

Prepare Now to Respond to Legislation on Virtual Charter Schools

Summary: A Wisconsin court recently ruled that the virtual charter school operated by Northern Ozaukee School District is illegal. Legislation will probably be introduced in January to address this issue. Virtual charter schools are public schools. However, because their students study in their homes, they are often confused with homeschools. Therefore, the legislation may well undermine our homeschooling freedoms. Homeschoolers working together through WPA will need to respond.

Important Facts

- The court did not rule that parents cannot teach their own children in homeschools. See below for details.
- Advocates of virtual charter schools want legislation to make them legal. Other groups with differing goals also see this as an opportunity to get legislation they have been wanting. Therefore, differing bills will probably be introduced, resulting in confusion, especially since money is a motivating factor. See key players below.
- Virtual charter schools depend on open enrollment, and applications must be filed between February 4 and 22, 2008. Advocates are likely to push hard for legislation in January. But because the court ruling raises questions about the definition of a school and a teacher, the legislation is likely to be complex and far-reaching and may become bogged down. It is impossible to predict what will happen or when.
- We homeschoolers must watch out for our own interests. We cannot assume that anyone else will go to bat for us, especially since some key players have interests opposed to ours. For example, as long time WPA members know, the DPI, WEAC, and public school districts have been trying for years to entice homeschoolers to use public school services so districts could count homeschoolers in their enrollment figures and get more tax money.
- If we homeschoolers accept money or favors from the government, state regulation of homeschools will increase. This will make it much more difficult for us to homeschool as we currently do, in ways that are working well. Homeschoolers choose homeschooling so we can raise our children according to our own principles and beliefs, not those of the government.

How We Can Prepare

We are likely to need to contact our legislators and possibly attend one or more hearings in Madison. To prepare:

- Make sure that WPA has your current email address so you can be contacted quickly if the need arises.
- Get a copy of the WPA handbook, *Homeschooling in Wisconsin: At Home With Learning*, if you don't already have

one. (Order forms are available on the WPA website—www.homeschooling-wpa.org.) The handbook contains information you will need, including detailed explanations of Wisconsin's current homeschooling law (Chapters 3 and 28), problems caused by accepting favors from the government (Chapter 24), information on working with legislators and attending hearings (Chapter 30), etc.

- Find out how to contact your state legislators, if you don't already know. Call the Legislative Hotline 1-800-362-9472 or use WPA's Contacting Legislators on the website. Consider calling them now. Ask to speak to an aide who handles education. Explain that you realize there is likely to be legislation soon about virtual charter schools, and it is very important to you that this legislation not undermine homeschooling freedoms. Explain that homeschoolers do not want money or favors from the government, and you are not asking your representative to support or oppose any legislation at this point. You just want to let them know what your position is now.
- Plan to attend a hearing, if necessary. Our presence at hearings is one of the most effective ways we can make our case before the legislature. You do not need to testify. You can simply fill out a form registering for or against a given bill. Well-behaved children are welcome; many families count this as a social studies field trip.
- Share this information with as many other people as possible. Numbers will matter; the more people, the better our chances. Inform homeschoolers you know, including members of your support group. Encourage them to join WPA. In addition, you do not need to be a homeschooler to call your legislators or attend a hearing about legislation that affects homeschooling, so you can include family, friends, and acquaintances. Some people set up their own email loops so they can share information they receive from WPA with others.
- It is important that we work together. Therefore, check with other homeschoolers and WPA before initiating new action so you don't undermine what someone else is trying to do. Speak for yourself and not for other homeschoolers.
- If you hear news reports or other information about this issue, inform WPA by email, voice mail (608-283-3131), or postal mail.

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Key Goals for Homeschoolers

- **Maintain Wisconsin's current homeschooling law.**

We have one of the best homeschooling laws in the nation. It has worked very well since 1984. There is no reason to change it. In fact, there would be serious negative consequences if it were changed.

- **Refuse money or favors from the government.** Homeschoolers do not want money from the government in the form of direct grants or tax credits or tax deductions and we do not want favors. There is no such thing as a free lunch. Experience in many other states and in Canada has shown that money or favors are accompanied by increased state regulation of homeschooling. In addition, when all is said and done, tax credits or deductions do not amount to much money and usually cannot be used for religiously based curriculum or other materials.

- **Maintain the distinction between homeschools and virtual charter schools.** Among the key differences:

–Virtual charter schools are PUBLIC schools and are subject to state regulation, including complying with state standards and administering state-mandated tests. Homeschools are PRIVATE schools and are not subject to state regulation. In order to insure that we are not subjected to the same regulations as virtual charter schools, we must maintain the distinction. Parents of virtual charter school students are willing to accept state regulation; some even welcome it.

