



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2007 Assembly Bill 697

**Assembly Substitute
Amendment 1**

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In *Johnson v. Burmaster*, 2006 AP 1380 (December 5, 2007), the Wisconsin Court of Appeals held that the Northern Ozaukee School District's operation of the Wisconsin Virtual Academy (WIVA) violated: (a) the charter school statute; (b) the open enrollment statute; and (c) the teacher licensing statute. As described below, Assembly Substitute Amendment 1 to 2007 Assembly Bill 697 first defines a "virtual charter school" and then addresses these three issues. The substitute amendment also includes provisions that are not directly related to the court decision, as described below.

2007 Assembly Bill 697 and 2007 Senate Bill 396 were both drafted in response to the court decision. While the bills were not identical, Assembly Substitute Amendment 1 to Assembly Bill 697 is identical to Senate Substitute Amendment 1 to Senate Bill 396.

DEFINITION OF VIRTUAL CHARTER SCHOOL

Current law does not define a virtual charter school. The substitute amendment defines a "virtual charter school" as a "charter school under contract with a school board under s. 118.40 [the charter school statute] 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." [SECTION 1 of the substitute amendment.]¹

PROVISIONS DIRECTLY RELATED TO COURT DECISION

The following provisions in the substitute amendment are directly related to the Court of Appeals decision:

¹ References to SECTION numbers are to SECTION numbers in the substitute amendment.

Charter School Statute

Court Decision

Current s. 118.40 (3) (c), Stats., provides that a “school board may *not* enter into a contract for the establishment of a charter school *located outside* the school district.” (Emphases added.) The exceptions are: (a) when two or more school boards enter into an agreement (in which case the charter school must be located within one of the school districts); and (b) when one or more school boards enter into an agreement with a cooperative educational service agency (CESA) (in which case the charter school must be located within the CESA boundaries).

The Court of Appeals agreed that part of WIVA is “located” in the Northern Ozaukee School District, namely, the part of WIVA that constituted the administration of the school inasmuch as the principal, vice-principal, and other administrators were physically located in that school district.

However, because the large majority of WIVA pupils receive their education at locations outside the Northern Ozaukee School District from teachers located outside that school district, the court concluded that WIVA also is, in part, located outside the Northern Ozaukee School District. The court held that this was in violation of s. 118.40 (3) (c), Stats., which prohibits a school board from entering into a contract to establish a charter school located outside the school district.

Substitute Amendment

The substitute amendment amends s. 118.40 (3) (c), Stats., to specify that the provisions in current law restricting where a school board, consortium of school boards, or consortium of one or more school boards and a CESA may establish a charter school do *not* apply to the establishment of a virtual charter school. [SECTION 8 of the substitute amendment.]

Open Enrollment Statute

Court Decision

Section 118.51, Stats., is the full-time open enrollment statute under which a pupil may apply to a nonresident school district (that is, a school district other than the school district in which the pupil resides) to attend school in that nonresident school district. Among other things, s. 118.51 sets forth the application procedures and deadlines and the nonresident school district acceptance criteria (including availability of space) for the open enrollment program.

Most of WIVA’s pupils reside outside the Northern Ozaukee School District but had become pupils of Northern Ozaukee through the open enrollment program. As noted above, the court held that WIVA is, in part, located outside the Northern Ozaukee School District. Thus, the court held that WIVA’s open enrollment pupils are attending school outside the Northern Ozaukee School District. The court held that this was a violation of the open enrollment statute which permits a pupil to attend school only in the nonresident school district in which the pupil has open enrolled.

Substitute Amendment

The substitute amendment amends s. 118.51 (2), Stats., to clarify that a pupil may attend a charter school under the open enrollment program. (This amendment applies to all charter schools, not just virtual charter schools.) [SECTION 11 of the substitute amendment.]

In addition, the substitute amendment specifies that for purposes of the open enrollment program, a virtual charter school is located in the school district specified in s. 118.40 (8) (a). Section 118.40 (8) (a) is created to specify that a virtual charter school is considered to be located in the following school district: (a) if a school board contracts for the establishment of a virtual charter school--in the school district governed by that school board; and (b) if a consortium of school boards or consortium of one or more school boards and a CESA establish a virtual charter school by agreement--in the school district specified in the agreement. Under the substitute amendment, this provision also applies to where a virtual charter school is considered to be located for purposes of s. 118.40 (7) (a), (am), and (ar), Stats. (statutes which generally provide that the school board of the school district in which a charter school is located determines whether or not the charter school is or is not an instrumentality of the school district). [SECTIONS 10 and 12 of the substitute amendment.]

