

1 **WISCONSIN ASSOCIATION OF SCHOOL BOARDS, INC.**
2 Madison, Wisconsin
3 December 6, 2016
4

5 **REPORT TO THE MEMBERSHIP ON 2017 RESOLUTIONS**
6 WASB Policy & Resolutions Committee
7 Terry McCloskey, Three Lakes School Board, Chair
8
9

10 **Resolution 17-01: Technical Resolution—Revisions to Repeal Outdated Resolutions**

11 a) **Repeal Resolution 1.23 *School Calendar***

12 Rationale: 2011 Wisconsin Act 10 made significant changes to the collective bargaining law
13 affecting school district employees and prohibits the school calendar from being a subject of
14 bargaining.
15
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17
18
19 b) **Repeal Resolution 1.24 (b) *Days of Instruction***

20 Rationale: 2011 Wisconsin Act 10 made significant changes to the collective bargaining law
21 affecting school district employees and prohibits the school calendar from being a subject of
22 bargaining.
23
24

25
26 c) **Repeal Resolution 3.116 *Administration of Certain Required State Assessments***

27 Rationale: The requirement that the ACT Explore test must be administered twice in the 9th
28 grade, once in the fall and once in the spring, which was enacted in 2013 Wisconsin Act 20,
29 the 2013-15 biennial budget, was repealed by 2015 Wisconsin Act 55, the 2015-17 biennial
30 budget.
31
32

33 **Resolution 17-02: Technical Resolution—Revisions to Amend Outdated Language**

34 a) **Amend Resolution 2.05 *Balanced Tax System*** as follows:
35
36

37 **2.05 Balanced Tax System**

38 The WASB recommends developing a well-balanced tax system that lowers Wisconsin's
39 heavy reliance on the income and property taxes while ~~maintaining the current two-thirds~~
40 ~~funding commitment for schools and~~ properly funding existing mandates. **(2003-10)**

41 Rationale: The state's two-thirds funding commitment was repealed in the 2003-05 state
42 biennial budget (2003 Wisconsin Act 33). From the 1996-97 school year through the 2002-
43 03 school year, the state committed by state statutes to fund two-thirds of public school
44 costs, calculated on a statewide basis.
45

1 b) **Amend Resolution 2.12 (g) State Aid Reduction** as follows:

2
3 **g) Enhance Flexibility**

4 No reductions in state support for school districts should be enacted without concurrent
5 relief in school district mandates, ~~including binding arbitration~~, and an increase in
6 flexibility being granted to meet school district operational needs. **(1991-16)**

7
8 Rationale: 2011 Wisconsin Act 10 made significant changes to the collective bargaining
9 law affecting school district employees and eliminated binding arbitration.

10
11
12 c) **Amend Resolution 3.18 State School Accountability System and ESEA Waiver** as
13 follows:

14
15 **3.18 State School Accountability System and ESEA Waiver**

16 The WASB supports the state's efforts to develop a state school accountability system for
17 all schools that receive public funds ~~as a necessary step to applying for a federal waiver~~
18 ~~from the accountability provisions of the current version of the Elementary and~~
19 ~~Secondary Education Act (ESEA) known as No Child Left Behind. The WASB further~~
20 ~~supports the state's efforts to obtain a federal ESEA flexibility waiver. (2012-10)~~

21
22 Rationale: Congress reauthorized the Elementary and Secondary Education Act (ESEA)
23 in December 2015 as the Every Student Succeeds Act (ESSA), as a replacement for the
24 No Child Left Behind Act. Under the ESSA, accountability waivers to states granted by
25 the U.S. Department of Education expired on August 1, 2016.

26
27
28 d) **Amend Resolution 6.13 State and Local Responsibility** to update the language as
29 follows:

30
31 **6.13 State and Local Responsibility**

32 The WASB recognizes that the Wisconsin Department of ~~Workforce Development~~Safety
33 and Professional Services is responsible for monitoring school districts to ensure safe and
34 healthful school facilities. The WASB supports state statutes that recognize the state and
35 local responsibility to maintain modern, safe and healthful school buildings. **(1994-1)**
36 **(1997-1)**

37
38 Rationale: This change updates the name of the state agency responsible for administering and
39 enforcing laws to ensure safe and sanitary conditions in public and private buildings. 2011
40 Wisconsin Act 32, the 2011-13 biennial budget, created the Department of Safety and
41 Professional Services by combining the Department of Regulation and Licensing and the
42 Divisions of Safety and Buildings and Environmental and Regulatory Services from the
43 Department of Commerce.

