



Legislative Briefs

from the Legislative Reference Bureau



Legislative Brief 08-6

May 2008

VIRTUAL CHARTER SCHOOLS

There are a growing number of students in the U.S. whose classes are taught through their home computer. Interacting with their teachers over the Internet, these students attend what is commonly known as a “virtual school.” Proponents of virtual schools argue that online education provides an innovative and much-needed publicly funded option for children who do not do well in traditional “bricks and mortar” schools. Critics of virtual schools raise the issues of quality standards, accountability measures, and fiscal impact.

Wisconsin was in the national spotlight when an appeals court ruled in December 2007 that the Wisconsin Virtual Academy (WIVA), a charter school established by the Northern Ozaukee School District, violated state laws and was not eligible for state funding. To prevent virtual charter schools from closing, the legislature responded by enacting 2007 Wisconsin Act 222. Signed by Governor Doyle on April 7, 2008, Act 222 makes changes to charter school, open enrollment, and teacher licensing laws to allow virtual charter schools in Wisconsin to operate with public funding. It took effect on April 22, 2008.

BACKGROUND

Operation of virtual schools. The number of virtual schools in Wisconsin increased from two in 2002-03 to 18 in 2007-08, and currently enroll approximately 3,000 students. The largest is WIVA with 865 students. Established in 2003, WIVA contracts with K12 Inc., a Delaware corporation that provides curricular materials to students who learn from their homes via the Internet. A majority of WIVA students reside outside the Northern Ozaukee School District and “attend” WIVA under the Open Enrollment Program. Licensed teachers, while employed by the district, also work from their homes across the state. Primary day-to-day

responsibility for implementing the students’ education resides with the parents. Schools are funded through the Open Enrollment Program, which provides for an adjustment to each school district’s state aid amount based upon the number of resident students transferring out of the district as compared to the number of nonresident students transferring in. The adjustment amount is equal to the average statewide cost of instruction per student.

Court involvement. Individuals and the Wisconsin Education Association Council (WEAC) filed suit against the school district, arguing that the operation of WIVA violated state statutes that: 1) prohibited a school board from contracting for the establishment of a charter school located outside the district, 2) required that open enrollment students attend a school in the district in which they are enrolled under the program, and 3) required that teachers in all public schools be licensed by the state. The Court of Appeals ruled in favor of the plaintiffs in December 2007.

Legislative action. Two competing bills were introduced in January 2008 in response to the court ruling. Assembly Bill 697, introduced by Representatives Davis and LeMahieu, would have changed state statutes to allow virtual schools to continue operations. Senate Bill 396, introduced by Senator Lehman, would have decreased the open enrollment transfer amount by 50 percent and set new requirements for student-teacher contacts and residency. A bipartisan compromise was reached on January 24.

On February 18, Governor Doyle indicated he would veto legislation that did not include an enrollment freeze and cap until an audit was performed. The senate passed an amended version of Senate Bill 396 the following day that included these provisions.

Opponents of the new amendments argued that capping enrollment would effectively “lock out” families who wanted virtual schools as an option for their children. On February 22, Representatives Davis and LeMahieu introduced a separate bill, Assembly Bill 870, that included an audit but not an enrollment freeze and cap.

On March 11, Representative Davis offered a second bipartisan compromise in the form of Assembly Substitute Amendment 1 to Senate Bill 396. The amended bill unanimously passed both houses and was enacted as 2007 Wisconsin Act 222 on April 7.

2007 WISCONSIN ACT 222

Act 222 retains the key elements of the previous versions of legislation, including a clear authorization for virtual school operation and the creation of new accountability measures.

Definition. Act 222 defines “virtual charter school” as:

[A] charter school under contract with a school board under s.118.40 in which all or a portion of the instruction is provided through means of the Internet, and the pupils enrolled in and instructional staff employed by the school are geographically remote from each other.

Location. The act specifies that for open enrollment and other purposes, a virtual charter school is located in the school district that has contracted for the school’s establishment.

Staff and licensing. Under current law, any person who teaches in a public school must hold a teaching license or permit issued by the Department of Public Instruction. In the appeals court case, State Superintendent of Public Instruction Burmaster and WEAC contended that because WIVA parents engaged in teaching, they required a license. The act resolves the issue by exempting parents and other persons providing educational services in the student’s home, other than instructional staff, from the licensing requirement.

Several accountability measures related to staff and licensing are included in the act. First,

the act requires a virtual charter school to assign an appropriately licensed teacher for each online course offered by the school. Second, the act bars any person from teaching in a virtual charter school if he or she holds only a charter school instructional staff permit. Lastly, beginning July 1, 2010, the act prohibits a person from teaching an online course in a public or charter school unless he or she has completed at least 30 hours of professional development designed to prepare a teacher for online teaching.

Attendance and participation. The act specifies that the compulsory school attendance requirement (Section 118.51 (1) (a), Wisconsin Statutes) does not apply when a child is enrolled in a virtual school; however, the act creates provisions relating to a student’s failure to participate. For example, if a student fails to respond appropriately to a school assignment or directive from instructional staff within five school days, the virtual school must notify the student’s parent or guardian. If a student fails to participate three times in a semester, he or she may be transferred to another school or program.

Funding and enrollment limit. The open enrollment transfer amount for students who reside in the state remains the same. Beginning in the 2009-10 school year, the total number of students attending virtual charter schools through the Open Enrollment Program in any school year may not exceed 5,250. Siblings of virtual school students are not included in this enrollment cap and are guaranteed opportunities to enroll. The act eliminates the governor’s proposed two-year enrollment freeze.

Audit. The act directs the Legislative Audit Bureau to perform a financial and performance evaluation audit of virtual charter schools. The report must be completed by December 30, 2009.

FOR MORE INFORMATION

View a copy of 2007 Wisconsin Act 222 at: www.legis.wi.gov/2007/data/acts/07Act222.pdf