.e., Choice schools).

**(4) DOJ Requirement: Public Outreach about the School Choice Program to Students with Disabilities.**

DPI must conduct outreach to educate the families of students with disabilities about school choice programs, and provide specific and accurate information about the rights of students with disabilities and the services available at voucher schools. DPI shall provide a copy of any existing outreach and informational materials related to the voucher schools, and submit any new and/or revised DPI materials for review to the United States.

**DPI Response:**

The DPI will conduct outreach to families of students with disabilities about the Choice programs, the rights of students with disabilities, and the services available to students with disabilities at Choice schools. Specifically, the DPI will develop materials addressing these topics and to make the materials available via publication on the DPI website, sending the materials at no cost to families who request them, and sending the materials to Choice schools on an annual basis. While the DPI will ask Choice schools to make these materials available to all families who participate in the Choice program, the DPI believes it lacks the statutory authority to require Choice schools to provide these materials to all families.

The DPI also will provide the United States with copies of any materials developed or revised of the purpose of outreach to the families of students with disabilities. All other "existing outreach and informational materials related to voucher schools" is already available on the DPI website. See [http://sms.dpi.wi.gov/sms\\_choice](http://sms.dpi.wi.gov/sms_choice). If the United States needs hard copies of these materials, the DPI will provide the United States with hard copies.

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<sup>3</sup> The following is the link to the cited sections of 2013 Wisconsin Act 20:  
<https://docs.legis.wisconsin.gov/2013/related/acts/20/1732M>.

**(5) DOJ Requirement: Monitoring and Oversight.**

DPI must ensure that voucher schools do not discourage a student with a disability from applying for admission, or improperly reject a student with a disability who does apply to a voucher school. DPI must further ensure that voucher schools, absent a valid ADA defense, do not expel/exit a student with a disability unless the school has first determined, on a case-by-case basis, that there are no reasonable modifications to school policies, practices or procedures that could enhance the school's capacity to serve that student. DPI shall report any review, investigation and/or findings of potential unlawful discrimination to the United States, and document the actions taken by the agency to remedy the discrimination.

**DPI Response:**

As stated previously, the DPI is fully committed to ensuring that its administration of the Choice programs does not discriminate against persons with disabilities. The DPI will work with the United States to monitor the operations of Choice schools to determine whether discrimination is occurring. As mentioned above, the DPI has only limited statutory authority regarding Choice school admission practices. Wis. Stat. § 119.23(3)(a). The DPI does not have the statutory authority to review Choice school expulsions. Because of the DPI's limited authority regarding regulation of Choice schools and its even more limited authority to impose any kind of sanctions against Choice Schools for what the United States or the DPI might consider discrimination, the DPI is concerned that it lacks the statutory authority to review, investigate, and correct discriminatory expulsions.

**(6) DOJ Requirement: ADA Training for Voucher Schools.**

DPI must provide mandatory ADA training to new voucher schools and to existing voucher schools on a periodic basis, and submit a copy of any training materials and attendance sheets to the United States.

**DPI Response:**

DPI does not provide ADA training for any public schools in Wisconsin. The Chicago office of the USDOJ Office of Civil Rights has advised the DPI that the OCR provides that training, not the DPI. Moreover, OCR in Chicago has told the DPI that the DPI should refer ADA questions and complaints to OCR. The DPI believes it would be better and more efficient to use the same model for Choice schools since OCR, not the DPI, is the expert in ADA compliance and has the explicit statutory authority to address ADA violations.

The DPI regularly conducts training sessions for Choice schools, including mandatory training sessions for new Choice school administrators. The DPI is willing to have OCR staff come to these trainings to provide information and instruction to Choice schools. The DPI is also

November 25, 2013

Page 8 of 8

willing to provide to Choice schools any materials OCR has developed regarding ADA and its requirements.

**(7) DOJ Requirement: Guidance.**

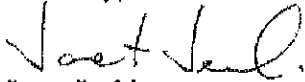
By December 31, 2013, DPI must develop program guidance in consultation with the United States to assist and educate voucher schools about ADA compliance.