1 **Resolution 17-03: Commencement of the School Term**

2
3 **Create:** The WASB supports legislation to allow PreK-8 school districts to begin their school
4 term before September 1.

5
6 **Rationale:** School districts have supported, without success, attempts to repeal the school start date
7 mandate law (s. 118.045, Stats.) since that law was enacted in 1999. Over the years, one argument
8 that the tourism industry has used to justify its support for the current mandate law is that starting
9 school prior to September 1 deprives that industry of seasonal workers needed to meet demand.
10 However, students in PreK-8 districts are not typically part of the teenage workforce that is employed
11 in the summer tourism industry. As a result, the impact of making this change on tourism and the
12 tourism workforce would be small, given the small number of PreK-8 districts (46) in the state.

13
14 An existing WASB resolution—Resolution 1.22 *Authority to Establish the School Calendar*—calls for
15 repealing the existing start date statute. This proposed resolution would amend the existing statute to
16 create a limited exception without affecting existing Resolution 1.22.

17
18
19 **Resolution 17-04: Increase Resources for Summer Learning**

20
21 **Amend** existing **Resolution 2.41(h)** as follows:

22
23 **h)** Include 100 percent of full-time equivalent (FTE) summer school membership for
24 each of the years used in the computation of the revenue cap. **(1995-17)**

25
26 **Rationale:** Research indicates that high-quality summer school programs can positively impact
27 student achievement, leading to demonstrable growth in learning and social skills while reducing the
28 summer learning slide. This proposed resolution supports a mechanism to provide additional resources
29 to districts to support summer school learning.

30
31 Summer school has long been aided by the state through the general aid formula, which allows
32 100 percent of the full-time equivalent (FTE) enrollment of summer school students to be fully
33 counted for aid purposes. Under current law, for revenue limit purposes, districts can include in
34 their membership counts 40 percent of the full-time equivalent (FTE) summer enrollment in
35 academic summer classes or laboratory periods that are for necessary academic purposes, as
36 defined in administrative rule by DPI. This proposed resolution, if adopted, would clarify that the
37 WASB supports allowing districts to count 100 percent of their full-time equivalent (FTE)
38 summer enrollment for revenue limit purposes.

39
40
41 **Resolution 17-05: Transportation Aid to Address Student Mobility**

42
43 **Create:** The WASB supports creating a state categorical aid targeted to assist districts with the
44 costs of transporting mobile or transient students to the school in which they were originally
45 enrolled when, within a given school year, such students move to another school within the
46 district.

1 Rationale: Keeping students in stable learning environments is important to student learning growth
2 and achievement. Changing schools multiple times during a year significantly impedes a student’s
3 academic and social growth. The research on highly mobile students, including homeless students,
4 indicates that a student can lose academic progress with each school change. Highly mobile students
5 have also been found to have lower test scores and worse overall academic performance than peers
6 who do not change schools frequently. High student mobility also creates a challenge for districts
7 because when students move from one school to another during the school year, the district must
8 revisit staffing and resources to ensure that all students’ needs are met.

9
10 Federal law—through the McKinney-Vento Act and Every Student Succeeds Act (ESSA)—
11 imposes requirements on school districts to keep homeless children and youths—those who lack
12 a fixed, regular, and adequate nighttime residence—and children in foster care in their school of
13 origin to promote school stability and greater educational outcomes overall, unless it is not in the
14 student’s best interest. In the interest of maintaining educational stability and improving student
15 achievement, school districts may choose to keep transient or mobile students who are not
16 “homeless” under federal law definitions in the same school even if they are not legally required
17 to do so.

18
19 In addition to state and local funds that may be available for providing transportation, limited
20 amounts of federal funds may be available to cover additional transportation costs to maintain
21 students in their schools of origin as required by law; however, these funds, even if available, are
22 unlikely to cover the full costs of such transportation.

