



DATE: April 15, 2026

TO: Committee on Government Operations, Accountability and Transparency

FROM: Jacob Curtis, General Counsel

RE: IRG Testimony regarding DPI 2024 Standard-Setting Workshop

“It is imperative that we recognize that transparency is the cornerstone of democracy and that citizens cannot hold elected officials accountable in a representative government unless government is performed in the open.”

Unfortunately, over the last two years, the Wisconsin Department of Public Instruction (DPI) has failed to follow this simple, yet powerful, statement. It is a statement that is the very first sentence Wisconsin public officials, transparency advocates, and everyday Wisconsinites read when they open the Wisconsin Department of Justice’s Open Meetings Law Compliance Guide, which has been maintained and updated over the last two decades by Wisconsin Attorneys General, both Republican and Democrat. It is not aspirational, it is a requirement for all public officials working in every level of government.

What began as a simple public records request by the Institute for Reforming Government (IRG) in 2024 has now grown into one of the most critical oversight efforts in recent memory. On April 25, 2024, IRG submitted a public records request to DPI for the period January 1, 2023, to April 25, 2024. IRG requested DPI release records concerning the 2024 standard setting of cut scores for the Forward Exam and ACT as well as records using the term “cut scores.” DPI released records to IRG on September 4, 2024. After reviewing the records, IRG released a report, *Testing Our Patience*, in October 2024.

Among other key findings, IRG’s report highlighted DPI’s June 6, 2024, public announcement of two substantial changes to the Forward Exam, PreACT Secure, and ACT tests that students take at the end of the school year. First, the names of the four categories into which students sort would switch to softer, “growth-based” terms. Students would no longer demonstrate Below

Basic, Basic, Proficient, or Advanced skills, but would instead be Developing toward, Approaching, Meeting, or Advanced for Wisconsin state standards. Second, and more consequentially, DPI altered each test's "cut scores," the minimum scores a student needs to reach each of those tiers of achievement. Citing revisions to state standards, DPI announced that Wisconsin families would no longer be able to compare their children's results to their standing before the pandemic. Additionally, it soon became clear that DPI had lowered the standards for each performance level.

IRG's report highlighted the troubling process by which these changes were initiated. Superintendent Underly initiated the push to change cut scores as early as January 2023 - before understanding how cut scores worked or how changes would affect proficiency. As has widely been reported, in a June 2023 internal email Superintendent Underly stated "I need help with this...but I truly don't understand what I am looking at for my approval. And with all this other nonsense going on with literacy I want to make sure we're not throwing more fuel onto this fire." She went on, "I just hate this stuff so much."

Based on the public records, IRG provided the following key findings in its report:

- Superintendent Underly initiated the changes to test score standards and wanted them lowered to match other states.
- Superintendent Underly struggled to interpret the implications of new test score standards.
- DPI staff provided information to decisionmakers based on either 50% or 55% proficiency in 2024, up from approximately 40% in 2023.
- DPI staff projected those proficiency levels would widen Wisconsin's achievement gaps along racial, poverty, and disability lines.
 - DPI staff projected those proficiency levels would increase gaps between 4 to 10 points for Black students, 3 to 4 points for economically disadvantaged students, and 5 to 10 points for special-needs students.
- DPI staff projected those proficiency levels would increase ratings on federally mandated state report cards, student performance being equal.
 - DPI staff projected those proficiency levels eventually would cause 71% of districts to score 4 or 5 stars on state report cards, up from 36%, and 63% of schools to score 4 or 5 stars, up from 46%.
- DPI staff projected those proficiency levels would benefit low-poverty schools more than high-poverty schools on state report cards due to how they are calculated.
- DPI staff anticipated significantly revising federally mandated state report cards to account for higher proficiency rates caused by lower cut score benchmarks.

(Indeed, new cut scores did widen achievement gaps on racial, economic, and disability lines at predicted rates, and proficiency rates did rise to the scenario predicted internally.)