**DPI Response:**

The DPI will develop program guidance in consultation with the United States to assist and educate Choice schools about ADA compliance. The DPI also will make this guidance available on the DPI website and send the guidance to Choice schools. The DPI respectfully requests that the United States assist the DPI in developing this guidance in a timely manner.

In conclusion, the DPI is fully committed to ensuring that it administers the Choice program in a nondiscriminatory manner. The DPI, like the United States, firmly believes that all eligible students should have the opportunity to participate in the Choice program. Insofar as the United States believes that some Choice schools may not be in compliance with the ADA, the DPI is concerned that it lacks the statutory authority to take action against such schools on that basis. The DPI looks forward to working with US DOJ, within the scope of the DPI's authority, to educate and assist Choice schools on ADA compliance.

Sincerely,



Janet Jenkins

Chief Legal Counsel

Wisconsin Department of Public Instruction

Cc: State Superintendent Tony Evers  
Wisconsin Department of Justice



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**From:** Fischbach, Jonathan (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=MAILBOXES/CN=JONATHAN F]  
**Sent:** 11/2/2011 7:14:17 PM  
**To:** Bhargava, Anurima (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=Abhargav]; Devine, Kathleen S (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=Mailboxes/cn=kdevine]  
**CC:** Pellegrino, Whitney (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=Mailboxes/cn=wpelligr]  
**Subject:** FW: Media Wisconsin  
**Attachments:** DPIs 9-27-11 Responses.pdf

FYI

**From:** Courtney Bowie [mailto:cbowie@aclu.org]  
**Sent:** Wednesday, November 02, 2011 3:05 PM  
**To:** Fischbach, Jonathan (CRT); Maisels, Amanda (CRT); Pellegrino, Whitney (CRT)  
**Cc:** Joshua David Riegel; Jeff Spitzer-Resnick; krotker@aclu-wi.org  
**Subject:** Media Wisconsin

Dear DOJ Team,

Per our conversation the other day, we wanted to give you a heads up about media after we had a chance to discuss it amongst ourselves. Tomorrow, we plan to release the attached document (only) to a few reporters with the message that we are outraged by DPI's assertion/belief that the voucher program schools do not have to comply with 504. We aren't redacting it, but we think with this one document being the only one released that this is a good compromise.

Thanks,

Courtney

**From:** Jeff Spitzer-Resnick [mailto:spitznick@drwi.org]  
**Sent:** Thursday, October 06, 2011 4:28 PM  
**To:** Fischbach, Jonathan (CRT); Maisels, Amanda (CRT); Pellegrino, Whitney (CRT)  
**Cc:** 'Courtney Bowie'; Karyn Rotker  
**Subject:** Checking in

Per our recent conversation, we would like to hold the 504 issue in our complaint in abeyance until further notice. We understand that you cannot act on it at this time, but our clients have not permitted us to withdraw it. You were not sure if this was something you could permit when we spoke, we're wondering if you have any additional information for us about this issue?

Also, we understand that the response from DPI was due on September 22nd. Have you received a response yet? If not, was an extension granted? If so, until when? If not, have you informed DPI of a specific time limit by when it must respond?

If you would like to discuss either of these issues by phone, feel free to propose a time and we will work towards finding a mutually available time to discuss these issues with you.

**Jeffrey Spitzer-Resnick**

**Managing Attorney**

**Disability Rights Wisconsin**

**131 W. Wilson St.**

**Suite 700**

**Madison, WI 53703**

**608-267-0214**

**800-928-8778 (consumers and families only)**

**608-267-0368 (fax)**

Hi guys,

**From:** Courtney Bowie [mailto:cbowie@aclu.org]  
**Sent:** Thursday, October 27, 2011 11:08 AM  
**To:** Fischbach, Jonathan (CRT); Maisels, Amanda (CRT); Pellegrino, Whitney (CRT)  
**Cc:** krotker@aclu-wi.org; Jeff Spitzer-Resnick  
**Subject:** Wisconsin Voucher Complaint  
**Importance:** High

Dear Department of Justice Team,

We are writing to follow up on Friday's call. First, we want to reiterate that we appreciate your work on the complaint and look forward to our continued collaboration with you to ensure that students with disabilities are not discriminated against in Wisconsin's voucher program. If that message was not the primary message you received from us, then there was a miscommunication. We trust you want to continue working with you, and understand that this is a complicated process.

