

Wisconsin Institute for Law & Liberty: Joins School Choice Wisconsin Action to sue DPI in school choice lawsuit

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State's ed agency illegally preventing private choice schools from counting "virtual instruction" towards classroom learning requirements

The Breaking News: Today WILL attorneys, on behalf of School Choice Wisconsin Action, sued State Superintendent of Public Instruction Carolyn Stanford Taylor and the Wisconsin Department of Public Instruction (DPI), the state ed agency, for their unfair, illegal treatment of private schools in Wisconsin's choice programs. DPI is denying private choice schools the opportunity to fully utilize online, virtual learning as part of classroom instruction. The lawsuit can be found [here](#).

The Story: Due to massive snowstorms and temperatures frequently below zero degrees, Wisconsin's unprecedented winter weather forced schools to scramble to make-up for cancelled class time. To help, many [public](#) schools have embraced online learning, so-called "virtual instruction." With tablets, laptops, and smartphones, students can participate in classroom activities from home without needing to go to a brick and mortar building. Besides helping with inclement weather, online learning expands the curriculum and available instruction time to help students of differing abilities and learning preferences.

DPI allows public schools to count virtual instruction towards the hourly pupil instruction requirements. But last month, DPI determined that private schools in the choice program cannot count virtual instruction towards their hourly pupil instruction requirements. Public schools get to take advantage of this innovative teaching tool, but DPI refuses to let choice schools have that same right.

This is the second time WILL has sued State Superintendent Carolyn Stanford Taylor since her appointment in January. Unfortunately, this lawsuit signals that Taylor's DPI will be a lot like Evers' DPI: hostile to school choice.

The Lawsuit: Wisconsin law requires all public and private schools in the choice programs to provide specific hours of direct pupil instruction: for grades 1 -6, at least 1,050 hours and for grades 7-12, at least 1,137 hours. DPI has said that public schools can count "virtual instruction" towards the "direct pupil instruction" requirements but private choice schools cannot.

State law does not empower DPI to make such a decision. And if they were to do it, they need to go through the rule-making process, which they have not. DPI is violating constitutional rights under the Equal Protection Clause by treating private schools in the choice program differently than public schools.

WILL's client, School Choice Wisconsin Action, has member schools in every corner of the state. These schools are affected by DPI's unfair treatment. The lawsuit was filed Wednesday in Waukesha County Circuit Court.

The Quotes:

Libby Sobic, WILL Attorney in the case: "Once again, the state Department of Public Instruction is violating the law to harm private schools in the choice programs. Public schools all over the state are using online learning to expand student access to curriculum and as a way to avoid cancelling classes due to Wisconsin's winter weather. But DPI will not give students at choice schools those same opportunities. It's unfair, wrong, and illegal."

Adam Kirsch, Principal, Milwaukee Lutheran High School on virtual learning: "Online learning gives schools the ability to improve student achievement by utilizing innovative teaching methods and the latest technology. Our schools have been experimenting with a new system to deliver high-quality learning content digitally to all students. This system could give us flexibility to deal with the harsh Wisconsin winters instead of cancelling class. Sadly we were told by DPI that, unlike public schools, we cannot count our online learning towards the instructional hour requirements."

Terry Brown, Chair of School Choice Wisconsin Action: "The legislature changed the process for all state agencies in setting rules and regulations that carry the weight of law. The Department of Public Instruction needs to be held accountable under the new law."