Interestingly, IRG's review of the public records (again, in September of 2024), revealed that Data Recognition Corporation (DRC), the company that produces the Forward Exam, would run a summer standard-setting session from June 11th to June 14th, 2024. DRC would select and guide teachers to help DPI establish cut scores that "reflect the updated state content standards, link students' scores on the tests to the state's expectations for students in each performance level, and are well-articulated across grades."

Who exactly would be involved in the sessions, where the sessions would take place, whether the public would be notified, whether the press would be invited or informed, whether other interested parties or stakeholders (aside from the public) were made aware of the sessions, and whether the sessions would be recorded and minutes taken, among other key questions, were all left unanswered. The release of the relevant records to IRG - three months *after* the DRC session - effectively kept the public in the dark.

IRG was not the only organization interested in getting answers as to why the standards by which Wisconsin's students would be tested were being dramatically altered. On January 21, 2025, the Dairyland Sentinel also sent a public records request to DPI, requesting records relating to the panel of experts, including their identities, how they were selected, when and where meetings occurred, agendas, minutes, recordings, whether nondisclosure agreements were used, and the costs associated with the process. On February 6, 2025, DPI provided a perfunctory response, simply pointing Dairyland Sentinel to the Wisconsin Forward Exam ELA and Mathematics Standard Setting 2024 Technical Report prepared by DRC (which in other sources was dated December 9, 2024) (the "Technical Report") and a two-page resource prepared by DPI and dated July 2024.

Despite follow-up communications from Dairyland Sentinel, DPI did not provide additional records responsive to the precise requests made by Dairyland Sentinel in January 2025 **for over one year**. Therefore, on January 22, 2026, IRG sent a demand letter on behalf of Dairyland Sentinel, noting "IRG expects prompt disclosure of responsive records to Dairyland's requests; otherwise, it will be forced to exercise its enforcement rights under Chapter 19."

On February 2, 2026, DPI released 17 pages of internal recruitment emails, applications, and non-disclosure agreements. Many of these records were withheld during DPI's original response in February 2025, which at the time only provided the pre-packaged Technical Report. In an email to the Dairyland Sentinel, DPI confirmed the line-item cost for the standard setting workshop was \$368,885 and that the event was held in June 2024 at the Chula Vista Resort in Wisconsin Dells. While DPI provided the summary of results of the 2024 conference and the

total cost of the junket, it failed to provide the itemized listing of expenditures requested by the Dairyland Sentinel. The agency did not provide receipts for staff time, food, travel, or lodging.

As noted by Dairyland Sentinel, “[i]t is understandable that student information and the answers to the tests be kept confidential. But the Non Disclosure Agreement conferees were under was far more encompassing. Participants had to agree that they *‘will not share ... workshop feedback, or workshop recommendations on any media, including social media.’*” (emphasis in original) In a June 2024 DPI/DRC “Security Briefing,” attendees were further reminded, “[a]fter the workshop, please feel free to share the process with others, but please keep private the recommendations, the contents of your conversations, and the test items.” Attendees were specifically warned that any disclosure could result in “civil legal liability for copyright violations” and “district-level disciplinary action.”

DPI officials confirmed to Dairyland Sentinel there are no recordings from the Wisconsin Dells session and did not provide requested meeting minutes from the event. Participants were required to leave all notes in the meeting room, where they were collected by facilitators. This raises a fundamental question of government accountability: if there were no official notes, no minutes, and no recordings, how was the final 324-page Technical Report actually written? Without primary records, the public is forced to trust a curated summary produced by a third-party contractor.

