

# Wisconsin Institute for Law & Liberty: Ahead of Assembly Education Committee hearing, WILL warns Evers to follow law with ESSA

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*State law requires parts of ESSA to go through rule-making, review by Legislature*

**February 7, 2017 - Milwaukee, WI** - The Wisconsin Institute for Law & Liberty (WILL) [sent a letter to State Superintendent of Public Instruction Tony Evers](#), warning him that he is at risk of violating state law which could jeopardize hundreds of millions of dollars in federal funds for Wisconsin's K-12 schools.

A recently enacted federal law, the [Every Student Succeeds Act \(ESSA\)](#), requires Wisconsin to submit a state plan to the U.S. Department of Education by September 18, 2017 to qualify for several types of federal education aid. The federal requirements for the state plan require the State to make decisions on a number of major policy issues such as the school report card, teacher effectiveness grading, and intervening in low-performing public schools. Superintendent Evers intends to make these decisions for the State unilaterally and has created his own process for doing so, a process that exceeds his power under Wisconsin law because it does not comply with the requirements for rule-making in the Wisconsin Statutes.

The letter explains in detail how this could violate state law. Because the state plan is a binding "statement of policy . . . which has the effect of law", it is a "rule." As such, it must follow the rule-making process in state law, Ch. 227. This requires, among other things, the creation of a scope statement and, most importantly, submitting the proposed rule to the legislature for review by the relevant standing committee and the Joint Committee for Review of Administrative Rules (JCRAR).

Because the state plan will have the effect of law when it is submitted, the rule making process must be complete before the state plan is submitted to the U.S. Department of Education in September.

CJ Szafer, WILL's Vice President for Policy and Deputy Counsel: "Regulatory oversight by the public and state legislature is critical for open government and our principle of separation of powers. We hope that Superintendent Evers follows state law in complying with ESSA which will affect every student, teacher, and school in Wisconsin."

If the DPI skips any step of the process or chooses to start the process after submitting the state plan, it invites a legal challenge.

The penalties could be severe to Wisconsin public schools if the Superintendent submits a plan that fails to follow state law. The state plan would be unenforceable and, as a result, could put the state at risk of losing access to hundreds of millions of federal funds under ESSA.

Last month, Szafer and WILL attorney Libby Sobic [explained in the State Journal](#) why it is very problematic for the legislature and Governor to allow Superintendent Evers to unilaterally make policy decisions in complying with ESSA.