Background Information on Selected Proposed Resolutions for 2015 WASB Delegate Assembly

Resolution 15-09: Modify Out-of-State Tuition Payment Statute
&
Resolution 15-10: Boundary Appeal Board Decisions

Both resolutions stem from essentially the same concern and both relate to the out-of-state tuition payment statute (sec. 121.78, Wis. Stats). (See below.)

The original resolution was brought forward by a school board whose district borders on upper Michigan. According to the offering board, an upper Michigan school district that lies just across the border is aggressively recruiting Wisconsin resident students who live closer to the Michigan school than to the schools they would attend in their district of residency.

That Michigan district is using Wisconsin's tuition payment statute, which allows parents to appeal a school board's refusal to allow the district resident student to attend an out-of-state school at a cost of tuition to the resident district to facilitate this "poaching" of students.

Michigan has no similar statute requiring a Michigan district to pay tuition to a Wisconsin district, should Michigan resident students wish to attend a Wisconsin public school.

Current Wisconsin law (Wis. Statutes, section 121.78) contains provisions for Wisconsin resident students to enroll in an out-of-state school with the Wisconsin school district paying tuition to the out-of-state school district.

Section 121.78, Wis. Statutes, governing **Tuition payments by school districts**, states:

> **(1)** By agreement.
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> **(a)** The school board of the district of residence and the school board of the district of attendance may make a written agreement to permit an elementary or high school pupil to attend a public school, including an out-of-state school, outside the school district of residence, and the school district of residence shall pay the tuition. The school district of residence shall be paid state aid as though the pupil were enrolled in the school district of residence.
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> **(b)** A school board, upon its own order, may provide for the enrollment of a pupil in a public school located outside this state, if the course of study in such school is equivalent to the course of study in this state and if the school is at least 1.5 miles nearer the pupil's home than any public school in this state. The school board shall pay the tuition for such pupil and the school district shall be paid state aid as though such pupil was enrolled in the school district of residence. The school board shall pay for the transportation of a pupil so enrolled who resides 2 or more miles from such out-of-state school. The school district shall be paid state aid under subch. IV for the transportation of such pupil as though the pupil had been transported to the school of the school district of residence.

(c)

1. The parent or guardian of a pupil may request the school board of the school district in which the pupil resides to provide for the enrollment of the pupil at a public school located outside this state under par. (b). The request shall be in writing. If the school board denies the request, the parent or guardian may request the school district boundary appeal board, in writing, to review the denial. Failure of a school board to act on a written request within 45 days of its submission to the school board constitutes a denial reviewable by the school district boundary appeal board.

2. Upon receipt of a request for review, the school district boundary appeal board may order the school board to pay tuition and transportation costs, as provided in par. (b), for the pupil's attendance at the out-of-state public school if the board finds that the course of study in the out-of-state public school is equivalent to the course of study in this state, the out-of-state public school is at least 1.5 miles nearer the pupil's home than any public school in this state, unusual hazards exist for the transportation of the pupil to and from the public school in his or her school district of residence, the out-of-state public school agrees to accept the pupil, and the tuition for the pupil does not exceed the per pupil costs of the out-of-state public school that are attributable to the enrollment of Wisconsin pupils.

3. The school district of residence shall be paid state aid for a pupil attending an out-of-state public school under this paragraph as though the pupil was enrolled in the school district, and shall be paid transportation aid under subch. IV as though the pupil had been transported to the school of the school district of residence.

A Wisconsin school district's options under this statute appear to be as follows:

- It can negotiate with the out-of-state school district and come up with a tuition that both agree on and pay that tuition.

- It can grant the parent request and pay the tuition the out-of-state district charges.

- It can deny the request. The parent may then appeal to the school district boundary appeals board. Part of the evidence to be considered is the tuition charged by the out-of-state school. The Wisconsin district can argue to that board that the out-of-state district charges too much in tuition or that one of the other four criteria for approval were not met. If the school district boundary appeals board grants the parent request, the Wisconsin district pays the tuition amount it would have paid under sec. (1)(b) of the statute, which presumably is the tuition that the school district boundary board considered in granting the parent request.