As a result of Dairyland Sentinel and IRG’s oversight efforts, the Joint Finance Committee (JFC) delayed a scheduled vote to release \$1 million to DPI for agency operations. Committee Co-chair Mark Born, R–Beaver Dam, cited the oversight efforts as the reason for the postponed vote, commenting the committee decided to “hit pause” as it raised serious questions about whether the use of taxpayer funds in this manner was proper. Following the JFC decision to delay the scheduled vote, DPI issued a statement, characterizing the Dairyland Sentinel reporting as nothing more than a “politically motivated blog post” and threatening in light of the JFC decision, DPI would “need to consider layoffs which will impact our ability to investigate educator wrongdoing, license teachers, pay choice schools, and operate the agency.”

Following the February 2, 2026, DPI release, Dairyland was forced to send *another* simple public records request on February 4, seeking “[t]he copy of the final, signed and executed contracts with Data Recognition Corporation for: all activities and research pertaining to the changes to the Forward Exam and its evaluation, the convening of the workshop(s) and any other meetings, calls, services or research.” After two weeks, IRG *again* sent a demand letter to DPI, noting the time typically needed to respond to a public records request seeking a single document. After a month of waiting for the DRC contract (and other previously requested records), Dairyland filed a formal request asking Attorney General Josh Kaul to intervene. Among other assertions, Dairyland stated the DOJ’s own Compliance Guide “makes clear that

routine workload is not a lawful reason for delay and that agencies must provide prompt access to public records unless a specific exemption applies.” It further requested that DOJ “reaffirm the standards set forth in its own guidance and ensure that state agencies follow them.”

Days later a DOJ Assistant Attorney General responded to Dairyland, indicating while the DOJ could not provide legal advice, she had contacted DPI “to make them aware of your concerns, and I am also copying them on this letter.” The very next business day, DPI relented, turning over a signed contract and a 70-page work plan for 2023-2024.

According to Dairyland Sentinel reporting, “[t]he newly released work plan reveals a two-year project with a price tag of approximately \$8 million. While the \$368,885 spent in the Dells is a massive sum for a four-day meeting, it represents less than five percent of the total project budget. In fact, the overall cost would likely be even higher if Superintendent Jill Underly’s department hadn’t postponed updates to science standards, kicking those expenses down the road.” Among other line items, the \$8.2 million DRC billing statement details (i) more than one million dollars for meetings and workshops, (ii) payments of nearly a quarter million dollars for DRC to operate a help desk, (iii) more than \$900,000 to hand score tests, and (iv) one line item for “technology” at a cost of \$1.7 million, with no further detail provided.

Based on this troubling time line of events, last week IRG filed a verified complaint with the District Attorney for Adams County. The verified complaint alleges that the Standard Setting Committee and its Six Sub-Committees are each “governmental bodies” subject to Wisconsin’s Open Meetings Law and held one or more meetings without proper public notice and not in open session.

Despite DPI’s claim that the Standard Setting Committee’s and Sub-Committee’s meetings were a “routine, transparent process,” the conference was shrouded in secrecy. The public was not permitted to attend the conference or any of the meetings of the Standard Setting Committee or Sub-Committees. No prior public notice of the Standard Setting Committee’s or Sub-Committee’s meetings was posted. Participants in the conference were required to sign non-disclosure agreements that not only prohibited disclosure of test questions (a reasonable restriction), but also “training materials ... workshop feedback, and workshop recommendations” and “DRC-related information, including without limitation, documents, notes, files, records, oral information, computer files, or similar materials.” Participants were prohibited from using their own electronic devices or even having electronic devices with them while working. Further, participants were required to use DRC-provided laptops, which were confiscated at the end of each day along with any workshop materials the participants used or created, including their personal notes.

Government transparency is required in Wisconsin Chapter 19 - “In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state 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.” Under Wis. Stat. § 19.83(1), “Every meeting of a governmental body shall be preceded by public notice as provided in s. 19.84, and shall be held in open session.”