–We homeschoolers take direct responsibility for our children's education rather than turning it over to the public schools. We educate our children according to our principles and beliefs, not those of the state.

–As the administrators of our homeschools, we homeschoolers choose our curriculums and decide how our children will be evaluated rather than following state mandates. We establish the yearly calendar and daily schedule our homeschool will follow.

- **Maintain the sanctity of homes.** We don't want homeschools to become the government's ticket into the homes of private citizens and set a precedent for major government intrusion into family life. This means that we are opposed to Wisconsin's virtual charter schools, which are public schools and allow the government to monitor what is happening in homes.

If we are to protect the sanctity of our homes, families can have at least four choices for how they will educate their children, but there is one they can't have. (1) Families can send their children to conventional brick and mortar schools. (2) Families can send their children to brick and mortar public schools where they can use the school's computers to take on-line courses. In other words, brick and mortar schools can offer virtual schools within their buildings. (3) They can send them to conventional private schools. (4) Families can have homeschools that are private schools, that do not receive money or favors from the government and are subject to the least government regulation possible, such as Wisconsin's current homeschooling law. But families cannot have government funded public schools in their homes because that sets a precedent of government intrusion into citizens' homes. Does it make sense to allow the few people who want public virtual charter schools in their homes to undermine the sanctity of everyone else's home?

To reach these goals, we will need to stand up and speak loudly when the occasion calls for it and as often as necessary.

Background and Details

Definitions

A **brick and mortar school** is a school whose students study in a school building.

A **charter school** in Wisconsin is a PUBLIC school that is exempt from some requirements put on all other public schools so it can try new approaches to education. However, it must still comply with state standards, administer state-mandated standardized tests, etc.

A **virtual school** (sometimes called an on-line school) can be EITHER PUBLIC OR PRIVATE. Students use computers to receive instruction, respond, communicate with teachers, etc. Students usually work from their homes. (A few homeschoolers take courses from private virtual schools.)

A **virtual charter school** is a PUBLIC school whose students receive instruction via computer. It must comply with state standards, administer state-mandated tests, etc. It is NOT a homeschool. Although virtual charter schools have existed in Wisconsin for six years, and advocates have worked to increase their number, there are still only 3,000 students enrolled in them, which is three-tenths of one percent of the school age population in Wisconsin.

A **homeschool** is a PRIVATE school. In Wisconsin, homeschools do not receive tax dollars and are not required to comply with state standards or administer state-mandated tests.

Because virtual charter school students study in their homes, they are sometimes referred to as homeschoolers and sometimes refer to themselves that way. In addition, the Appeals Court decision refers to virtual charter school students as receiving "a home-based education." This phrase is similar enough to the statutory term for homeschools ("home-based private educational programs") to increase confusion.

History of Virtual Charter Schools

To increase profits, in recent years several curriculum providers have been marketing their virtual schools to school districts so districts rather than parents pay for the curriculums, which often cost over \$1,000 per child per year. One such corporation is K12, Inc., originally headed by William Bennett, who was Secretary of Education under President Reagan. Bennett has fallen from favor and no longer heads K12, Inc. WPA opposed the establishment of such schools and testified at hearings in several school districts. (See WPA's opposing public E-Schools.) Lake Mills School District considered and rejected a contract with K12, Inc., but in 2003, Northern Ozaukee School District signed on. Northern Ozaukee faced declining enrollment and wanted to increase enrollment, jobs, and its budget. (In its contract with Northern Ozaukee, K-12, Inc. agreed to cover court costs and attorneys' fees resulting from lawsuits.)

Wisconsin has never had a statute saying that virtual charter schools are legal. From the beginning, these schools have relied on loopholes in statutes governing charter schools and open enrollment that were enacted before virtual charter schools came into existence and were not intended to authorize them.

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Court Decisions

The Wisconsin Education Association Council (WEAC), Wisconsin's largest teachers union, filed suit against Northern Ozaukee in January 2004. In 2006, a circuit court ruled that Northern Ozaukee could operate a virtual charter school under existing statutes and recruit students from throughout Wisconsin through the state's open enrollment statute, which allows students to attend a school in a district outside the one in which they reside.

On December 5, 2007, in a unanimous decision by three judges, the District II Court of Appeals reversed the lower court's decision. It ruled that, "As the law presently stands, the charter school, open-enrollment, and teacher certification statutes are clear and unambiguous, and the [Northern Ozaukee School] District is not in compliance with any of them."