Second, the discussion during the call with you gave us an opportunity to examine the 504 issues more thoroughly. We understand that you will not have jurisdiction against DPI for the 504 claims and **we now withdraw our 504 claims against DPI only. We would like our 504 claims versus the individual schools – over which is does not appear DOJ is likely to have jurisdiction, as they are religious schools - to be sent to OCR for investigation.** If we need to take additional action to make that happen, please let us know.

We would like to give the media an update next week. It would simply be a release of materials from DPI without a release. We may also like to publicly state that you (DOJ) are looking for additional plaintiffs. If this is something that is okay with you, if possible, please let us know by next Tuesday. If it isn't, we can ask that additional plaintiffs come to us. We are in the process of trying to identify additional victims of the process as it is.

Again, we look forward to continuing to work with you and hope that our next call is a harmonious one.

Sincerely,

Courtney A. Bowie

Attorney

Racial Justice Program



**U.S. Department of Justice  
Civil Rights Division  
Educational Opportunities Section**

AB:KD:JF:WMP  
DJ 169-85-23

U.S. Mail: 950 Pennsylvania Avenue, NW  
Patrick Henry Building, Suite 4300  
Washington, DC 20530  
Overnight Mail: 601 D Street, NW  
Suite 4300  
Washington, DC 20004  
Telephone: (202) 514-4092  
Facsimile: (202) 514-8337

November 17, 2011

**By Electronic and U.S. Mail**

Frank Lopez  
General Attorney  
Office of the General Counsel  
U.S. Department of Education  
400 Maryland Ave., SW; Room 6C106  
Washington, DC 20202

Dear Frank,

On June 7, 2011, we received a complaint alleging that the Wisconsin Department of Public Instruction ("DPI") operates a state program, the Milwaukee Parental Choice Program ("MPCP" or "voucher" program), that discriminates against students with disabilities in violation of Title II of the Americans with Disabilities Act of 1990 ("Title II"), 42 U.S.C. §§ 12131-12134 and Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 701 *et seq.* The complaint specifically asserts that students with disabilities in the Milwaukee Public School District ("MPS") are denied access to aids, services, and benefits associated with participation in the voucher program in violation of the anti-discrimination mandates in Title II and Section 504. Complainants believe that students with disabilities in MPS are: (1) deterred by DPI and participating voucher schools from participating in the voucher program, (2) denied admission to voucher schools when they do apply, and (3) expelled or constructively forced to leave voucher schools as a result of policies and practices that fail to accommodate the needs of students with disabilities.

We informed complainants that we intended to refer their Section 504 claims to the Department of Education's Office for Civil Rights ("OCR"), whereupon they elected to withdraw their Section 504 claim against DPI *only*. Complainants did request that we refer to the Department of Education their Section 504 claims against the individual schools that participate in Wisconsin's voucher program, which we do via this letter.

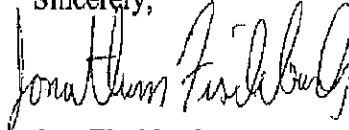
We are sending you a hard copy of the materials generated thus far in connection with our investigation of the Title II allegations, including: (1) the original complaint and appendices,

Frank Lopez  
Office of the General Counsel  
November 17, 2011

(2) an information request sent by DOJ to DPI on August 17, 2011, (3) the materials produced by DPI in response to DOJ's information request on September 27, 2011, and (4) the letter from complainants withdrawing their Section 504 claim against DPI and requesting referral of their Section 504 claims against the individual voucher schools.

