



ENSURING TRANSPARENCY: Legislative Oversight of DPI's Forward Exam Workshop

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Introduction: The Need for Additional Oversight of DPI's Forward Exam Standard-Setting Process

From June 11 to 14, 2024, the Wisconsin Department of Public Instruction hosted a workshop at the Chula Vista Resort in the Wisconsin Dells designed to set student performance standards for the Wisconsin Forward Exam.¹

Substantively, the workshop attracted public criticism for lowering student standards while making it more difficult for parents to track performance.²

But the manner in which DPI conducted the workshop, which came to light following reporting by the Dairyland Sentinel and a formal demand letter from IRG,³ also raised concerns on several grounds.

First, some questioned the workshop's \$368,885 price tag given the workshop's luxury setting at one of Wisconsin's premier resorts.⁴ Second, attendees were required to consent to blanket non-disclosure agreements, preventing participants from sharing any discussions with the public.⁵ Third, and relatedly, DPI appeared

¹ See Data Recognition Corporation, *Wisconsin Forward Exam ELA and Mathematics Standard Setting 2024 Technical Report 2* (2024), available at [this link](#); Brian Fraley, *Delayed DPI Records Reveal Taxpayers Soaked with \$368K Water Park Resort Bill to Weaken State Exam Standards*, Dairyland Sentinel (Feb. 3, 2026), available at [this link](#).

² See, e.g., Institute for Reforming Government, *Testing Our Patience: How Wisconsin Lowered Standards, Widened the Achievement Gap, and Busted its State Exams* (Oct. 2024), available at [this link](#).

³ See, e.g., Fraley, *supra* n.1.

⁴ Fraley, *supra* n.1

⁵ See, e.g. DRC Technical Report, *supra* n.1, at 290–93; Wisconsin Forward Exam Confidentiality Agreement, available at [this link](#); Institute for Reforming Government, *IRG: DPI's Refusal to Explain \$368,885 Secret Waterpark Meeting Risks Invalidation of New Exam Standards* (Feb. 2026), available at [this link](#).



to have treated the workshop as exempt from the requirements of Wisconsin's Open Meetings law, that is, did not publicly notice the meetings or hold them in open session.⁶

To its credit, the Legislature immediately recognized the need for action. With respect to the substantive changes to the Forward Exam, the Legislature passed a bill restoring student performance standards.⁷ Unfortunately, Governor Evers vetoed the bill in March of 2025.⁸

The Legislature then turned to the question of oversight, focusing on the money DPI spent to finance the workshop. On February 3, 2026, the Legislature Joint Finance Committee delayed the release of operational funds to DPI pending JFC's receipt of additional information from DPI regarding the workshop.⁹ After receiving satisfactory answers to questions it sent to DPI regarding "how the educators who attended the conference were selected, historical information on past conferences and a comparison to spending by other states," JFC released most of the funds to DPI in a demonstration of just how effective the legislative oversight process can be in ensuring agency transparency.¹⁰

Following JFC's action, a top DPI official commented that he hoped "this is a water-under-the-bridge moment."¹¹ Unfortunately, however, questions persist regarding the remaining issues identified above—that is, whether DPI violated the Open Meetings Law and whether the gag rule it implemented was legal and appropriate.

DPI owes the public answers to these questions, particularly as it plans additional off-site conferences.¹² As IRG has elsewhere explained, if DPI has violated the

⁶ See IRG, *supra* n.5.

⁷ See Wisconsin Assembly Bill 1, available at [this link](#).

⁸ See Tony Evers, Veto Message, available at [this link](#).

⁹ See Corrinne Hess, *Wisconsin lawmakers withhold funding to DPI over resort spending* (Feb. 4, 2026).

¹⁰ See WisPolitics, *Co-chair says 'nothing wrong' with DPI water park conference as Joint Finance releases \$1.75 million to agency* (Mar. 4, 2026).

¹¹ WisPolitics, *supra* n. 10.

¹² See Brian Fraley, *The Waterpark Department: DPI Pushes More Resort Conferences While Threatening Staff Layoffs* (Mar. 2, 2026), available at [this link](#).



Open Meetings Law, its actions—including its adoption of the new Forward Exam Standards—are subject to invalidation.¹³

In this report IRG provides a concrete proposal the Legislature can adopt to build on its existing oversight of DPI’s 2024 standard-setting workshop: the formation of a Special Committee on Oversight of the Department of Public Instruction. The report then identifies the key questions the Special Committee should investigate and the key personnel it should question.

Formation of the Special Committee

The Legislature’s oversight powers are broad and it has the ability to address oversight problems in several different ways.¹⁴ In this case, however, where the issue involves a state agency’s intentional lack of transparency, it may become necessary for the Legislature to compel the production of documents and testimony from DPI officials via subpoena. IRG therefore believes the most efficient and effective way to accomplish oversight of DPI’s standard-setting workshop involves the formation of a special investigative committee.

