

Learn at Home, Play at School: A State-by-State Examination of Legislation, Litigation and Athletic Association Rules Governing Public School Athletic Participation by Homeschool Students

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I. INTRODUCTION

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition . . . The child is not the mere creature of the State; those who

nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

U. S. Supreme Court Chief Justice Warren Burger (1972).¹

Susan and Emily are teammates on their local high school volleyball team. They are best friends, spending virtually all their spare time together. They live in the same neighborhood, listen to the same music, go to church together, participate in the same leisure activities, and shop for clothes at the same stores. They are virtually inseparable - except when they attend school.

Susan goes to school Monday through Friday. She sits in a classroom with 25 or more students, does her homework at night, and is expected to be at school ready for her first class promptly at 8:00 a.m. She attends classes until 3:30 p.m., then goes to volleyball practice after school. In contrast, Emily has a room in her home dedicated to her academic studies. She learns at her own pace, by herself, or with help from her stay-at-home mother. She has a flexible schedule that allows unstructured learning throughout the day, and that is designed to generate many hands-on learning experiences.

Many days at practice, Susan complains to Emily about the boring lectures in her classes, only to find that Emily has spent the day learning about classical music at a noon concert, talking to a state leader at a political event, or learning history through a workshop at a local historical site. To make matters even worse, Emily tells Susan that after the volleyball season is over, Emily's family will be accompanying her father on a two week business trip to Europe in order to experience life in foreign countries. During her international travel, Emily will not miss any school work, but will use her time to learn about the different traditions and customs of other cultures.

Susan is envious of Emily's situation, and wants to complete her education at home like Emily will. However, Susan's parents have both chosen to continue pursuing their careers, and due to their work schedules, they have no choice but to enroll Susan in the local public school. Susan's parents were educated in public schools, and they are confident that Susan is getting the same high-quality education they received. They value the structured learning environment, and believe that it creates the ideal situation for Susan to excel academically. Conversely, Emily's parents believe that the learning environment should be more flexible in order to experience more than just "book learning." Therefore, Emily's parents have chosen to keep her at home to complete her education.

1. *Wisconsin v. Yoder*, 406 U.S. 205, 232-33 (1972).

Emily's presence on the team has evoked diverse responses. While many players and parents approve of Emily's participation on the school team, school administrators resent being required to accept a player who does not attend the school for which she competes. Although her teammates are very supportive of Emily, the situation causes some hard feelings in the school and community, and especially with parents of players who would start and get the playing time that is now going to Emily.

This is not an isolated incident. Recent statistics demonstrate rapid growth in students being taught at home, and the trend indicates that the number of homeschool students will continue to increase in the years ahead. One author has said that "the homeschool phenomenon has caught fire across America."² Many parents, school administrators, courts and legislators, have faced the dilemma whether or not homeschool students should be allowed to participate in public school extracurricular activities.

Like most disagreements arising out of sincere philosophical differences, disputes between parents and public school administrators are not likely to disappear soon. Parents are emotionally invested in their children's education, and aspire to prepare their children for the "additional obligations" referred to by Chief Justice Burger. In the *Yoder* case, the Supreme Court recognized among those additional obligations "the inculcation of moral standards, religious beliefs, and elements of good citizenship."³ Many homeschool parents believe that participation in extracurricular activities should be accepted by public schools as an additional obligation owed to their children. Homeschool parents recognize the benefits of participation in extracurricular activities, and desire for their children to have the same extracurricular experiences as public school students.

However, school administrators express concern that they will no longer manage and regulate all of the school's activities, and that students in full-time attendance at the school will be denied participation opportunities by "non-attending" students. Since there is little ground for compromise on either side, courts and state legislatures have been (and will continue to be) called upon to resolve these disputes.

After a brief review of the history and current status of the homeschool movement, this article will examine the manner in which each state has

2. Virginia Johnson, *The Homeschool Phenomenon*, AnswerPoint.org (2001) at http://www.answerpoint.org/columns2.asp?column_id=266&column_type=feature (last visited Jan. 5, 2005).

