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Literacy on Hold

What School Districts Should Know About The Legal Status of Wisconsin Act 20





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What School Districts Should Know About the Legal Status of Act 20

This document explains the history, controversy, and status of three related Wisconsin laws addressing literacy that were passed in 2023 and 2024. The purpose of this document is for Wisconsin schools to better understand what is currently expected of them and what may change with these laws in the future.

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In 2023, improving early literacy and reading outcomes became a top priority for the Wisconsin legislature. To achieve this, lawmakers aimed to replace outdated methods like “three cueing” with a back-to-basics “science of reading” approach, which emphasizes phonics and foundational skills. States that have adopted this back-to-basics approach have seen significant improvements. For example, in just 6 years, Mississippi rose from 49th to 9th in fourth-grade reading proficiency according to the National Assessment of Educational Progress.

To achieve similar outcomes here in Wisconsin, a package of three laws was enacted:

- Act 20: Creates reading and literacy improvement programs.
- Act 19: Wisconsin State Budget, which earmarks funds to implement these programs.
- Act 100: Creates the account(s)¹ to hold and distribute the funds.

What is Act 20 (and Act 19 and Act 100)?

Among many of the changes Act 20 made, was the creation of the Office of Literacy (or “Wisconsin Reading Center”) within the Department of Instruction (“DPI”)² as well as the Early Literacy Curricula Council (“ELCC”).³ The Office of Literacy is required to award “grants to school boards, independent charter schools, and private schools participating in a parental choice program that adopt a recommended literacy curriculum that contains the components of science-based early reading instruction and does not include three-cueing.”⁴ The task of

¹ The “s” in accounts is in parenthesis here because of Governor Evers’ line-item veto on Act 100. See the “Controversy over the Partial Veto” section.

² Wis. Stat. § 15.374(2).

³ Wis. Stat. § 118.015(1m)(a).

⁴ 2023 Wisconsin Senate Bill 971 (available at: <https://docs.legis.wisconsin.gov/2023/related/proposals/sb971>).

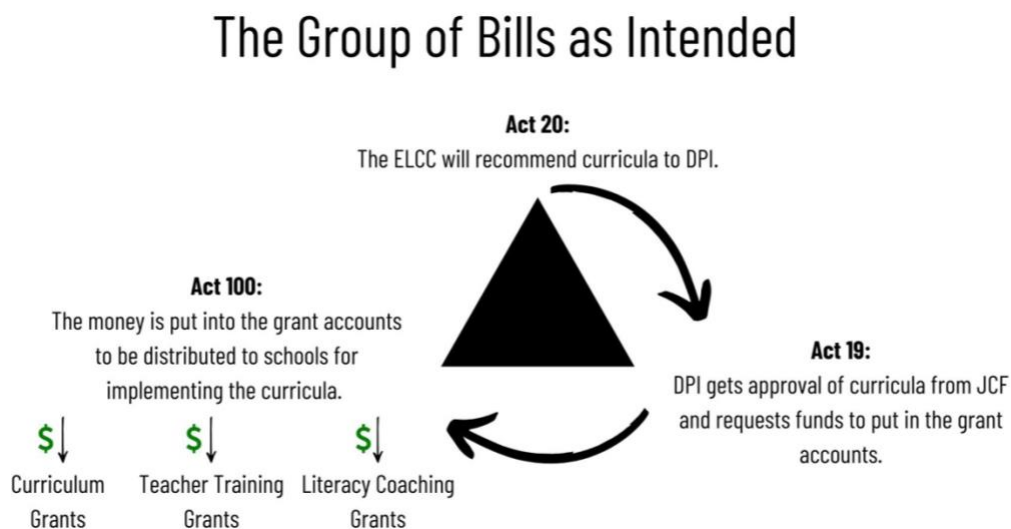
recommending literacy curricula and instructional materials eligible for these grants was given to the ELCC.⁵

In order to award the grants for literacy curricula, the Office of Literacy needs money appropriated for that explicit purpose. Act 19 allocated \$200 million to the Joint Committee on Finance’s supplemental funding account.⁶ Of these funds, the Joint Committee on Finance (“JCF”) was to designate \$50 million to support the implementation of Act 20. This funding includes grants for schools which adopted approved literacy curricula and materials, professional development for teachers, and literacy coaches.