Because Michigan has no similar law, the Wisconsin border district is at a disadvantage in competing for students. This resolution provides one potential approach to levelling the playing field by denying parents who are turned down by the resident school board an appeal to the Boundary Appeal Board. Presumably, there would be an appeal to circuit court, but that would likely be more expensive because it would typically require the family to hire an attorney. Whether the costs involved in going to court would serve as a deterrent is anyone's guess. Although the district that brought the resolution to the WASB seems to think it would be a deterrent to at least some appeals.

Notes:

- Proposed resolution 15-9 would create new language to the WASB Resolutions Adopted by Delegate Assemblies .

- Proposed resolution 15-10 would add a new paragraph (c) to the existing language of Resolution 5.24. (Resolution 5.24 *Boundary Appeal Board Decisions* is found at page 38 of the 2014 edition of the WASB Resolutions Adopted by Delegate Assemblies .)

Resolution 15-12: Repeal of "Populous Counties Teacher Tenure" Statute.

Teachers throughout Wisconsin have a limited form of job security in the "continuing contract law" (Wis. Statutes, sec. 118.22). In a nutshell, this law requires that a teacher be given written notice of termination or renewal or his or her contract for the ensuing year on or before May 15. If this notice is not given, the written contract then in force continues for the next school year. In either case, the teacher must accept or reject the contract not later than June 15.

However, state statutes also provide certain teachers —but only those in Milwaukee County—a more encompassing form of job security known as "tenure" (Wis. Statutes, sec. 118.23). Qualifying Milwaukee County teachers are granted tenure, or permanent employment, when they receive their fourth contract in the same school system. (Although tenure is no longer being granted, those teachers who received tenure on or before Dec. 21, 1995 are "grandfathered" under the statute and continue to have tenure.) A teacher who is on tenure may be dismissed or discharged only for the reasons specified in the statute and upon written charges. Further, the statute creates a higher burden on districts seeking to dismiss or discharge a teacher than even the "just cause" standard that was common in many collective bargaining agreements. Further, a public hearing on the charges before the school board must be granted if the teacher submits a written request for a hearing.

It is argued that the teacher tenure statute (Wis. Statutes, sec. 118.23) causes particular problems for boards and districts in Milwaukee County because it does not allow those boards and districts to take things like multiple certifications, other special qualifications or performance evaluations into account when making certain staff decisions.

The teacher tenure statute long predates both 2011 Wisconsin Act 10 and the state's current educator effectiveness (EE) initiative under which teachers will be evaluated based on a 50-50 split between in-class evaluations of teacher practice and the performance of their students. The 2014-15 school year is the first year that teachers and principals are required to be evaluated under this new EE initiative. While it is hoped that the new EE initiative will give administrators, parents, and taxpayers tangible evidence of the value that their teachers bring to the classroom, it will have less of an impact on staffing decisions in districts where the teacher tenure stature applies.

Under the teacher tenure law, if a reduction in a district's teaching staff (i.e., a layoff) is necessary because of a drop in student enrollment or for other budgetary reasons, the teacher with tenure is protected to a certain extent. Although a teacher who has tenure may be laid off if necessary because of a decrease in the number of pupils within the school district, such layoffs must be made in inverse order of the appointment of the teachers involved and the teachers must be reinstated in inverse order of their being laid off if they are qualified to fill vacancies which occur. No new permanent or substitute appointments may be made within the school district while there are laid-off permanent (tenured) teachers available who are qualified to fill the vacancies. The above inhibits the affected districts ability to retain the most qualified staff in situations where a reduction needs to occur.