We would appreciate the opportunity to discuss this matter with you once you have had an opportunity to familiarize yourself with the documents. In the meantime, if you have any questions or concerns, please contact Jonathan Fischbach by phone, 202-305-3753, or by email at [jonathan.fischbach@usdoj.gov](mailto:jonathan.fischbach@usdoj.gov).

Sincerely,



Jonathan Fischbach  
Whitney Pellegrino  
Educational Opportunities Section

Cc: Kathryn A. Ellis, Esq.  
Courtney A. Bowie, Esq.  
Karyn L. Rotker, Esq.  
Jeffrey Spitzer-Resnick, Esq.



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

500 WEST MADISON ST., SUITE 1475  
CHICAGO, IL 60661-4544

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WISCONSIN

February 3, 2012

Courtney A. Bowie, Esq.  
American Civil Liberties Union Foundation  
Racial Justice Program  
125 Broad Street, 18<sup>th</sup> Floor  
New York, New York 10004

Karyn L. Rotker, Esq.  
ACLU of Wisconsin  
207 East Buffalo Street, Suite 325  
Milwaukee, Wisconsin 53202

Jeff Spitzer-Resnick, Esq.  
Disability Rights Wisconsin  
131 West Wilson Street, Suite 700  
Madison, Wisconsin 53703

Re: OCR Docket #05-12-1119 (Messmer Catholic Preparatory School)  
and #05-12-1120 (Concordia University School)

Dear Attorneys Bowie, Rotker and Spitzer-Resnick:

On December 13, 2011, the Chicago Office of the U.S. Department of Education (Department), Office for Civil Rights (OCR) received from the Department of Justice the complaints you filed against Messmer Catholic Preparatory School (Messmer) and Concordia University School (Concordia) alleging discrimination based on disability in violation of Section 504 the Rehabilitation Act of 1973. OCR has carefully evaluated your complaints in accordance with OCR's *Case Processing Manual* to determine whether to open the complaints for investigation. Specifically, in the complaints, you allege that the Messmer and Concordia schools discriminate against students with disabilities in the Milwaukee Public School District by denying access to aids, services and benefits associated with participation in the Milwaukee Parental Choice Program.<sup>1</sup>

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<sup>1</sup> Under the Milwaukee Parental Choice Program, the state pays all or a portion of the costs for an eligible pupil who resides within the City of Milwaukee to attend a participating private school. In addition, under 2011 Wisconsin Act 32, private schools may participate in a parental choice program in an eligible school district. Likewise, the state pays all or a portion of the costs for an eligible pupil who resides within the eligible school district to attend a participating private school. Memo. from Rachel Letzing, Senior Staff Attorney, *Wisconsin Legislative Council Act: Changes to the Milwaukee Parental Choice Program and the Choice Program for Eligible School Districts* (November 29, 2011).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulations at 34 C.F.R. Part 104. Section 504 prohibits discrimination based on disability by recipients of Federal financial assistance. For OCR to proceed with an investigation of your complaint, OCR must have jurisdiction over the institutions alleged to have discriminated. OCR has the authority to only investigate complaints under Section 504 filed against institutions that receive Federal funds from the Department. OCR has determined that Messmer and Concordia schools are not recipients of Federal financial assistance from the Department. Consequently, OCR does not have jurisdiction to investigate your disability complaints against the Messmer and Concordia schools under Section 504. Therefore, we are dismissing the complaints effective the date of this letter.

If you have any questions regarding this letter, please contact Ms. Karen Mines at (312) 730-1596 or by e-mail at [karen.mines@ed.gov](mailto:karen.mines@ed.gov).