Finally, Act 100 was passed to create a structure for DPI to expend the funds allocated by Act 19 as they are transferred by the JCF. Importantly, Act 100 did not appropriate or transfer any money into those accounts.⁷

The idea was that the ELCC, created by Act 20, would recommend curricula and instructional materials to the DPI,⁸ and DPI would submit those recommendations to the Joint Committee on Finance (“JCF”) for final approval.⁹ JCF, who held the funds that were appropriated in Act 19, would approve the suggested materials, which DPI would publish then on its website for schools to access.¹⁰

Following that, DPI could request funds from JCF to be allocated into the respective accounts created in Act 100, thus enabling the department to issue grants to reimburse schools for purchasing the curricula recommended by the ELCC.¹¹



⁵ Wis. Stat. § 118.015(1m)(a).

⁶ 2023 Wis. Act 19.

⁷ 2023 Wis. Act 100.

⁸ Wis. Stat. § 118.015(1m)(a).

⁹ Wis. Stat. § 118.015(1m)(b)1.

¹⁰ Wis. Stat. § 118.015(1m)(b)2.

¹¹ Wis. Stats. §§ 20.255(1)(fc) and 20.435(1)(dx).

Act 19, Act 20, and Act 100 all passed with bipartisan support in both houses of the legislature. Despite this rare common ground, all three laws have been fraught with controversies based on a separation of powers dispute between the legislative and executive branches.

Controversy Over Evers' Act 100 Partial Veto

When Act 100 reached Governor Evers' desk, he exercised a “partial veto” to strike certain words and phrases without vetoing the entire bill. His power to do so is controverted because the “partial veto power” is only available to the Wisconsin Governor on bills that appropriate funding and Act 100, on its face, did not do so.

Governor Evers vetoed parts of Act 100 stating that he thought the bill was “overly complicating the allocation of funding related to literacy programs in Wisconsin by creating multiple appropriations for what could be accomplished by one. By consolidating the funding into one appropriation, the department will have the flexibility necessary to utilize the appropriate amount of funding for various literacy needs based on the needs of Wisconsin schools. The Department would not be able to do so with the funding divided between multiple appropriations.”¹²

In essence, the Governor contends that the Legislature was trying to improperly exercise executive power by determining which particular programs would be funded rather than giving the entire appropriation to DPI (as an executive branch agency) to decide on which particular literacy programs would be funded.

The Governor went on to claim that the bill had “an apparent error that benefits only private choice schools and independent charter schools” because “as drafted” these private or independent schools “could also receive an increase in per pupil funding” that would not “be provided to public school districts under the bill.”¹³

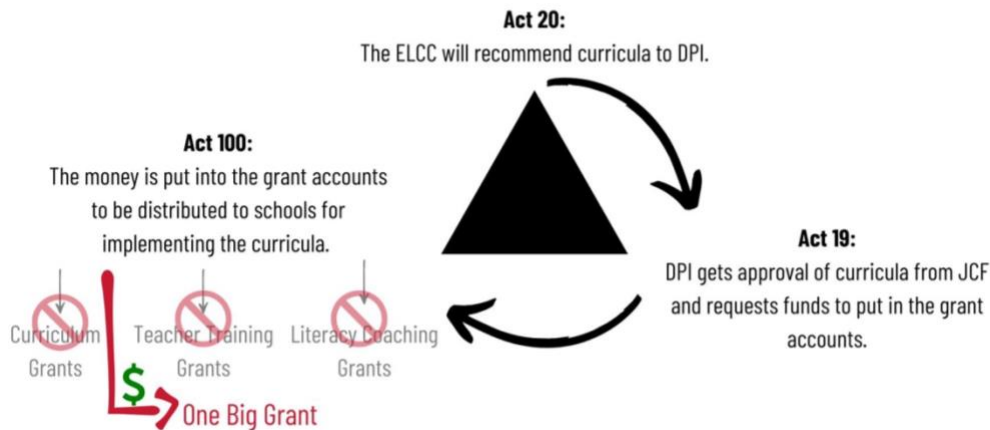
On the other hand, the lawmakers that passed the bill assert that the distinct funding streams were intentional to prevent DPI from having complete discretion over the funds. Specifically, the Legislature was concerned that DPI would fund programs that did not advance the purposes of Act 20 and that it was the Legislature's role to set education policy for the state, and part of that is determining which particular literacy programs should be funded.¹⁴