23
24
25 ***Resolution 17-06: Annual Revenue Limit Adjustments***

26
27 **Substitute the following language for the language of current Resolution 2.41 (u):**

28
29 The WASB supports legislation to annually increase per pupil revenue limits statewide
30 by a dollar amount equal to the percentage increase, if any, in the consumer price index
31 (CPI-U) on a fiscal year basis applied to the statewide average revenue limit authority per
32 pupil.

33
34 Rationale: Revenue limits were implemented in 1993-94 by state lawmakers, as a means of
35 controlling increases in school property tax levies. Throughout most of the history of revenue limits,
36 lawmakers provided annual per pupil adjustments in the amount school districts could raise. These
37 adjustments helped school district budgets keep pace with inflation in school costs. Since 2009,
38 however, per pupil adjustments to revenue limits have not kept pace with inflation and in the 2015-16
39 and 2016-17 school years and thereafter no per pupil adjustment is provided.

40
41 This proposed resolution updates Resolution 2.41 (u) to clarify that it calls for a restoration of the
42 annual per pupil adjustments aligned to CPI-U of the type that were customarily provided by
43 lawmakers prior to 2009.

1 **Resolution 17-07: Narrowing Disparities in Allowable Revenue Under the Revenue Limits**
2

3 **Create:** The WASB supports legislation to require the Department of Public Instruction (DPI)
4 each year to identify in dollar terms a per-pupil revenue limit that approximates 95 percent of the
5 statewide average per-pupil revenue limit and to allow any district with a per-pupil revenue limit
6 that falls below that dollar amount identified by the DPI to increase its revenue limit each year
7 by up to \$100 per-pupil more than the dollar amount of the per-pupil adjustment generally
8 allowed by law without the need for referendum approval up to the dollar amount identified by
9 the DPI.

10
11 Rationale: Revenue limits were imposed on school districts by the state, beginning in 1993-94, and
12 have been in place for 24 years. Districts that were frugal and low-spending back in 1992-93 often
13 argue they have been unfairly locked-in to their per-pupil spending levels/patterns at that time by these
14 limits and can only break free if they can pass a referendum to increase their revenue limit. For some
15 districts, this may be difficult or unlikely.

16
17 Early on, lawmakers recognized that disparities in the ability of districts to pass referendums
18 could lead to widening of the gaps in budgetary resources between low-revenue-limit and high-
19 revenue-limit districts. They enacted the low revenue ceiling in the 1995-97 biennial budget act
20 (the same act that made revenue limits permanent). The low revenue ceiling allows school
21 boards of the lowest spending districts in the state to increase their per-pupil revenues up to the
22 dollar amount of this ceiling (set by the Legislature) without having to go to a referendum vote.

23
24 No school board is required to raise its per-pupil revenues to up to the dollar amount of the low-
25 revenue ceiling; rather, it is an option that gives the lowest-spending districts an opportunity—if
26 they choose to use it—to narrow their revenue disparity with the highest-spending districts.

27
28 The proposed resolution uses an approach similar in concept to the low-revenue ceiling but
29 distinguishable as different. Rather than allowing a district to increase its per pupil revenue limit
30 to a set figure in one fell swoop, it takes an incremental approach that allows a series of increases
31 over a several year period. The proposed resolution expresses support for an approach that would
32 allow districts with per-pupil revenue limits below a certain defined dollar amount to
33 incrementally increase their revenue limits each year by up to \$100 more per year than districts
34 above that certain defined dollar amount until they reach or “catch up” to that defined dollar
35 amount. No board would be required to raise its per-pupil revenues under this approach, the use
36 of which would be optional.

37
38
39 **Resolution 17-08: Impact Aid**
40

41 **Create:** The WASB petitions the Wisconsin Legislature to adopt a joint resolution asking
42 Congress to fully fund Impact Aid as it did from the creation of the program in 1950 until 1969,
43 and will also work with the NSBA to try to secure greater funding of Impact Aid, including by
44 offering a proposed resolution to the NSBA urging NSBA to lobby Congress for a similar
45 increase in federal Impact Aid.

1 Rationale: Impact Aid is a federal program created in 1950 to provide financial assistance to
2 school districts financially "impacted" by federal activities. For example, when a school district
3 has federal land within its boundaries (e.g., Indian land or a military installation), such land is
4 exempt from taxation. The school district cannot receive property taxes for that land, even if
5 children who attend schools in the district reside there. Impact Aid compensates school districts
6 for this loss of local tax revenue.