First, Northern Ozaukee's virtual charter school, called Wisconsin Virtual Academy (WIVA) violates the statute that says a school district cannot establish "a charter school located outside the school district." The lower court had ruled that WIVA is located in Northern Ozaukee because its administrative offices are there. The Appeals Court ruled that because teachers and students are an important part of a school, and because many of WIVA's teachers and students are located outside of Northern Ozaukee, part of WIVA is located outside of Northern Ozaukee, and so WIVA violates the statute.

Second, the court ruled that WIVA is not entitled to collect money from other school districts through open enrollment because students who do not live in Northern Ozaukee do not meet the open enrollment requirement that students attend school in the district to which they have been transferred, in this case, Northern Ozaukee.

Third, the court stated, "And we are convinced beyond a doubt that the activities of the WIVA parents constitute teaching in a public school." Therefore, WIVA violates the statute requiring teachers in public schools to be state-certified.

The court also ordered that the DPI not make "pupil transfer payments based upon nonresident students enrolled in WIVA," in other words, not give Northern Ozaukee open enrollment funds for students who do not reside in the district.

Key Players and Their Apparent Objectives

To understand what is likely to happen next, it's helpful to review the key players and their apparent objectives. Note that except for homeschoolers working together through WPA, money is a significant motivator for all of them.

Northern Ozaukee School District-Apparent objectives: Increase enrollment and thus the district's income despite the fact that enrollment in brick and mortar schools is declining. Recruit students throughout Wisconsin through open enrollment, run a virtual charter school, make a small profit, and send most of taxpayers' money to K12, Inc. in Virginia. Note: The plan is working; Northern Ozaukee now has more students enrolled in WIVA than in its brick and mortar schools. According to the Milwaukee Journal-Sentinel, Northern Ozaukee "recorded the largest net gain in open enrollment funds for the state last school year, netting more than \$3.6 million that otherwise would have gone to the students' home districts."

K12, Inc.-Apparent objectives: Increase profits and make money by selling curriculum and services to Northern Ozaukee.

WEAC, Wisconsin's largest teachers union-Apparent objectives: Ensure that virtual charter schools don't undermine

brick and mortar schools. Protect jobs of members who work in brick and mortar schools. Since one virtual charter school teacher can "teach" 50 students, teaching jobs would be lost if virtual charter schools grew in popularity. (So far they are growing very slowly.)

Wisconsin Coalition of Virtual School Families, an organization of parents, educators, and principals who support public virtual schools in Wisconsin-Apparent objectives: Keep open a public school that provides them with free curriculum and supervision by a certified teacher and loans them a computer. Continue taking direction from public school teachers, reporting to them, taking state-mandated tests, etc. (It is worth noting that in testimony before the Wisconsin Legislature, Rose Fernandez, the president of this organization, said parents welcomed monitoring by public school teachers, adherence to state standards, and state-mandated testing. Obviously, there are major differences between this organization and WPA.)

School districts, parents, and others associated with the few other virtual charter schools in Wisconsin-Apparent objective: Get court decisions and legislation that legalize virtual charter schools so they can continue operation.

The Wisconsin Department of Public Instruction (DPI)-Apparent objective: Try to deal with being caught in the middle. Although the DPI (in the person of the State Superintendent of Public Instruction) was a codefendant with Northern Ozaukee in the original suit, the DPI "has adopted WEAC's position on the teacher licensing statute and takes no position on the other two claims," according to the ruling.

Many Democratic legislators and Governor Doyle-Apparent objectives: Support public schools and work to reform them through the existing structure. Oppose virtual charter schools as they have been operating because they pose a threat to public schools.

Many Republican legislators-Apparent objective: Support virtual charter schools as one more way (along with vouchers and school choice programs) to increase the role of the private sector in education and use tax money to support private education.

Wisconsin Charter Schools Association (WCSA) and other advocates of charter schools-Apparent objective: Maintain current virtual charter schools through legislation or a favorable decision from the Wisconsin Supreme Court.

Homeschoolers working together through WPA-Objectives: Maintain Wisconsin's current homeschooling law. Refuse money or favors from the government. Maintain the distinction between homeschools and virtual charter schools. Maintain the sanctity of homes.

What May Happen Next

Northern Ozaukee will request that the circuit court stay the order that the DPI not make transfer payments through open enrollment, and the court will probably grant this request. Northern Ozaukee will also appeal the case to the Wisconsin Supreme Court.

Some key players will devise legislation that would benefit them. There will probably be a number of different bills and some confusion. Fortunately, because of the Legislature's holiday break, it is unlikely that there will be hearings or votes on legislation related to this issue before late January. (If this schedule changes, WPA will inform you.)

Thank you for taking the time to read this and for your continuing support of WPA. —The WPA Board ❖