Background—Teacher Tenure Statute:

Wisconsin Statutes, sec. 118.23 reads as follows:

118.23 Populous counties; teacher tenure.

(1) In this section "teacher" means any person who holds a teacher's certificate or license and whose legal employment requires such certificate or license, who is employed full time and meets the minimum requirements prescribed by the governing body employing such person and who is employed by a school board, board of trustees or governing body of any school operating under chs. 115 to 121 and lying entirely and exclusively in a county having a population of 500,000 or more. "Teacher" does not include any superintendent or assistant superintendent; any teacher having civil service status under ss. 63.01 to 63.17; any teacher in a public school in a 1st class city; or any person who is employed by a school board during time of war as a substitute for a teacher on leave while on full-time duty in the U.S. armed forces or any reserve or auxiliary thereof and who is notified in writing at the time of employment that the position is of a temporary nature.

(2) All teachers shall be employed on probation, but after continuous and successful probation for 3 years and the gaining of the 4th contract in the same school system or school, their employment shall be permanent except as provided in sub. (3). All principals shall be employed on probation, but after continuous and successful probation for 3 years and the gaining of a 4th contract in the same school system or school, their employment shall be permanent except as provided in sub. (3). Upon accepting employment in another school system or school to which this section applies, a teacher who has acquired permanent employment under this section shall be on probation therein for 2 years. After continuous and successful probation for 2 years and gaining the 3rd contract in such school system or school, employment therein shall be permanent except as provided in sub. (3). A person who acquired tenure as a teacher under this section shall not be deprived of tenure as a teacher by reason of the person's employment as a principal.

(3) No teacher who has become permanently employed under this section may be refused employment, dismissed, removed or discharged, except for inefficiency or immorality, for willful and persistent violation of reasonable regulations of the governing body of the school system or school or for other good cause, upon written charges based on fact preferred by the governing body or other proper officer of the school system or school in which the teacher is employed. Upon the teacher's written request and no less than 10 nor more than 30 days after receipt of notice by the teacher, the charges shall be heard and determined by the governing body of the school system or school by which the teacher is employed. Hearings shall be public when requested by the teacher and all proceedings thereat shall be taken by a court reporter. All parties shall be entitled to be represented by counsel at the hearing. The action of the governing body is final.

(4) If necessary to decrease the number of permanently employed teachers by reason of a substantial decrease of pupil population within the school district, the governing body of the school system or school may lay off the necessary number of teachers, but only in the inverse order of the appointment of such teachers. No permanently employed teacher may be prevented from securing other employment during the period that the teacher is laid off under this subsection. Such teachers shall be reinstated in inverse order of their being laid off, if qualified to fill the vacancies. Such reinstatement shall not result in a loss of credit for previous

years of service. No new permanent or substitute appointments may be made while there are laid off permanent teachers available who are qualified to fill the vacancies.

(6) This section does not apply after December 21, 1995. Any person whose employment is permanent under sub. (3) on December 21, 1995, shall retain all of the rights and privileges of such permanent employment after that date.

It is the language of subsections 3 and 4 of the teacher tenure law that arguably causes school boards and districts the greatest problems. Subsection 3 prevents school boards from refusing employment, dismissing, removing or discharging tenured teachers, except for:

- inefficiency or immorality;
- willful and persistent violation of reasonable regulations of the governing body of the school system or school; or
- other good cause, upon written charges based on fact preferred by the governing body or other proper officer of the school system or school in which the teacher is employed.

Subsection 4 of the statute (see above) establishes a strict seniority system regarding the layoff of tenured teachers, which, it is argued, severely restricts the ability of school boards and districts to address staff reductions necessitated by reductions in enrollment or other budgetary reasons.

The district that offered this resolution provided this language as their rationale:

> "Act 10 eliminated tenure in teacher contracts across the state of Wisconsin in 2011. However, according to Wis. State Statute 118.23, school districts in "populous counties" must still respect tenure for those teachers who achieved it prior to December 21, 1995. By definition, a "populous county" is any county with more than 500,000 residents. At this time, only Milwaukee County qualifies as a populous county (although Dane County is approaching this status as well). This forces Milwaukee County school districts -- and ONLY Milwaukee County school districts -- to retain tenured staff, even if it is not in the best interest of student achievement."