7
8 Between 1950 and 1969 Congress fully funded the Impact Aid program; but with the creation of
9 numerous new programs within the discretionary side of the federal budget, Impact Aid began
10 competing for discretionary dollars, a situation which has continued for the past 45 years. If all
11 1,300 school districts in the country that receive Impact Aid were fully funded, the total cost of
12 the program would be slightly over \$2 billion. However, the program is currently funded at about
13 \$1.1 billion—or approximately 55 percent of the amount necessary to fund all districts at the
14 level that was intended they should receive. This proposed resolution supports full funding of the
15 Impact Aid program.

16
17
18 ***Resolution 17-09: Educational Goals and Objectives***

19
20 **Substitute the following language for the language of current resolution 3.01(c):**

21
22 (c) recognition that a “well-rounded education” includes courses, activities, and programming
23 in subjects such as English, reading or language arts, writing, science, technology, engineering,
24 mathematics, foreign languages, civics and government, economics, arts, history, geography,
25 computer science, music, career and technical education, health, physical education, and any
26 other subject, as determined by the State or local school district, with the purpose of providing
27 all students access to an enriched curriculum and educational experience.

28
29 Rationale: A frequent criticism of No Child Left Behind (NCLB), the version of the federal
30 Elementary and Secondary Education Act (ESEA) in effect from 2001 to December 2015, was its
31 overemphasis on English language arts and mathematics as the only measures of student success. The
32 result, said critics, was a national trend of narrowing K-12 curricula and instruction toward those two
33 subjects and “teaching to the test.”

34
35 With this criticism in mind, Congress reauthorized the ESEA in late 2015, replacing NCLB with the
36 Every Student Succeeds Act (ESSA) in a way that encourages states and districts to embrace an
37 educational model that offers a comprehensive educational program to meet each student’s unique
38 academic needs, learning styles and interests. The ESSA encourages states to re-establish a “well-
39 rounded education” for all students, which covers a wide selection of academic subjects, including the
40 arts, humanities, sciences and social sciences, in addition to English language arts and mathematics.

1 The ESSA opens up opportunities for states and districts to invest in activities that support a “well-
2 rounded education” by authorizing Student Support and Academic Enrichment Grants under Title IV,
3 Part A meant to increase state and local capacity to provide, among other things, students access to a
4 “well-rounded education.” This grant program is a consolidation of several smaller, targeted NCLB
5 grants into a single formula-funded flexible block grant program. This frees school districts from
6 having to select a specific subject area or type of program and allows them room to create their own
7 unique program.

8
9 Beyond authorizing Student Support and Achievement Grants, ESSA also clearly opens up a well-
10 rounded education to include both in-school and out-of-school learning opportunities in Titles I, II and
11 IV. For example:

- 12
- 13 ○ Title I includes a requirement that all districts provide a “well-rounded program of instruction
14 that meets the needs of all students.”
- 15 ○ Title II allows funds to be used to help teachers “integrate comprehensive literacy instruction
16 into a well-rounded education.”
- 17 ○ Title IV encourages districts and local partners to provide “well-rounded education activities,
18 including activities that enable students to be eligible for credit recovery or retainment.”
- 19

20 This proposed resolution supports a strategy to meet these educational goals by recognizing the
21 elements of a “well rounded education,” which are more consistent with the language of the
22 ESSA than the reference to “comprehensive education” in the current language of Resolution
23 3.01 (c).

24

25

26 ***Resolution 17-10: Measuring College- and Career-Readiness***

27

28 **Create:** The WASB supports the use of a framework of multiple valid and reliable readiness
29 indicators to more accurately assess students' college- and career-readiness to succeed in life.

30
31 Rationale: Under the state’s current accountability framework, students’ readiness for college or
32 careers is determined largely on the basis of standardized test scores, particularly scores in the
33 domains of English language arts and mathematics. Some argue that this framework is too narrow and
34 that multiple measures of college-and career-readiness should be utilized to recognize students who
35 have demonstrated the knowledge, skills and dispositions that indicate a readiness for life (and
36 success) after high school. Under the federal Every Student Succeeds Act (ESSA), states must
37 develop robust, multi-measure statewide accountability systems and are able to identify new indicators
38 of Academic Progress and School Quality or Student Success, as long as the *indicators are proven to*
39 *increase student academic achievement or, at the high school level, graduation rates.*

40
41 This proposal would support the use of a framework of multiple research-based readiness
42 indicators to more accurately assess students' readiness to succeed in college, career and life.
43 One example of such a framework is the *Redefining Ready!* Campaign developed by the
44 American Association of School Administrators (AASA), the national school superintendents’
45 association.