Thus, for example, if the Northern Ozaukee School District contracted for the establishment of a virtual charter school, the school is deemed to be located in the Northern Ozaukee School District. If a pupil open enrolled into the Northern Ozaukee School District and was attending that virtual charter school, the pupil would be attending school in the nonresident school district in compliance with the open enrollment statute.

Teacher Licensing Statute

Court Decision

Section 118.19 (1), Stats., provides that: “Any person seeking to teach in a public school, including a charter school, or in a school or institution operated by a county or the state shall first procure a license or permit from the [D]epartment [of Public Instruction (DPI)].” While the statutes do not define “teach” for this purpose, the Court of Appeals noted that “teaching” is defined for purposes of ch. PI 34, Wis. Adm. Code (Teacher Education Program Approval and Licensing), as meaning “improving pupil learning by planning instruction, diagnosing learning needs, prescribing content delivery through classroom activities, assessing student learning, reporting outcomes to administrators and parents and evaluating the effects of instruction.” [s. PI 34.01 (59), Wis. Adm. Code.]

The court noted that while the parties to the case had somewhat different descriptions of a WIVA parent’s role, it was undisputed that a WIVA parent works one-on-one with a pupil, presents the lesson, answers questions, and assesses progress. Moreover, the court indicated that WIVA required the parents to do so in order for WIVA to function. The court essentially characterized this as having unlicensed individuals be the primary teachers of the WIVA pupils. According to the court, this constituted teaching in a public school without a license--in violation of the teacher licensing statute.

Substitute Amendment

The substitute amendment specifies that if a pupil attends a virtual charter school, any person providing educational services to the pupil in the pupil's home, other than instructional staff of the virtual charter school, is not required to hold a license or permit to teach issued by DPI. [SECTIONS 5, 10 (creating s. 118.40 (8) (b) 2.), and 17 of the substitute amendment.]

PROVISIONS NOT DIRECTLY RELATED TO COURT DECISION

In addition to the above provisions, the substitute amendment also includes the following provisions that are not directly related to the court decision:

Statewide Web Academy

The substitute amendment requires the State Superintendent of Public Instruction to make online courses available for a reasonable fee, through a statewide web academy, to: school districts, CESAs, charter schools, and private schools located in the state. [SECTION 2 of the substitute amendment.]

Required Days and Hours and Required Teacher Response Time in Virtual Charter Schools

Current Law

Under current law, a school board is required to annually schedule certain minimum amounts of direct pupil instruction as follows: (a) for kindergarten--at least 437 hours (for four-year-old kindergarten, up to 87.5 of those hours may be for outreach activities); (b) for grades one to six--at least 1,050 hours; and (c) for grades seven to twelve--at least 1,137 hours. In addition, the school board is required to schedule at least 180 school days annually. [s. 121.02 (1) (f), Stats.] These provisions do not apply to charter schools. [s. 118.40 (7) (b), Stats.]

Substitute Amendment

The substitute amendment requires a virtual charter school to do all of the following effective July 1, 2008:

- Ensure that its teachers are available to provide direct pupil instruction for at least the minimum numbers of hours specified by grade level under current law as noted above. No more than 10 hours in any 24-hour period may count toward this requirement.
- Provide educational services to its pupils for at least 150 days each school year.
- Ensure that its teachers respond to inquiries from pupils or from the parents or guardians of pupils by the end of the first school day following the day on which the inquiry is received. [SECTION 10 of the substitute amendment (creating s. 118.40 (8) (d)).]

Virtual Charter School Instructional Staff--Licensure and Staff Duties

Current Law

Current law requires that all instructional staff at a charter school hold a license or permit to teach issued by DPI. [s. 118.19 (1), Stats. (See also, s. 121.02 (1) (a) 2., Stats., requiring that a school board ensure that all instructional staff² of charter schools located in the school district hold a license or permit to teach issued by DPI.)]