Notes:

- Proposed resolution 15-12 would create new language to the WASB Resolutions Adopted by Delegate Assemblies .

- One question raised by this proposed resolution is whether repealing the Wisconsin Tenure Statute (Wis. Stat. 118.23) would violate the Due Process or Contracts clause of the US Constitution? The short answer appears to be NO. Repealing the Wisconsin Tenure Statute will not violate the Due Process Clause because while tenure creates a legal "right" for teachers, the passing of a statute likely confers sufficient process to fulfill the requirements of the Due Process Clause. The repeal will also not violate the Contracts Clause because the Wisconsin Tenure Statute does not create a contractual right to continued employment for teachers, merely a legislative grant of a property right subject to change by subsequent statutes.

Special Note: Wis. Statutes, sec. 118.23, **does not** cover Milwaukee Public School District (MPS) teachers because teachers in "first class cities" are exempt from this particular statute. (See subsection 1 of the statute.) However, teachers in MPS have similar tenure rights under Wis. Statutes, sec. 119.42. And as is the case under Wis. Statutes, sec. 118.23, while tenure is no longer being granted to MPS teachers, those MPS teachers who received tenure on or before Dec. 21, 1995 are "grandfathered" under section 119.42, Wis. Stats., and continue to have tenure.

Resolution 15-15: Student Achievement Guarantee in Education Program (SAGE).

This resolution was a product of discussions within the WASB Policy & Resolutions Committee, which reviews proposed resolutions submitted by member boards and decides which proposals to advance to the Delegate Assembly.

The context in which this occurred was that a Board had submitted a proposed resolution relating to allowing schools that had been participants in the SAGE program but had dropped out to be reinstated into the program. (Under current law, a school may only enter the SAGE program when the Legislature authorizes a round of SAGE contracts, though a school currently participating in the program may renew its existing SAGE contract. The most recent large-scale authorization of new SAGE contracts was for contracts beginning in the 2010-11 school year. Schools that are not currently participating in SAGE cannot enter the program unless state law is changed to authorize additional SAGE contracts. Thus, currently, a school that drops out of the SAGE program cannot be reinstated unless the Legislature approves a new round of SAGE contracts.)

The WASB Policy & Resolutions Committee was informed during its discussions about the work of a Legislative Council Special Study Committee on the SAGE Program, chaired by Sen. Luther Olsen (R-Ripon), and charged with examining alternatives to the current SAGE program. Among other things, this Special Study Committee noted that certain school districts or schools with high concentrations of low-income students, which would appear to be prime candidates for the SAGE program, are not currently participating in the program or participated in the past and have subsequently dropped out.

In an effort to address this concern, the Special Study Committee considered but **did not** adopt either of the following options: a) authorizing a round of new SAGE contracts beginning in the 2015-16 school year and allowing any eligible school to enter the program; or b) authorizing a more limited round of new SAGE contracts making only those schools which participated in the past, but are not currently participating, eligible to enter the program by signing SAGE contracts.

The Special Study Committee recommended not opening additional SAGE contracts at this time under the rationale to not dilute the funding already there. To avoid taking the SAGE program option away from schools that had qualified in the past the Special Committee also agreed to leave eligibility for a SAGE contract at the 30% poverty rate (free- and reduced price lunch eligibility) level. (Some had suggested raising this to 50% FRL eligibility to target the program more toward schools with higher concentrations of student poverty.)

In the wake of the Special Study Committee's decisions on these items, the WASB Policy & Resolutions Committee was informed that the Special Study Committee had considered but rejected a proposal to reopen the SAGE program to schools that were once participants but which had dropped out. The Policy & Resolutions Committee was also informed that the stated rationale for the Study Committee's rejection of that proposal was a lack of adequate funding to allow every school that had dropped out back in.