A “governmental body” is “a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order.” According to the DOJ Compliance Guide, “This list of entities is broad enough to include virtually any collective governmental entity, regardless of what it is labeled.” In *Krueger v. Appleton Area School District*, the Wisconsin Supreme Court ruled that a curriculum review committee was subject to the Open Meetings Law even though it was created by high-ranking district administrators, not the school board itself. Here, also, the DOJ Compliance Guide concluded that the following bodies were “created by rule or order”: “A committee appointed by the school superintendent to consider school library materials”; “A citizen’s advisory group appointed by the mayor”; and “A citizen’s advisory committee appointed by a county executive.” The court in *Badke v. Village Board of Greendale* also concluded “Purely advisory bodies are therefore subject to the law, even though they do not possess final decision-making power, as long as they are created by constitution, statute, ordinance, rule, or order.”

Critically, Wisconsin Chapter 19 details the remedy in the event the Open Meetings Law is violated - “Any action taken at a meeting of a governmental body held in violation of this subchapter is voidable, upon action brought by the attorney general or the district attorney of the county wherein the violation occurred. However, any judgment declaring such action void shall not be entered unless the court finds, under the facts of the particular case, that the public interest in the enforcement of this subchapter outweighs any public interest which there may be in sustaining the validity of the action taken.”

Here, the facts are indisputable. DPI, a state agency, deliberately created the Standard Setting Committee and assigned it a specific duty – following DRC’s processes to develop and make a recommended set of cut scores for the Forward Exam’s performance levels in English language arts and math. The Standard Setting Committee had a concrete membership. DPI recruited, selected, and invited the 88 members of the Standard Setting Committee based on their demographics and expertise. The Standard Setting Committee possessed and exercised a collective responsibility – recommending a set of cut scores for the Forward Exam’s performance levels in English language arts and Math – which acted upon those recommendations. Although the Standard Setting Committee did not vote, it did reach decisions via “consensus” and acted upon those decisions by forwarding its recommendations to DPI. DPI’s own Technical Report referred to the 88-member group as a “committee” at least 37 times

just in its primary text (not counting the hundreds of pages of appendices included with the Technical Report), including multiple instances referring to it as the “standard setting committee.”

The analysis is clear. The public interest in the enforcement of Chapter 19 outweighs the public interest in DPI using an outside agency to hide its efforts to recalibrate the standards by which the progress of Wisconsin’s students is measured. DPI cannot lower academic standards in secret and simply expect parents and students to accept the outcome. Working groups created by DPI are not exempt from Wisconsin’s Open Meetings Laws. Taxpayers funded this process, but DPI shut them out. A state agency doesn’t get to spend public dollars, make consequential decisions, and then hide the process from public scrutiny.

As to the Superintendent of Public Instruction, simply put, the buck stops with her. Everyone in this hearing room who took the time to attend today’s hearing, whichever side of the aisle you’re on, should be commended for caring about ensuring the public has the greatest amount of information possible to make informed decisions about the future of Wisconsin students and the standards by which their collective progress is measured. And you don’t need to take my word for it - the office of Superintendent of Public Instruction is a constitutional office (*see* Article X, Sec. 1). Wisconsin Chapter 115 clearly defines the duties of the office. Among other responsibilities, the Superintendent is required to “[a]scertain the condition of the public schools, stimulate interest in education and spread as widely as possible a knowledge of the means and methods which may be employed to improve the schools” (*see* Wis. Stat. § 115.28(1)) and to “give the public information upon the different methods of school organization and management and the subject of education generally” (*see* Wis. Stat. § 115.28(4)).

In other words, it is at the very core of the office of Superintendent of Public Instruction to give the public the greatest amount of information about education policy. For over two years now, DPI has either dragged its feet or straight up stonewalled. The actions of DPI exposed by IRG and Dairyland Sentinel are the antithesis of transparency. Wisconsin parents, educators, business leaders, and frankly all taxpayers deserve to hear from those public officials most responsible for measuring student progress, or lack thereof.

Thank you to this for shedding light on DPI’s efforts to obfuscate.