The Senate recently used this method with great effectiveness in addressing a separate problem. On December 15, 2025, in response to concerns over third-party influence over the Department of Justice, the Senate’s Committee on Senate Organization created the Senate Special Committee on Oversight of the Department of Justice.¹⁵ The Committee on Senate Organization instructed the Special Committee “to conduct a thorough and impartial examination, investigation, and audit of the operations and priorities of the Wisconsin Department of Justice,” and to assess “whether the Department is acting consistent with its statutory responsibilities and serving the interests of the people of Wisconsin.”¹⁶ It directed the Special Committee to issue a report and recommendations within four months.¹⁷ The Special Committee immediately set

¹³ See IRG, *supra* n.5.

¹⁴ See generally Daniel Kelly, *The Lawmaker’s Manual for Legislative Oversight*, Institute for Reforming Government (2021); *Evers v. Marklein*, 2024 WI 31, ¶20, 412 Wis. 2d 525, 8 N.W.3d 395 (noting the Legislature’s authority to conduct oversight of and audit administrative agencies).

¹⁵ See State of Wisconsin Senate Journal, 107th Leg. (Dec. 15, 2025), available at [this link](#).

¹⁶ See Journal, *supra* n. 15.

¹⁷ Journal, *supra* n. 15.



to work, subpoenaing the Attorney General for questioning.¹⁸ The bold move got results: the Attorney General appeared and answered questions for more than three hours.¹⁹

The same method can and should be used to obtain answers from DPI to important questions like those that follow in the next section. That is, both the Senate and the Assembly rules contemplate the creation of special committees (and the issuance of subpoenas), so either body can create a Special Committee on Oversight of the Department of Public Instruction.²⁰ The Legislature can tightly define the mission of the Special Committee and request a final report summarizing its actions.

Key Questions for the Special Committee to Ask DPI

1. Did DPI violate the Open Meetings Law by holding its standard-setting workshop in secret?

The basic mandate of Wisconsin’s Open Meetings Law (which is found at Wis. Stat. §§ 19.81–19.98), is that “[e]very meeting of a governmental body shall be preceded by public notice . . . and shall be held in open session,” meaning “held in a place reasonably accessible to members of the public and open to all citizens at all times.”²¹ This requirement exists to serve explicit state policy that “the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.”²²

Yet for reasons that remain unclear, and despite the public importance of DPI’s standard-setting activities, DPI appears to believe its “workshop committee” was exempt from Open Meetings requirements. It did not, apparently, notice its sessions at Chula Vista and certainly did not make them open to the public.

¹⁸ See, e.g., Lucas Kihmm, *AG Kaul testifies in front of Legislative Oversight Committee; defends outside hires*, WKOW.com (Feb. 25, 2026), available at [this link](#).

¹⁹ See Kihmm, *supra* n. 18.

²⁰ See Senate Rules 21, 44 (Apr. 19, 2023), available at [this link](#); Assembly Rules 3(1)(o), 10 (Jan. 6, 2025), available at [this link](#).

²¹ Wis. Stat. § 19.83(1), (3).

²² Wis. Stat. § 19.81.



The fact that the workshop committee was a temporary advisory group does not insulate it from the Open Meetings Law. That law broadly defines “governmental body” to include “a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order . . . or a formally constituted subunit of any of the foregoing.”²³ DOJ guidance confirms that “rule or order” “has been liberally construed to include any directive, formal or informal, creating a body and assigning it duties.”²⁴ Thus temporary and advisory committees created for specific purposes fall under the Open Meetings Law.²⁵

Here DPI admits forming an 88-member “workshop committee” for the explicit purpose of advising it on setting performance benchmarks, yet appears to have failed to notice its meetings or hold them in open session. Why does DPI believe its “workshop committee” was exempt from Open Meetings requirements?

2. Why were workshop attendees required to consent to blanket non-disclosure agreements? What is the legal basis for requiring attendees to consent to these agreements and what are the limits on the use of NDAs? Where else has DPI used non-disclosure agreements?

DPI claims that its use of non-disclosure agreements was necessary to protect proprietary information relating to Forward Exam test questions. Even if that were permissible, DPI’s gag rules swept much more broadly, banning attendees from sharing *any* committee discussions with the public.²⁶

No provision of the Open Meetings Law authorizes this extreme level of secrecy. While public bodies may enter closed session, they may do so only according to specific procedures, for limited purposes only, and with proper notice given.²⁷ None of these requirements were followed here. Why does DPI believe it could hold the entire conference in closed session? Why were participants barred from sharing non-proprietary information with the public?

²³ Wis. Stat. § 19.82.