Upon a closer look, the WASB Policy & Resolutions Committee turned down the resolution proposed by the offering board after it determined that existing WASB Resolution 2.32 (b) already expresses the WASB's support for "legislation to authorize the periodic reopening of contract applications under the SAGE program to allow participation in the SAGE program by additional schools, including charter schools authorized by school boards." Committee members were persuaded that while this language doesn't match up completely, it can be used by the WASB's governmental relations staff to advance the goal of the proposed resolution submitted by the board that offered the original proposal.

Background on the *Student Achievement Guarantee in Education* (SAGE) Program:

The SAGE program is currently the **only** state aid program that targets assistance to local districts based on students' income level. SAGE is a categorical aid program that provides funding to schools for low−income students in primary grades (K−3) if certain statutory requirements are met. The requirements include: (a) class sizes no larger than 18 students to one classroom teacher, or 30 students to two classroom teachers; (b) provision of education and human services available in the school; (c) ensuring a rigorous curriculum; and (d) providing staff development and accountability.

Before an eligible school may participate in SAGE, the school board of the district must enter into a contract with the Department of Public Instruction (DPI) on behalf of the school. SAGE contracts are for five years and may be renewed for additional five−year terms.

Currently, the SAGE program sets no expectations and requires no reporting on student academic growth (apart from what is required under the state accountability (report card) system. As a result, some lawmakers are concerned about a perceived lack of accountability in the SAGE program and frustrated at the lack of data on what outcomes the SAGE program is generating given the money that is provided. Currently, for example, districts do not have to demonstrate that student achievement is improving as the result of the receipt of SAGE monies in order to keep receiving SAGE payments.

When the WASB Policy & Resolutions Committee members learned that the Legislative Council Special Study Committee was considering recommending that the focus of the SAGE program should be changed to require participating schools to implement one of three strategies for improving academic performance of low-income pupils in reading and mathematics, they felt that this issue was worthy of debate by the membership, was timely and was of statewide concern. That is why they asked the staff to draft some language on this to be offered as a committee resolution and why they voted to advance the proposed resolution that was prepared in response to their request.

Here is a link to the proposal developed by the Legislative Council Special Study Committee to convert the existing SAGE program to an "Achievement Gap Reduction" program under a new section of the statutes. The new (AGR) program would be similar to the SAGE program and incorporates many existing aspects of the SAGE program; however, it would end the SAGE program as it currently exists.

Under this proposal to convert the SAGE program into an Achievement Gap Reduction program a school will still have the option to retain small class sizes as one of the three interventions that must be implemented. The other two intervention options are providing instructional coaches for English language arts and math, and one-to-one tutoring. A school must do at least one of the three. The main thing is that a school will have to create performance goals for and report on the progress its students in the program are making. As I understand it, that's the trade-off for getting sum sufficient funding for the program. (See description below.)

> Under the draft legislation being advanced by the Special Study Committee, The new AGR program **differs from** the existing SAGE program in the following key aspects:
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> - The AGR program allows a school to meet its obligations under the contract by using one of three strategies, or a combination of these strategies: (a) one−to−one tutoring provided by a licensed teacher; (b) instructional coaching for teachers provided by a licensed teacher; or (c) maintaining 18:1 or 30:2 classroom ratios and providing professional development on small group instruction.

(Unlike SAGE, the AGR program would not require all participating grades to meet the 18:1 or 30:2 classroom ratios in order to receive funding.)

- The AGR program would require a participating school to create performance goals, including reduction of the achievement gap between low−income students in that school and the statewide average.

- The AGR program would require school board review of implementation and progress toward achieving performance objectives in each participating school every semester.

- The AGR program would be funded by a sum-sufficient appropriation at the per−pupil level currently received by SAGE participants ($2,027).

Note: The proposed resolution that will be before delegates is written in the affirmative (i.e., the WASB supports). This is not an indication that either the Policy & Resolutions Committee or the association has a viewpoint (or a bias) in favor of this change. Rather, it is reflective of a general preference to frame WASB resolutions in the affirmative rather than the negative. It will be up to the delegates to decide whether they agree or disagree with the resolution as presented.