Current administrative rules generally provide for licenses issued at particular developmental levels (for example, early childhood) and in particular subject categories³ (for example, language arts). [See generally, ch. PI 34, Wis. Adm. Code.]

Current rules also provide for a “charter school instructional staff license” under s. PI 34.34 (1) and a “charter school instructional staff permit” under s. PI 34.34 (2). These charter school licenses and permits do not require completion of an approved program or institutional endorsement from a college or university for issuance. [s. PI 34.34 (intro.), Wis. Adm. Code.] Under current administrative rules:

- ***A charter school instructional staff license*** may be issued to an individual who holds a valid license issued by DPI upon the request of a school district administrator or a designated official of the employing school district or a (2r) independent charter school. A charter school instructional staff license allows the license holder to perform any instructional duty in a charter school, that is, the license holder is not restricted to teaching at the developmental level and in the subject category in which the underlying license may have been issued.
- ***A charter school instructional staff permit*** may be issued under certain circumstances to a person who does not hold a current license or permit to teach at a specific developmental level in a specific category.

Under current administrative rules, a school board is required to ensure that all instructional staff of charter schools hold either: (a) a DPI license or permit to teach at the developmental level and in the subject of their assignments; or (b) a charter school instructional staff license or a charter school instructional staff permit. [s. PI 8.02 (2) (a) 2. a., Wis. Adm. Code.] As noted above, the latter types of licenses and permits are not at specific developmental levels or in specific subject categories.

² The State Superintendent is required to define “instructional staff” for this purpose by administrative rule [s. 121.02 (1) (a) 2., Stats.] and has done so in s. PI 8.001 (6m), Wis. Adm. Code, which provides that:

Instructional staff for the purposes of charter schools, means all professional employees who have as part of their responsibility direct contact with students or with the instructional program of the school. Instructional staff includes, but is not limited to, teachers, librarians, pupil services staff, and administrative staff who supervise licensed staff.

³ Categories also have subcategories.

Substitute Amendment

The substitute amendment requires the governing body of a virtual charter school to assign an appropriately licensed teacher for each online course offered by the virtual charter school. Moreover, the substitute amendment provides that, beginning July 1, 2009: (a) notwithstanding ss. PI 8.02 (2) (a) 2. and 34.34 (1) (a), a charter school instructional staff license provides no additional authority to the license holder in a virtual charter school; and (b) notwithstanding ss. PI 8.02 (2) (a) 2. and 34.34 (2), no person may teach in a virtual charter school if the person holds only a charter school instructional staff permit. [SECTION 10 of the substitute amendment (creating s. 118.40 (8) (b) 1.).]

In addition, the substitute amendment specifies that, in a virtual charter school, an instructional staff member is responsible for all of the following for each pupil the instructional staff member teaches: (a) improving learning by planned instruction; (b) diagnosing learning needs; (c) prescribing content delivery through class activities; (d) assessing learning; (e) reporting outcomes to administrators and parents and guardians; and (f) evaluating the effects of instruction. [SECTION 10 of the substitute amendment (creating s. 118.40 (8) (c)).]

Parent Advisory Council for Virtual Charter School

The substitute amendment requires the governing body of a virtual charter school to establish a parent advisory council for the school. The governing body is required to determine the selection process for members of the council. The governing body also must ensure that the council meets on a regular basis. [SECTION 10 of the substitute amendment (creating s. 118.40 (8) (e)).]

Contact Information for Virtual Charter Schools

The substitute amendment requires the governing body of a virtual charter school, at the beginning of each school term, to inform the parent or guardian of each pupil attending the school, in writing, of the name, and how to contact, all of the following: (a) members of the school board that contracted for the establishment of the school; (b) the administrators of that school district; (c) the members of the virtual charter school's governing body (if different than the school board members); (d) members of the school's parent advisory council; and (e) staff of the virtual charter school. [SECTION 10 of the substitute amendment (creating s. 118.40 (8) (f)).]

