

MEMORANDUM

TO: WSBA Legislative Committee

FROM: Adam E. Torem, Past Chair & Legislative Liaison
Legal Assistance to Military Personnel (LAMP) Section
Washington State Bar Association

DATE: October 26, 2010

RE: Proposal for Bill Expanding Rights of Activated Guard and Reserve Members
at Institutions of Higher Education

Members of the Washington national guard or any other reserve component of the armed forces who are enrolled at institutions of higher education are now entitled to certain protections if their military service calls them away from their educational pursuits for more than 30 days. However, the law does not currently cover shorter periods of service nor does it address a student's rights if injured during a military training exercise that might occur during a weekend drill session. The LAMP Section is seeking to address those two deficiencies in the current law.

I. Background.

RCW 28B.10.270 is entitled "Rights of Washington national guard and other military reserve students called to active service." As the title indicates, protections under the law require the military student to be called up to active service (either state or federal) and that call-up must last for a period of more than 30 days. The Legislature adopted this provision in 2004 as a measure to formalize protections for the many Washington residents serving in the national guard or reserves who were being called away to service in Iraq and Afghanistan.

As currently enacted, RCW 28B.10.270 does not contemplate national guard or reserve members called away for 30 days or less having to interrupt a school term in favor of their military service. Over the last year, one servicemember's case was brought to our attention where he was denied an opportunity to take a make-up exam three (3) times despite being ordered to attend a military drill scheduled at the same time as those exams. This U.S. Marine Corps reservist attends Western Washington University in Bellingham but has to travel to Spokane for his monthly weekend drill sessions. In some instances, this Marine has to travel to Spokane on a Friday in order to be present and prepared for the drill that begins early on Saturday morning, and it was this sort of situation that caused him to miss exams set during those Friday travel times. Despite knowledge of the Marine's military obligations, this professor refused to offer an alternate time to take the test.

Although the current law now states that it provides only minimum protections for students and does not prevent individual institutions from providing additional options or protections, WWU This particular reservist's military service negatively impacted his educational opportunities. The LAMP Section wants to ensure this type of situation does not recur.

II. Proposed New Subsection of RCW 28B.10.270.

The WSBA LAMP Section proposes the following self-explanatory subsection to be added into the current RCW 28B.10.270:

(2) (a) A member of the Washington national guard or any other military reserve component who is a student at an institution of higher education and who is ordered for a period of thirty days or less to either active or inactive state or federal service and as a result of that service or follow-up medical treatment for injury incurred during that service, misses any class, test examination, laboratory, or other event upon which a course grade or evaluation is based, shall be entitled to make up such class, test, examination, laboratory, or event without prejudice to the final course grade or evaluation.

(b) If the faculty member teaching the course determines that the student has completed sufficient work and has demonstrated sufficient progress toward meeting course requirements to justify the grade without making up the class, test, examination or other event, the grade may be awarded without such make-up, but the missed class, test, examination, laboratory or other event must not be used in any way to adversely impact the student's grade or standing in the class.

Quite simply, new provision (a) would protect a military student from being called away from school to perform military duties for a weekend, a period of days, or a period of weeks and not require the absence to extend for a full month or more. In addition, the language recognizes that some military service or training can result in accidental injury to the member, possibly leading to a medical incapacity to attend or continue school studies or events. In both of these situations, the institute of higher education and its faculty members would be required to offer the military student a reasonable opportunity to make up the missed work, test, etc.

Further, new provision (b) would specifically allow a faculty member to use individual discretion to waive course requirements that a military student missed due to a short-term military absence, so long as doing so does not prejudice the military student's end-of-course grade.

The LAMP Section believes that many institutions of higher education around the state already take the initiative to work with students who have to miss class for a variety of reasons. However, the example brought to our attention last year suggests that some military members are not receiving all the protection they should when serving their country in uniform. Therefore, we seek to mandate this expanded protection and ensure that even our "weekend warriors" are still able to complete their educational endeavors while serving in the national guard or a military reserve component.