1 **Resolution 17-11: Medicaid Direct Certification**

2
3 **Create:** The WASB supports the Department of Public Instruction initiative to create a
4 demonstration project which would enable participating school districts to test the use of Medicaid
5 enrollment to qualify children for free or reduced-price meals.
6

7 Rationale: In January 2016, the U.S. Department of Agriculture (USDA), which administers the
8 federal school meals program, published a policy memorandum titled *Request for Applications to*
9 *Participate in New Demonstrations to Evaluate Direct Certification with Medicaid*. Because direct
10 certification has the potential to improve student access to school meals, reduce administrative burden
11 for schools and local educational agencies, and improve certification accuracy, the new
12 demonstrations will evaluate the impact of using Medicaid data to directly certify students for both
13 free and reduced price meal eligibility.
14

15 The DPI School Nutrition Team (SNT) is submitting an application to USDA to participate in
16 these new demonstration projects for the 2017-2018 school year. This proposed resolution
17 expresses support for this demonstration project.
18
19

20 **Resolution 17-12: Mental Health Supports**

21
22 Amend Resolution 6.06 *Mental Health Supports* as follows:
23

24 **Mental Health Supports**

25 The WASB supports the provision of state funding adequate to: address the shortage of mental
26 health professionals in our state qualified to address the needs of school-age children and
27 young adults; provide adequate professional mental health supports in our schools and our
28 communities that wish to provide such supports; and permit schools to enter into effective
29 partnerships with agencies that are involved with mental health to provide for school-based
30 mental health programs, that could provide services, including but not limited to, the
31 following:
32

- 33 • Comprehensive student screening in every school;
- 34 • Professional development for ~~classroom teachers~~ all staff on recognition and
35 appropriate classroom response to support affected students;
- 36 • Professional mental health counselors and/ or services;
- 37 • Professional education and training to expand availability of mental health
38 professionals; and
- 39 • Public information programs related to mental health.
40

41 Rationale: This proposed amendment would clarify that the provision of mental health supports
42 to students by school districts is voluntary and that the objective of securing state funding to
43 address student mental health needs should allow for professional development for all licensed
44 professional staff and not solely for classroom teachers.

1 **Resolution 17-13: Sparsity Aid**

2
3 **Amend** Resolution 2.16 (a) *Sparsity Aid* as follows:

4
5 **(a) Sparsity Aid**

6 The WASB supports providing sparsity aid based on enrollment size and population density
7 (students per square mile), without regard to the percentage of the district's enrollment that is
8 eligible for free- and reduced-price lunch, ~~provided that, if any formula changes are made.~~ If
9 sparsity aid eligibility is expanded, additional funding should be provided to maintain sparsity
10 aid payments to districts that are currently eligible. (2012-2)

11
12 **Rationale:** This proposed resolution would clarify the intent that if changes are made to sparsity aid
13 that would allow more districts to qualify for this aid, funding should be increased so that payments to
14 previously eligible recipient districts do not have to be decreased or prorated.

15
16
17 **Resolution 17-14: Recovery School Districts**

18
19 **Substitute** the following language for the language of current Resolution 1.01 (b) *Recovery School*
20 *Districts* as follows:

21
22 **(b) Recovery School Districts**

23 The WASB opposes the creation in Wisconsin of a recovery school district or a similar state-
24 created authority designed to take over public schools or school buildings.

25
26 **Rationale:** This proposed resolution would reiterate the WASB's support for the governance of public
27 schools by locally elected boards and restate the WASB's opposition to proposals or programs to
28 remove governance from local school boards in unambiguous language. (2015 Wisconsin Act 55, the
29 2015-17 biennial state budget, created a program under which certain of the lowest performing,
30 vacant, or underutilized schools in Milwaukee County are to be transferred from management and
31 control of the locally elected school board to an Opportunity Schools and Partnership Program under
32 the management and control of a Commissioner supervised by the Milwaukee County Executive.