Compulsory School Attendance and Virtual Charter School Pupil's Failure to Participate

Current Law

Current law provides that, with limited exceptions, unless the child is excused, a person having under his or her control a child who is between the ages of six and 18 years must "cause the child to attend school regularly during the full period and hours, religious holidays excepted, that the public or private school in which the child should be enrolled is in session until the end of the school term, quarter or semester of the school year in which the child becomes 18 years of age." [s. 118.15 (1) (a), Stats.] (For example, one of the exceptions under current law is the statute which provides that instruction in a "home-based private educational program" that meets certain criteria may be substituted for attendance at a public or private school. [s. 118.15 (4), Stats.]

Substitute Amendment

The substitute amendment specifies that this requirement does not apply to a person having under his or her control a child who is enrolled in a virtual charter school. [SECTIONS 3 and 4 of the substitute amendment.]

The substitute amendment includes the following provisions for a virtual charter school pupil for failure to participate:

- Provides that if a virtual charter school pupil fails to respond appropriately to a school assignment or directive from instructional staff within five school days, the governing body of the virtual charter school must notify the pupil's parent or guardian.
- Provides that the third time in the same semester that a virtual charter school pupil fails to respond appropriately to a school assignment or directive from instructional staff within five school days, the governing body of the virtual charter school must notify the pupil's parent or guardian, the school board that contracted for the establishment of the virtual charter school, the school board of the pupil's resident school district, and DPI.
 - If this occurs and the pupil is attending a virtual charter school contracted for by the ***pupil's resident school district***, the school board may assign the pupil to another school or program in the school district.
 - If this occurs and the pupil is ***not a resident of the school district*** that contracted for the establishment of the virtual charter school (for example, if the pupil is attending the virtual charter school under the open enrollment program), the school board that contracted for the establishment of the virtual charter school may transfer the pupil to the pupil's resident school district. The school board must notify the pupil's parent or guardian and DPI. The pupil's parent or guardian may appeal the transfer to DPI within 30 days after receipt of the notice of transfer. DPI must affirm the school board's decision unless DPI finds that the decision was arbitrary or unreasonable. [SECTION 10 of the substitute amendment (creating s. 118.40 (8) (g)).]

Prohibition on (2r) Virtual Charter Schools

Current law authorizes the entities specified in s. 118.40 (2r) (b) 1., Stats. (that is, the University of Wisconsin (UW)-Milwaukee, City of Milwaukee, Milwaukee Area Technical College, and the UW-Parkside⁴) to establish or contract for the establishment of charter schools (sometimes referred to as independent or (2r) charter schools). The substitute amendment prohibits these entities from establishing a virtual charter school. [SECTION 7 of the substitute amendment.]

Tuition Charge to Out-of-State Virtual Charter School Pupils

Current law prohibits a charter school from charging tuition. [s. 118.40 (4) (b) 1., Stats.]

⁴ The UW-Parkside is limited to one charter school with a maximum of 480 pupils.

Effective July 1, 2008, the substitute amendment makes one exception to that prohibition and requires a school board that has contracted for the establishment of a virtual charter school to charge tuition for a pupil at the school who is not a resident of Wisconsin. The minimum amount that must be charged is the amount used for the per pupil state aid adjustment under the open enrollment program. [SECTIONS 9 and 18 of the substitute amendment.]

Professional Development Requirement to Teach Online Courses

Beginning July 1, 2010, the substitute amendment prohibits any person from teaching an online course in a public school, including a charter school, unless the person has completed at least 30 hours of professional development designed to prepare a teacher for online teaching. [SECTION 6 of the substitute amendment.]

Availability of Contracts Relating to Online Courses

The substitute amendment provides that any contract entered into by a school board that relates to providing online courses is open to public inspection and copying. [SECTIONS 13 to 16 of the substitute amendment.]

LEGISLATIVE HISTORY

Assembly Bill 697 was introduced by Representative Davis and others; cosponsored by Senator Olsen and others. Assembly Substitute Amendment 1 was introduced by Representative Davis. The Assembly Committee on Education introduced Assembly Amendment 1 to Assembly Substitute Amendment 1 but (on a vote of Ayes, 1; Noes, 8) did not recommend adoption of Assembly Amendment 1. The committee recommended adoption of Assembly Substitute Amendment 1 on a vote of Ayes, 6; Noes, 3. The committee then recommended passage of the bill, as amended, on a vote of Ayes, 6; Noes, 3.

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