

FILED
05-10-2019
Clerk of Circuit Court
Waukesha County
2019CV000574

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY

SCHOOL CHOICE WISCONSIN
ACTION, INC.,

Plaintiff,

v.

Case No. 19-CV-0574

CAROLYN STANFORD TAYLOR,
WISCONSIN DEPARTMENT OF
PUBLIC INSTRUCTION,

Defendants.

DEFENDANTS' ANSWER

INTRODUCTION

1. As to paragraph 1, Defendants admit that DPI has informed Choice Schools that they may not count instruction provided through the internet between students and teachers geographically remote from each other as “direct pupil instruction” under Wis. Stat. §§ 118.60(2)(a)8. and 119.23(2)(a)8. Defendants deny the remaining allegations in this paragraph.

2. As to paragraph 2, Defendants deny.

JURISDICTION AND VENUE

3. As to paragraph 3, the allegation consists of a legal conclusion to which no response is required. To the extent this paragraph misstates the law or contains factual allegations, Defendants deny.

4. As to paragraph 4, Defendants lack knowledge or information to form a belief about the allegation, and therefore deny.

THE PARTIES

5. As to paragraph 5, Defendants lack knowledge or information to form a belief about the allegation, and therefore deny.

6. As to paragraph 6, Defendants lack knowledge or information to form a belief about the allegation, and therefore deny.

7. As to paragraph 7, Defendants lack knowledge or information to form a belief about the allegation, and therefore deny.

8. As to paragraph 8, Defendants admit.

9. As to paragraph 9, Defendants admit.

STATEMENT OF CLAIM

10. As to paragraph 10, Defendants admit that Choice Schools are regulated in Wisconsin under the provisions of Wis. Stat. §§ 118.60 and 119.23. Defendants deny that the remaining allegation fully or correctly quotes Wis. Stat. § 118.60(2)(a)8., which speaks for itself and which includes additional language.

11. As to paragraph 11, Defendants admit that the direct pupil instruction hours requirement for schools in the Wisconsin Parental Choice Program is identical to the requirement in the Milwaukee Parental Choice Program. Defendants deny that the remaining allegation fully or correctly

quotes Wis. Stat. § 119.23(2)(a)8., which speaks for itself and which includes additional language.

12. As to paragraph 12, Defendants deny Wis. Stat. § 121.02(1)(f) creates an identical requirement for Wisconsin Public Schools. Defendants further deny that the remaining allegation fully or correctly quotes Wis. Stat. § 121.02(1)(f), which speaks for itself and which includes additional language.

13. As to paragraph 13, Defendants admit.

14. As to paragraph 14, Defendants admit.

15. As to paragraph 15, Defendants admit that pursuant to a lawfully promulgated administrative rule enacted by DPI, public schools may count hours of instructional programming offered through “innovative instructional designs” that apply to the entire school or grade level. “Innovative instructional designs” means instruction aligned to the public school district standards under Wis. Stat. § 121.02(1), offered in alternative settings, including virtually. Defendants deny that the remaining allegations fully or correctly summarize Wis. Admin. Code § PI 8.01(2)(f), which speaks for itself.

16. As to paragraph 16, Defendants admit that the allegation quotes the cited provision.

17. As to paragraph 17, Defendants admit that the allegation includes a quote from DPI’s website, which speaks for itself. Defendants deny Plaintiff’s characterization of the quote.

18. As to paragraph 18, Defendants admit that in January 2019, various Choice Schools asked DPI whether they could make up hours of direct pupil instruction lost due to inclement weather by providing virtual instruction. Defendants deny the remaining allegations in this paragraph.

19. As to paragraph 19, Defendants admit.

20. As to paragraph 20, Defendants admit.

21. As to paragraph 21, Defendants admit.

22. As to paragraph 22, Defendants lack knowledge or information to form a belief about the allegation, and therefore deny.

Claim I – Declaration under Wis. Stat. § 227.40

23. No response required.

24. As to paragraph 24, Defendants admit that the same term—“direct pupil instruction”—is used in Wis. Stat. §§ 118.60(2)(a)8., 119.23(2)(a)8., and 121.02(1)(f) and that that term is not defined in the Wisconsin Statutes. The remaining allegation consists of a legal conclusion to which no response is required.

25. As to paragraph 25, Defendants admit.

26. As to paragraph 26, Defendants admit that DPI has promulgated a rule that “direct pupil instruction” includes instructional programs aligned to public school district standards provided outside the normal school day, virtually, or in an alternative setting. *See* Wis. Admin. Code

§§ PI 8.001(6g), 8.01(2)(f). The remaining allegation consists of a legal conclusion to which no response is required.

27. As to paragraph 27, Defendants admit that DPI interprets “direct pupil instruction,” as used in Wis. Stat. § 121.02(1)(f), to include instructional programs aligned to public school district standards provided outside the normal school day, virtually, or in an alternative setting. *See* Wis. Admin. Code §§ PI 8.001(6g), 8.01(2)(f). Defendants deny the remaining allegations in this paragraph.

28. As to paragraph 28, Defendants admit DPI clarifies its interpretation of “direct pupil instruction” as used in Wis. Stat. § 121.02(1)(f) on its website.

29. As to paragraph 29, Defendants admit that in its February 5 and February 28, 2019, communications, DPI interprets “direct pupil instruction” as used in Wis. Stat. §§ 118.60(2)(a)8. and 119.23(2)(a)8. to exclude instructional programs aligned to public school district standards provided virtually, as the public school standards under Wis. Stat. § 121.02(1) do not apply to Choice Schools. Defendants deny the remaining allegations in this paragraph.

30. As to paragraph 30, Defendants deny.

31. As to paragraph 31, Defendants deny that the allegation fully or correctly quotes Wis. Stat. § 227.10(1), which speaks for itself and which includes additional language.

32. As to paragraph 32, Defendants admit that DPI is the agency charged with administering and implementing Wis. Stat. §§ 118.60 and 119.23. Defendants deny the remaining allegations in this paragraph.

33. As to paragraph 33, Defendants deny.

34. As to paragraph 34, Defendants deny.

35. As to paragraph 35, Defendants deny.

Claim II – Declaration under Wis. Stat. § 806.04

36. No response required.

37. As to paragraph 37, Defendants deny that the allegation fully or correctly summarizes Wis. Stat. § 806.04, which speaks for itself and which includes additional language.

38. As to paragraph 38, Defendants lack knowledge or information to form a belief about the allegation, and therefore deny.

39. As to paragraph 39, Defendants deny.

40. As to paragraph 40, Defendants deny.

Claim III – Equal Protection

41. No response required.

42. As to paragraph 42, Defendants admit.

43. As to paragraph 43, the allegation consists of a legal conclusion to which no response is required. To the extent this paragraph misstates the law or contains factual allegations, Defendants deny.

44. As to paragraph 44, the allegation consists of a legal conclusion to which no response is required. To the extent this paragraph misstates the law or contains factual allegations, Defendants deny.

45. As to paragraph 45, Defendants deny.

46. As to paragraph 46, Defendants deny.

RELIEF REQUESTED

As to all requests for relief that follow “WHEREFORE,” Defendants deny and deny that any of the requested relief is warranted.

DEFENSES

1. Failure to state a claim upon which relief may be granted.

Dated this 10th day of May, 2019.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

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