33
34
35 **Resolution 17-15: Weapons Possession**

36 **Amend** Resolution 6.11 (b) *Weapons Possession* as follows:

37
38 (b) The WASB supports safe learning environments for all children, free of guns and other
39 weapons. Further, the WASB opposes any initiatives at the state or federal level that would
40 legalize any further ability for anyone, with the exception of sworn law enforcement officers,
41 to bring a weapon or possess a weapon, including a facsimile or "look-alike" weapon,
42 concealed or otherwise, in school zones or lessen the consequences for violation of existing
43 safe school policies relating to guns and other weapons. Decisions about whether CCW
44 licensees may possess weapons in school buildings must remain exclusively in the hands of the
45 locally elected school board which governs the school.

1 Rationale: This proposed amendment would update the existing WASB resolution to reflect recent
2 changes in state law, as well as anticipated proposals to change state law with respect to individuals
3 possessing firearms in or on school grounds.
4

5 2011 Wisconsin Act 35, commonly referred to as the Carrying Concealed Weapon (CCW) law,
6 effectively allows those with training and registration to carry concealed weapons in most settings
7 unless specially prohibited by law. Act 35 became effective November 1, 2011, and changed the state
8 law governing firearms in or on school grounds or in school zones (i.e., within 1,000 feet of school
9 grounds). Under the amended law, there is a general prohibition on individuals, including students,
10 knowingly possessing firearms in or on school grounds. There is no exception provided for CCW
11 licensees. However, some exceptions make it lawful to possess a firearm:
12

- 13 (1) on private property that is not part of school grounds;
- 14 (2) for use in a program approved by a school in the school zone;
- 15 (3) in accordance with a contract entered into between a school in the school zone and the
16 individual or employer of the individual;
- 17 (4) by a law enforcement officer acting in his or her official capacity;
- 18 (5) when the firearm is unloaded and is possessed by an individual while traversing school
19 premises for the purpose of gaining access to public or private lands open to hunting, if the
20 entry on the school premises is authorized by school authorities;
- 21 (6) when the firearm is not loaded and is encased or in a locked firearms rack that is on a
22 motor vehicle;
- 23 (7) by a state-certified commission warden acting in his or her official capacity; or
- 24 (8) by a person legally hunting in a school forest if the school board has decided that hunting
25 may be allowed in the school forest.
26

27 In general, absent an exception in the law, firearms are not allowed on school grounds, regardless of
28 any rights afforded under Act 35 for carrying concealed weapons. Further, although a CCW licensee
29 may possess a firearm within 1,000 feet of school grounds, other individuals, including students, are
30 generally prohibited from such possession.
31

32 Legislation that was proposed last session and will be reintroduced in January would allow an
33 individual who has a CCW license to possess a firearm on the grounds of a school, but would prohibit
34 a CCW licensee from possessing a firearm in a building on the grounds of a school if instruction is
35 provided to students in the building and if the building has signs posted at all entrances that notify the
36 licensee not to enter or remain in the building while possessing a firearm.
37
38

39 ***Resolution 17-16: Education Savings Accounts***

40
41 Create: The WASB opposes the creation of Education Savings Accounts.
42

43 Rationale: The WASB has not taken a position with respect to Education Savings Accounts (ESAs).
44 This proposed resolution would establish a WASB position on ESAs.
45

46 Education Savings Account (ESA) programs (as known as “Vouchers 2.0”) are a type of private
47 school choice program that provides eligible students with public funding toward a private education.

1 They are a mechanism that enables a parent to direct their education funding to the schools, courses,
2 programs, and services of their choice. ESAs typically may be used fund private school tuition, online
3 education and other educational expenses. Assembly Republicans who hold a substantial majority
4 have proposed advancing ESAs in their 2017-18 Legislative Agenda, which they have labeled the
5 “Forward Agenda.”
6

7 Education Savings Accounts (ESAs) can be distinguished from voucher programs in that vouchers are
8 a *school choice* program. Vouchers generally provide interested parents with funding for *tuition* at a
9 religious or secular private school. ESAs, on the other hand, are an *educational* choice program.
10 ESAs are typically designed to fund *a broader set of educational expenses*, such as private school
11 tuition and fees, online learning programs, private tutoring, education therapies for students with
12 special needs, textbooks, or dual enrollment or higher education expenses. ESA programs also lay out
13 which expenses are allowed and what to do with any unused funds. In some cases, ESAs allow funds
14 to be used for college savings plans or for a student to enroll in college courses
15