²⁴ Department of Justice, *Wisconsin Open Meetings Law Compliance Guide 2* (Mar. 2025), available at [this link](#).

²⁵ See Compliance Guide, *supra* n.24, at 2, 4, 8 n.65.

²⁶ See IRG, *supra* n.5.

²⁷ See Wis. Stat. §§ 19.84(2); 19.85(1).



If DPI believes its actions were authorized, this raises the question of whether the agency is using NDAs in other settings. By definition, the public would likely be unaware of this practice. Can DPI identify all recent instances where it imposed NDAs on advisors?

3. Were all secrecy measures for the event demanded by Data Recognition Corporation, a private, third-party entity, or did DPI impose the measures itself?

In its report authorizing a Special Committee to investigate the Department of Justice, the Committee on Senate Organization expressed concern over “the extent to which the Department may be subject to influence from external organizations, advocacy groups, or third-party funding sources, and whether such influence compromises its independence, judgment, loyalty, or accountability to the people of Wisconsin.”²⁸

Similar dangers could be present with respect to DPI’s collaboration with the Data Recognition Corporation, a private, third-party entity. It seems apparent that the secrecy measures at the workshop were implemented in part to protect DRC proprietary information. But given that the measures, as noted, swept much more broadly than necessary, the Legislature is entitled to know whether it was ultimately DPI or DRC that drove the decision to close the workshop to the public entirely and ban participants from sharing committee discussions. “[A] private entity’s desire for confidentiality does not permit a closed meeting.”²⁹ Is DRC aware of the requirements of Wisconsin’s Open Meetings Law? Is DRC demanding secrecy measures as a condition of its collaboration with the State of Wisconsin? In this regard, it remains troubling that DPI has yet to produce its signed and executed contract with DRC.³⁰

4. Even if DPI was not required to comply with Open Meetings requirements, does it agree with Governor Evers that its lack of transparency was a

²⁸ See Senate Journal *supra* n.15.

²⁹ *State ex rel. Citizens for Responsible Dev. v. City of Milton*, 2007 WI App 114, ¶¶13–14, 300 Wis. 2d 649, 731 N.W.2d 640.

³⁰ Brian Fraley, *DPI Stonewalls Public: Where’s the Secret Waterpark Workshop Contract?*, Dairyland Sentinel (Feb. 16, 2026), available at [this link](#).



mistake? Will it commit to holding future standard-setting meetings in public?

Aside from the pure legalities of DPI's actions is the question of the propriety of those actions. Even Governor Evers did not hold back in criticizing the manner in which DPI adjusted the Forward Exam, stating that “there should have been some information and dialog happening with all sorts of people before that decision was made” and “[t]he mistake was there wasn't enough conversation with stakeholders, parents ahead of time.”³¹

Does DPI agree with the Governor? If not, why not? If so, will DPI commit to changing the way it holds these types of meetings in the future? Will it include greater input from parents and other key stakeholders?

5. Why has it been necessary for members of the public to send DPI formal demand letters and endure months of delay for DPI to release records related to the workshop?

One of the most troubling aspects of DPI's behavior—and part of the reason why oversight remains necessary—is that even today, DPI refuses to provide full transparency regarding its workshop. IRG has sent two demand letters on behalf of the Dairyland Sentinel, which in turn has waited a year for the full production of records and *still* has not received everything it asked for.³² DPI owes the public an explanation for its continued obstruction.

Key Personnel for the Special Committee to Question

The curated materials DPI has released are insufficient to apprise the public as to exactly what went on behind closed doors at Chula Vista. DPI should make key personnel available to the Special Committee to offer a full accounting of the content of workshop proceedings and the legal basis for holding these proceedings in secret. Personnel who played a central role with respect to the retreat include, but are not necessarily limited to:

³¹ Emilee Fannon, *Gov. Evers Critical of DPI lowering test standards, “surprised” by decision*, CBS 58, available at [this link](#).

³² See Fraley, *supra* n.30.



- **Dr. Jill Underly, State Superintendent of Public Instruction.** As Superintendent, Underly has the constitutional obligation to supervise all public instruction.³³ She is ultimately responsible for all decisions surrounding DPI’s workshop.
- **Viji Somasundaram, DPI’s Director of Office of Educational Accountability.** According to DPI’s Technical Report, Somasundaram was DPI’s highest-ranking representative at the standard-setting workshop and attended the workshop to “monitor the process, answer assessment and curriculum questions, and address DPI policy questions.”³⁴
- **Members of the Workshop Committee.** DRC’s technical report lists 88 workshop participants from districts around the state.³⁵

³³ Wis. Const. art. X, § 1.

³⁴ Technical Report, *supra* n.1, at 13.

³⁵ See Technical Report, *supra* n.1, at 322–24.