Sincerely,



Dawn R. Matthias  
Team Leader

---

**From:** Fischbach, Jonathan (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=MAILBOXES/CN=JONATHAN F]  
**Sent:** 2/15/2012 5:07:19 PM  
**To:** Devine, Kathleen S (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=Mailboxes/cn=kdevine]; Pellegrino, Whitney (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=Mailboxes/cn=wpelligr]  
**Subject:** FW: Wisconsin voucher program expanding

FYI

**From:** Courtney Bowie [mailto:cbowie@aclu.org]  
**Sent:** Wednesday, February 15, 2012 11:01 AM  
**To:** Fischbach, Jonathan (CRT)  
**Subject:** Wisconsin voucher program expanding

Jonathan,

The MPCP program now has 23,000 students in it and Racine has created a program that is leading to increased racial segregation in the schools (not related to this case, but super interesting). Please let us know (officially) about our status when it's been decided. We are in a position to get out there in a few weeks and find some children who have been discouraged and/or expelled from the private voucher program. We really appreciate your Department's efforts on this case.

Thanks,

Courtney

<http://www.jsonline.com/news/education/voucher-enrollment-jumps-after-rules-are-relaxed-98457h4-139198094.html>



---

**From:** Wohlenhaus, Renee (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=MAILBOXES/CN=RWOHLEN]  
**Sent:** 4/11/2014 7:42:16 PM  
**To:** Phillips, Colleen (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=cphillip]  
**Subject:** RE: Wisconsin Voucher Program

Let's just schedule a call with them. (b)(5)

Renee

**From:** Phillips, Colleen (CRT)  
**Sent:** Friday, April 11, 2014 3:34 PM  
**To:** Wohlenhaus, Renee (CRT)  
**Subject:** FW: Wisconsin Voucher Program

(b)(5)

**From:** Courtney Bowie [<mailto:cbowie@aclu.org>]  
**Sent:** Friday, April 11, 2014 3:09 PM  
**To:** Wohlenhaus, Renee (CRT); Phillips, Colleen (CRT)  
**Cc:** Susan Mizner; [mmurphy@drwi.org](mailto:mmurphy@drwi.org); [krotker@aclu-wi.org](mailto:krotker@aclu-wi.org); Alison Silveira; Robert Hunter  
**Subject:** Wisconsin Voucher Program

Renee and Colleen,

We hope this finds you well. We write to schedule a call to check in about Wisconsin. The voucher program in Wisconsin continues to expand and we're concerned about the state's continued inability or unwillingness to oversee the schools they fund. As summer approaches, we are trying to either develop a case for federal court or adopt a wait and see policy with respect to your interaction with DPI. Can you let us know if there is any progress or if movement is imminent? It would permit us to plan accordingly.

From: [Phillips, Colleen \(CRT\)](#)  
To: [Wohlenhaus, Renee \(CRT\)](#)  
Subject: FW: Wisconsin Voucher Program  
Date: Friday, April 11, 2014 3:34:00 PM

I am in meetings until 5 or 6pm. I can respond to this after and tell them we are engaging in the conversation on providing ADA compliance training and welcome their input.


From: Courtney Bowie [mailto:[cbowie@aclu.org](mailto:cbowie@aclu.org)]  
Sent: Friday, April 11, 2014 3:09 PM  
To: Wohlenhaus, Renee (CRT); Phillips, Colleen (CRT)  
Cc: Susan Mizner; [mmurphy@drwl.org](mailto:mmurphy@drwl.org); [krotker@aclu-wi.org](mailto:krotker@aclu-wi.org); Allison Silveira; Robert Hunter  
Subject: Wisconsin Voucher Program

Renee and Colleen,

We hope this finds you well. We write to schedule a call to check in about Wisconsin. The voucher program in Wisconsin continues to expand and we're concerned about the state's continued inability or unwillingness to oversee the schools they fund. As summer approaches, we are trying to either develop a case for federal court or adopt a wait and see policy with respect to your interaction with DPI. Can you let us know if there is any progress or if movement is imminent? It would permit us to plan accordingly.

As always, we really appreciate the work that you are doing on these important issues. Let us know if there are good blocks of time when we may schedule a call.