¹² *Office of the Governor Tony Evers*, Veto Message, February 29, 2024 (available at: https://docs.legis.wisconsin.gov/2023/related/veto_messages/2023_wisconsin_act_100.pdf).

¹³ See n. 12.

¹⁴ *Wisconsin State Legislature v. Wisconsin Dep't of Public Instruction et al*, No. 2024CV001127, Summons and Complaint, dkt. 3 at 3, April 16, 2024 available at: (https://wheeler-files.s3.amazonaws.com/upload/files/frontpage/doc_176232301466202138f01c20.13395269.pdf).

After Evers' Partial Veto



Wisconsin Legislature Sues Governor Evers

The Wisconsin Legislature claims that the Governor should not have been able to exercise a partial veto in the first place, since Act 100 was only creating the separate funding streams and not actually appropriating funds.¹⁵ In other words, Act 100 would be like going to the bank and opening an account, but not putting any money in. A separate bill – Act 19 – contained the money that would be deposited into the account, at a later date by JCF.

If Act 100 does not appropriate any money, and therefore is not an appropriations bill, Governor Evers does not have the authority under the Wisconsin Constitution to partially veto the bill and combine all the funding streams into one. The Legislature brought this argument to court.

On August 27, 2024, a Circuit Court Judge in Dane County ruled that even though no money was allocated in Act 100, Act 19, Act 20, and Act 100 should be viewed together as “part of a unified whole.”¹⁶ When examined together, the Court concluded the Acts *do* allocate money and therefore the partial veto *is* constitutional because Act 100 is, under that view, part of an appropriations bill.¹⁷

The Legislature appealed this decision to the Wisconsin’s Court of Appeals. However, on October 29, 2024, Wisconsin Attorney General Josh Kaul filed a

¹⁵ *Wisconsin State Legislature v. Wisconsin Dep’t of Public Instruction et al*, No. 2024CV001127, Summons and Complaint, dkt. 3, April 16, 2024 available at: (https://wheeler-files.s3.amazonaws.com/upload/files/frontpage/doc_176232301466202138f01c20.13395269.pdf).

¹⁶ *Wisconsin State Legislature v. Wisconsin Dep’t of Public Instruction et al*, No. 2024CV001127, Decision and Order, dkt. 56 at 12, August 27, 2024, available at (https://dpi.wi.gov/sites/default/files/imce/news/Leg_v_DPI_decision.pdf).

¹⁷ *Id.* at 14.

petition on behalf of DPI to bypass the Wisconsin Court of Appeals and go straight to the Wisconsin Supreme Court. That petition was granted by the Wisconsin Supreme Court on January 24, 2025.¹⁸ Oral argument before the Wisconsin Supreme Court is scheduled for April 3, 2025.¹⁹

Controversy and Countersuit Over Release of the Act 20 Funding

On May 13, 2024, DPI filed a counterclaim asserting that DPI should receive the \$50 million appropriated by the Legislature directly rather than the money going into the JCF supplemental funding account as appropriated by Act 19. A small portion of the \$50 million –\$327,400– was disbursed to DPI by JCF in December, 2023, but the remainder is still in dispute.²⁰

Based on the partial veto and the ruling from the Dane County Circuit Court upholding the partial veto, DPI believes that the \$50 million earmarked for Act 19 to implement Act 20 should be disbursed to DPI to be spent as DPI determines.²¹ But despite upholding the Governor’s veto, the Dane County Circuit Court determined that there was not constitutional violation in allowing JCF to continue to hold the funds in its supplemental account.²²

DPI disagrees with this part of the Circuit Court’s ruling and contends that DPI should not have to ask JCF for the funds at all. A recent, separate case ruled that the executive agencies do not have to seek funds from the legislature after they have already been given the power to execute a law.²³ DPI hopes the ruling will apply the same to this situation as well.