16 ESAs are a new but rapidly expanding private school choice option. While the first voucher program
17 began in 1990, the first ESA program began more recently in 2011 in Arizona. Since then, ESA
18 programs have been adopted in Florida (in 2014), and Mississippi, Tennessee and Nevada. Eligibility
19 for ESAs can be limited to special populations (e.g., Florida or Tennessee, which limit participation to
20 special populations) or can be available to nearly all students (e.g., Nevada). The Nevada program
21 extends eligibility to all 450,000+ public school students in the state, making it the country’s most
22 expansive K-12 choice program ever enacted. In all five states that have enacted ESA programs,
23 students must leave or withdraw from public education in order for their family to access ESA funds.
24

25 Advocates for ESAs argue that they give parents greater control and ability to “unbundle” educational
26 services or access a wider range of services than vouchers do. They also argue that by allowing parents
27 to plan for their child’s unique needs, ESAs create a personal approach to education that can maximize
28 each child’s natural learning abilities.
29

30 Critics question whether educational providers who accept ESA funds will offer uniformly high-
31 quality services and, if not, whether parents will be able to differentiate between high-quality
32 providers and low quality providers. At their worst, ESA programs might simply enable low-
33 performing private schools of other providers to access millions of dollars of government
34 revenue.
35

36 It is an open question whether or how ESAs could be used in any in public schools given that the
37 Wisconsin Constitution requires public education to be “free and without charge for tuition to all
38 children.” Wisconsin statutes provide a number of pathways for non-public school students to
39 access public school courses at the high school level free of charge in their district of residence.
40 Under s. 118.145(4), Stats., pupils enrolled in private schools or tribal schools may take up to
41 two public high school courses each semester in the school district in which they reside if space
42 is available. Under s. 118.53, Stats., pupils who are home-schooled may take up to two public
43 high school courses each semester in the school district in which they reside if the school board
44 determines that they qualify for admission to those courses and space is available.

1 **Resolution 17-17: Gender Identity**
2

3 **Create:** The WASB encourages each member school board to take the initiative to assess
4 whether its policies and/or practices deny equal opportunities for students and/or school district
5 employees as a result of the person’s sex, including transgender status, change of gender, gender
6 identity, gender expression or gender nonconformity.
7

8 **Rationale:** While federal non-discrimination law—Title IX—has been the basis for conflicting
9 court rulings related to transgender individuals, as well as guidance from the Office for Civil
10 Rights and the U.S. Department of Justice over the past several years, school districts generally
11 have an obligation to support all students by providing a safe, positive environment. In this
12 period of unsettled law, school districts may be well advised to address the needs of
13 transgendered students to ensure their transgender status does not interfere with their ability to
14 access educational programs. This proposed resolution suggests that while the legal battles swirl,
15 a review of district policies and a thoughtful, case-by-case approach to addressing these needs is
16 advisable.
17

18 While school leaders await further resolution of their legal obligations to students from the courts
19 and, potentially, from Congress, applicable state legislatures, and administrative agencies, they
20 will continue to face policy challenges as they attempt to balance student rights and personal
21 privacy, provide safe learning environments for all students, and ensure that no student is
22 unnecessarily marginalized.
23

24 While federal circuit courts are currently divided on the issue of whether a different federal non-
25 discriminations law—Title VII—may be used by transgender employees as a basis to sue a
26 public employer for discrimination, the federal Equal Employment Opportunity Commission
27 (EEOC) has, since 2012, held that discrimination against transgender employees because of their
28 gender identity is prohibited by Title VII as discrimination because of sex. Although EEOC
29 rulings are not directly binding on employers, federal courts give deference to EEOC substantive
30 guidance and regulations to the extent the court finds them persuasive.
31

32 This proposed resolution suggests that with respect to both students and employees, school
33 leaders should continue to monitor further developments in this area and, in the absence of
34 binding court precedents, consider that it may be a best practice for boards to review their
35 board’s policies in this area.