Sincerely,

**Courtney A. Bowie\***  
Senior Staff Attorney  
Racial Justice Program  
American Civil Liberties Union  
125 Broad St., New York, NY 10004  
212-549-2682 [cbowie@aclu.org](mailto:cbowie@aclu.org)  
[www.aclu.org](http://www.aclu.org) 



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*This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.*

**From:** Wohlenhaus, Renee (CRT) [/O=USDOJ/OU=CRT/CN=RECIPIENTS/CN=MAILBOXES/CN=RWOHLEN]  
**Sent:** 1/23/2014 2:52:08 PM  
**To:** Phillips, Colleen (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=cphillip]  
**CC:** Bhargava, Anurima (CRT) [/O=USDOJ/OU=CRT/cn=Recipients/cn=abhargav]  
**Subject:** RE: WI reintroducing SPED vouchers in the legislature. FYI.

(b)(5)

(b)(5)

Thanks, Colleen.

**From:** Phillips, Colleen (CRT)  
**Sent:** Thursday, January 23, 2014 9:47 AM  
**To:** Wohlenhaus, Renee (CRT)  
**Cc:** Bhargava, Anurima (CRT)  
**Subject:** RE: WI reintroducing SPED vouchers in the legislature. FYI.

(b)(5)

(b)(5)

**From:** Wohlenhaus, Renee (CRT)  
**Sent:** Thursday, January 23, 2014 9:18 AM  
**To:** Phillips, Colleen (CRT)  
**Cc:** Bhargava, Anurima (CRT)  
**Subject:** WI reintroducing SPED vouchers in the legislature. FYI.

**Special Education Today, Jan. 21, 2014**

**Legislative support renewed for Wisconsin special ed voucher program**

A proposal to allow students with disabilities to attend private schools with taxpayer-funded vouchers is being revived in Wisconsin, the Milwaukee *Journal Sentinel* reported.

According to the newspaper, the proposal is a revamped version of a measure that failed in Gov. Scott Walker's 2013-15 budget.

That measure would have allowed 5 percent of students with disabilities to attend schools outside their home districts with the help of vouchers, the *Journal Sentinel* said. As part of a broader compromise, the portion on students with disabilities was dropped in favor of a limited expansion of private school vouchers statewide, the newspaper said.

According to the *Journal Sentinel*, the revived Wisconsin Special Needs Scholarship bill is scheduled to be introduced today by state Sens. Leah Vukmir, R-Wauwatosa, and Alberta Darling, R-River Hills, and Reps. John Jagler, R-Watertown, and Dean Knudson, R-Hudson.

The revamped bill is likely to require that students first fail to obtain a public school placement outside their district through the state's open enrollment program before they are eligible for a special needs voucher they can use to attend a private school, the newspaper said.

Lisa Pugh, director of Disability Rights Wisconsin, told the *Journal Sentinel* that parents of children with disabilities routinely get denied through open enrollment because districts often have limited open enrollment seats, and even more limited special ed resources.

Pugh told the newspaper that her group is working with the state to improve the open enrollment process for families of students with special needs.

See also:

- DOJ: Wisconsin must do more to ensure nondiscrimination in voucher program (May 3)
- Wisconsin parents, legislators oppose special ed voucher program (April 23)
- Evaluation of Milwaukee voucher program finds no harm in school choice (March 6, 2012)

From: Karyn Rotker  
To: Wohlenhaus, Renee (CRT); Phillips, Colleen (CRT)  
Cc: Monica Murphy  
Subject: fyi  
Date: Tuesday, June 16, 2015 3:14:26 PM

Sen. Johnson posted this today. Thought you'd be interested.  
<http://www.wispolitics.com/index.html?Article=350619>

Also, if you could let us know the status of the complaint, we'd appreciate it.

Karyn

--  
Karyn L. Rotker  
Senior Staff Attorney  
Poverty, Race & Civil Liberties Project  
ACLU of Wisconsin Foundation  
207 E. Buffalo St. #325  
Milwaukee WI 53202  
(414) 272-4032 ext. 221  
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Twitter (<https://twitter.com/ACLUofWisconsin>)

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