To complicate matters even further, the budget governing fiscal operations for the state of Wisconsin ends on June 30, 2025. If the \$50 million earmarked in the JCF

¹⁸ *Wisconsin State Legislature v. Wisconsin Dep’t of Public Instruction et al*, No. 2024AP001713, Order Granting Bypass Petition, January 24, 2025, available at: (<https://www.wicourts.gov/sc/order/DisplayDocImage.pdf?docId=907148>).

¹⁹ *Samuel A. Christensen*, Supreme Court of Wisconsin Calendar: Assignment for April 2025, February 28, 2025 (available at: <https://www.wicourts.gov/sc/orasch/DisplayDocument.pdf?content=pdf&seqNo=922867>).

²⁰ *Wisconsin State Legislature v. Wisconsin Dep’t of Public Instruction et al*, No. 2024CV001127, Answer and Counterclaim, dkt. 20 at 17, May 13, 2024 (available at: https://dpi.wi.gov/sites/default/files/imce/news/Answer_and_counterclaim_file_stamped.pdf).

²¹ *Id.* at 13.

²² *Wisconsin State Legislature v. Wisconsin Dep’t of Public Instruction et al*, No. 2024CV001127, Decision and Order, dkt. 56 at 12, August 27, 2024, available at (https://dpi.wi.gov/sites/default/files/imce/news/Leg_v_DPI_decision.pdf).

²³ *Evers v. Marklein*, 2024 WI 31, where the Wisconsin Supreme Court ruled 6-1 that “by placing the power of the executive branch to carry out the law in a committee of the legislature, the legislative branch subsumed the executive power.”

supplementary budget is not spent by June 30, 2025, it could return to the state surplus.

Controversy with the Council

Act 20 laid out the process to approve certain early literacy curricula and instructional materials. It was supposed to be the following:

1. Vendors submit their materials to be considered by the Council.
2. The Council meets and evaluates the curricula and instructional materials. The first meeting took place in October of 2023.
3. The Council makes a recommendation to DPI about what materials should be approved. This was supposed to happen by December 1st, 2023, but did not happen until February 14th, 2024.
4. The DPI submits that list to the JCF for approval.
5. The DPI posts the list of approved materials to its website for schools to access. The deadline for these actions was January 1st, 2024.
6. Finally, DPI must award grants to reimburse schools who adopt a literacy curriculum from the recommendations after January 1, 2024.²⁴

When this process began, the DPI created a virtual portal where vendors could submit their early literacy instructional materials for the Council to review.²⁵ DPI also developed a self-assessment rubric for vendors to demonstrate whether, how, and where their submitted instructional materials meet the criteria outlined in Act 20.²⁶

Council leaders performed initial reviews of the submitted materials and on February 14, 2024, the Council recommended four titles for Wisconsin's 2024–25 recommended list of early literacy instructional materials:

- *Bookworms Reading & Writing K-3* (Open up Resources, 2022);
- *Core Knowledge Language Arts K-3* (CKLA, Amplify Education, 2022);
- *EL Education K-3 Language Arts* (Open up Resources, 2017);
- *Wit and Wisdom* (Great Minds, 2020) with *PK-3 Reading Curriculum* (Really Great Reading).²⁷

²⁴ *Jill Underly*, Early Literacy Curricula Recommendations as Required Under 2023 Act 20, Wisconsin Department of Public Instruction, February 19, 2024 (available at: [https://dpi.wi.gov/sites/default/files/imce/wi-reads/Letter to JFC 2023 Act 20 Recommended Early Literacy Curriculum.pdf](https://dpi.wi.gov/sites/default/files/imce/wi-reads/Letter%20to%20JFC%202023%20Act%2020%20Recommended%20Early%20Literacy%20Curriculum.pdf))

²⁵ See n. 24 at 3–5.

²⁶ See n. 24 at 3–5.

²⁷ See n. 24 at 3–5.

