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John H. Ashley, Executive Director

TO: Members, Assembly Committee on Education
FROM: Dan Rossmiller & Chris Kulow, Government Relations Staff
RE: Assembly Bill 488, relating to requiring an evaluation of whether a pupil with an extended absence from school is a child with a disability.
DATE: January 14, 2016

The Wisconsin Association of School Boards, representing 423 school boards across the state of Wisconsin, is neutral on Assembly Bill 488.

This bill requires a school attendance officer to:

- direct the school board of the school district in which a child resides to determine whether to refer a child who has been excused absent due to a medical condition for ten or more days for an evaluation as to whether the child is a child with a disability;
- direct the school district to provide the parent or guardian of that child with information about the school district's special education referral and evaluation procedures; and
- notify the parent or guardian of a child who is a habitual truant whether that they may request a special education referral for an evaluation of whether the child is a child with a disability together with information about the school district's special education referral and evaluation procedures.

The bill also requires that school attendance policies must include provisions that require the school attendance officer to direct the school board in which a child resides to determine whether to refer a child who is absent for ten or more days for an evaluation as to whether the child is a child with a disability. (This provision does not specify whether the absence is excused or not.)

While we are still evaluating the merits of the bill, we have a number of concerns with the way this bill is drafted that prevent us from supporting the bill in its present form. These concerns are largely technical.

One concern is that the bill does not specify the measuring period during which the ten more days are to be measured. Is it during a school year? During a semester? During the child's entire educational career? This needs to be clarified in order for schools to be certain they are complying with the requirements set forth in the bill.

Another concern is that (as noted above) the ten-or-more-day period described in Section 3 of the bill dealing with school attendance policies does not specify whether the absence is excused or not or whether, like under Section 1 of the bill, the absences are in any way related to a medical condition. Further, like the provisions in Section 1 of the bill this provision in Section 3 also does not specify the measuring period during which the ten more days are to be measured. If it is intended that the ten- or-more-day period applies to all absences, it intersects with section 118.15(3) (c), Stats., which allows a child to be excused in writing by his or her parent or guardian before the absence for a period of up to ten days in a school year. Further, a district may have to count truancy or days of disciplinary suspension toward the ten days mentioned in Section 3 of the bill as currently drafted. We think Section 3 of the bill should clarify that this section does not apply except to absences related to a medical condition that are excused under s. 118.15 (3) (a). This change would make Section 3 of the bill parallel Section 1 of the bill, which we believe was the intent.

We note that concerns have been raised from time to time about whether certain districts are over-identifying students or subgroups of students as children with disabilities. Another potential concern we have with the bill is that if extended absences from school occur disproportionately among low-income students (students in poverty) and students of color (minority students), the provisions of this bill could lead to higher rates of identification of poor and minority students as children with disabilities.

Finally, while the bill aims primarily at referrals and evaluations as to whether the child absent for an extended period is a child with a disability as defined under the federal special education law known as the Individuals with Disabilities Education Act (IDEA), it strikes us that the children most likely to be absent for an extended period should perhaps be evaluated as to whether they have a physical or mental impairment that substantially limits one or more major life activities and thus may qualify for what is known as a Section 504 accommodation.

Section 504 of the Rehabilitation Act of 1973 is a federal antidiscrimination law designed to eliminate discrimination on the basis of disability against students with disabilities. It aims generally to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education. Its language provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"

A student with a suspected disability may be referred for an evaluation pursuant to the IDEA, under Section 504 or both. The bill addresses only referrals for an evaluation under IDEA.