Four days later, DPI sent a memo to JCF saying that the Council’s recommendations were at risk of being legally challenged.²⁸ DPI then conducted its own review and created its own list of eleven early literacy curriculum packages that they claimed they could legally submit to JCF instead.²⁹

The JCF committee met to consider both lists and voted 10–4 on March 11, 2024, to approve the Council’s list of instructional materials, rather than DPIs.³⁰

On December 6, 2024, the DPI sent a letter to JCF announcing which curricula DPI “has adopted” for approved early literacy curricula for the 2025-26 school year.³¹ This list included the four from the list for the 2024-25 school year with two new additions:

- *Bookworms Reading & Writing K-3* (Open up Resources, 2022);
- *Core Knowledge Language Arts K-3* (CKLA, Amplify Education, 2022);
- *EL Education K-3 Language Arts* (Open up Resources, 2017);
- *HMH Into Reading with Amira* (HMH, 2023);
- *Wit and Wisdom with Geodes* (Great Minds, 2023) and *Foundations* (Wilson Language Training, 2020);
- *Wit and Wisdom* (Great Minds, 2020) with *Really Great Reading* (Countdown, 2017, Blast Foundations 2014, HD Word 2015).³²

In this letter, DPI said that because of the “ongoing issues” with Act 20, “DPI will not submit this curricula list to the Joint Committee on Finance for review or approval.”³³ Instead, DPI unilaterally adopted this list, arguing that because “[o]nce the legislature passes a bill that is signed by the governor and becomes law, the legislature plays no part in enforcing our statutes.”³⁴ Rather, DPI takes the position that all “supervision of public instruction shall be vested in a state superintendent.”³⁵

²⁸ See n. 24 at 7.

²⁹ See n. 24 at 7–8.

³⁰ *Wisconsin Department of Public Instruction, Joint Committee on Finance Approves 2024–25 Early Literacy Instructional Materials List*, April 4, 2024 (available at: <https://dpi.state.wi.us/sfs/joint-committee-finance-approves-2024-25-early-literacy-instructional-materials-list>).

³¹ *Jill Underly, Early Literacy Curricula Recommendations as Required Under 2023 Act 20*, Wisconsin Department of Public Instruction, December 6, 2024 (available at: https://dpi.wi.gov/sites/default/files/imce/wi-reads/JFC_ELCC_Curriculum_List_25-26_FINAL.pdf).

³² See n. 31.

³³ See n. 31.

³⁴ See n. 31.

³⁵ See n. 31.

Where Does Act 20 Stand Now?

There are substantial outstanding questions surrounding Act 20.

First, the Wisconsin Supreme Court has not yet answered whether Governor Evers' line-item veto of Act 100 is constitutional. Without answering that question, it is unlikely that JCF will release any of the remaining funds to DPI without further court intervention.

Which brings us to the second question: whether it is constitutional for JCF to have control over the funds in the first place. DPI claims that withholding the funds is unconstitutional, but the Wisconsin Supreme Court has not answered the question in this context yet.

Finally, there is a question about what curricula is technically approved for the 2025–26 school year. In its December 2024 letter to JCF, DPI claims that it does not need any JCF approval to designate certain curricula as eligible for the grants. However, that position conflicts with the current statute, which says “the department shall submit to the joint committee on finance proposed recommendations...”³⁶

It's also unclear whether the Wisconsin Supreme Court will directly address this curricula approval question when deciding if JCF must release all earmarked funding to DPI, as the countersuit requests. However, the issue may be resolved indirectly. If the Wisconsin Supreme Court rules that JCF must release the funding to DPI, it is likely that DPI will award grants for *all* the curricula it has approved, including the two most recent additions. On the other hand, if the Wisconsin Supreme Court rules that JCF must continue to allocate the funding the way Act 100 was originally written, then it is unlikely the two most recent curricula additions will qualify, unless JCF votes to approve them.

Only the original four curricula provided to JCF in February 2024 were approved by the committee.³⁷

Why Does this Matter for School Districts and Key Takeaways

First, Act 20 is still the law and school districts should be following it. This means:

- Beginning in the 2024–25 school year, school districts must publish the percentage of students reading at grade level by the end of the 3rd grade in their accountability report.³⁸

³⁶ Wis. Stat. § 118.015(1m)(b)1.

³⁷ See n. 30.

³⁸ Wis. Stat. § 115.385(1)(c).

- Each school district must employ a reading specialist certified by DPI to coordinate a comprehensive reading curriculum in grades kindergarten to 12.³⁹
- Each school board must annually assess the early literacy skills of each student enrolled in 4-year-old kindergarten in the school district at least two times during the school year using a fundamental skills screening assessment selected by DPI.⁴⁰
- Each school board must annually assess the early literacy skills of each student enrolled in 5-year-old kindergarten to 3rd grade at least three times during the school year using a universal screening assessment selected by DPI and return those results to parents within 15 days of the assessment.⁴¹
- A student who is enrolled in 5-year-old kindergarten to 3rd grade who is identified as “at risk” on a universal screening or diagnostic assessment must be put on a personal reading plan.⁴²
- Each school board must establish an early literacy remediation plan for grades 5-year-old kindergarten to 3rd.⁴³
- Each school board must ensure that by July 1, 2025, each individual who teaches a class from kindergarten to 3rd grade has received professional development training.⁴⁴
- Each school board must adopt a policy on promotion of students from 3rd grade to 4th grade who have not completed their personal reading plan.⁴⁵
- Your school may be identified as one of the schools with the greatest need for early literacy instructional coaching and be assigned a literacy coach.⁴⁶

Second, DPI is currently taking applications for the reimbursement grants, and they are due on May 9, 2025.⁴⁷ If your district is applying for a grant for the 2024–25 school year the approved curriculum and instructional materials needed to be purchased between January 1 and December 31, 2024.⁴⁸ If your district is applying for a grant for the 2025–26 school year, the approved curriculum and instructional materials needed to be purchased between January 1 and May 9, 2025.⁴⁹

Your school can access the application here:

<https://forms.office.com/Pages/ResponsePage.aspx?id=QNFUFmAyA0m1txhFAFHO>

³⁹ Wis. Stat. § 118.015(2).

⁴⁰ Wis. Stat. § 118.016(2).

⁴¹ Wis. Stat. § 118.016(3–4).

⁴² Wis. Stat. § 118.016(5).

⁴³ Wis. Stat. § 118.016(6).

⁴⁴ 2023 Wisconsin Act 20, non-statutory provisions § 27(2)(a).

⁴⁵ Wis. Stat. § 118.33(5m).

⁴⁶ Wis. Stat. § 115.39(3)(a)2.a.

⁴⁷ *Wisconsin Department of Public Instruction, Early Literacy Curriculum: Early Literacy Curriculum Grants* available at: (<https://dpi.wi.gov/wi-reads/curriculum#Curriculum%20Grants>).

⁴⁸ See n. 44.

⁴⁹ See n. 44.

Third, just because DPI is taking applications does not guarantee the funding will be available for schools. As explained above, if the funding is not released by June 30, 2025, the funding will return to Wisconsin's state surplus.⁵⁰ Since the Wisconsin Supreme Court is hearing this case in April, it is likely that a ruling will come out before that funding reverts back to the surplus.

Finally, the two curricula added to the approved list by DPI in December of 2024 were not approved by JCF and ultimately may not count towards the grant awards. Wisconsin statute created by Act 20 requires JCF to approve curricula and instructional materials that schools can receive grants for, and those two items do not have JCF approval.

Conclusion

While the legal and political battles surrounding Act 20 continue to unfold, the core mission of the law remains unchanged: improving early literacy outcomes for Wisconsin students. School districts must stay informed, proactive, and compliant with current law, even amid lingering uncertainties around funding and curriculum approvals. Every child in Wisconsin has the opportunity to become a confident, capable reader. Even with the pending court decisions or administrative disputes, the potential impact on student achievement is too significant to ignore.

⁵⁰ *Corrinne Hess*, Money allocated for Wisconsin reading law could go to state surplus if not used by June 30, January 15, 2025 (available at: <https://www.wpr.org/news/money-allocated-wisconsin-reading-law-state-budget-surplus-not-used-june-30>).