3. *Yoder*, 406 U.S. at 233.

resolved the issue of homeschool students seeking to participate in public school extracurricular activities.

It should be noted that there is no consistency in language to describe students who learn at home. Various courts, legislatures, writers and commentators refer to a student involved in this activity as a "homeschool," "home-school," "home school," "home educated," "nonpublic," "part-time," "home-instructed," "nonenrolled," or "home study" student. The activity is described as "homeschooling," "home-based education," "home education," "alternative instruction," or something similar. For consistency in this article, students who learn at home will be referred to as "homeschool" students, except in direct quotations or references to specific statutes, rules, or bylaws which use different designations.

II. THE HOMESCHOOL MOVEMENT

Homeschooling is not a new approach to educating America's children. The Massachusetts Bay Colony enacted the first compulsory education law in America in 1642, although the law did not provide for public schools or teachers.⁴ Instead, the law placed the responsibility for educating children exclusively on their parents. In fact, "until the early 19th Century, home schooling was the ordinary means of basic education" in America.⁵ The U.S. Supreme Court has acknowledged that "free public education was virtually nonexistent in the late 18th century... since there then existed few government-run schools."⁶ When discussing the provisions of the 14th Amendment in *Brown v. Board of Education*,⁷ the court further confirmed that "[i]n the South, the movement toward free common schools, supported by general taxation, had not yet taken hold" at the time of passage of the Amendment in 1868.⁸

Shortly after the American Revolution, Massachusetts was the first state to pass a law requiring towns to establish and support public schools.⁹ In 1852, Massachusetts also became the first state to establish compulsory attendance laws, requiring that children between the ages of eight and fourteen attend

4. Gerald B. Lotzer, *Texas Homeschooling: An Unresolved Conflict Between Parents and Educators*, 39 BAYLOR L. REV. 469, 470 (1987).

5. Pamela R. Klipsch, *An Educated Collection for Homeschoolers*, 120 LIBR. J. 47 (Feb. 1, 1995).

6. *Wallace v. Jaffree*, 472 U.S. 38, 80 (1985).

7. 347 U.S. 483 (1954).

8. *Id.* at 489-90.

9. Lotzer, *supra* note 4, at 470.

school for twelve weeks each year.¹⁰ Once Massachusetts began the movement toward government-sponsored public education and mandatory attendance, other states began to follow this example. By 1918, every state had a compulsory school attendance law.¹¹

Virtually every compulsory attendance law contained an enforcement mechanism that made non-attendance a crime.¹² The potential result of a parent homeschooling a child was a criminal charge of truancy.¹³ Many states used these truancy laws to discourage parents from removing students from public schools, believing that they were "protecting innocent children from serious harm."¹⁴ Homeschool students did not become free from truancy prosecution in all 50 states until 1993, when the Michigan Supreme Court decided in *People v. DeJonge*¹⁵ that the Michigan compulsory education law requiring students to attend public or "state approved nonpublic" schools was an unconstitutional violation of the Free Exercise Clause of the First Amendment to the Constitution.¹⁶

In *San Antonio Independent School District v. Rodriguez*, the U.S. Supreme Court has held that education is not a fundamental right guaranteed by the U.S. Constitution.¹⁷ Further the Court has acknowledged in *Plyler v. Doe*¹⁸ that "education has a fundamental role in maintaining the fabric of our society,"¹⁹ and held in *Brown* that "education is perhaps the most important function of state and local governments,"²⁰ and that "where the state has undertaken to provide it (the opportunity of an education), [it] is a right which must be made available to all on equal terms."²¹ While the *Rodriguez*, *Plyler*, and *Brown* cases recognize the state's interest and obligation to educate students in the public school system, the Supreme Court in *Yoder* also confirmed the right of parents to educate their children at home, and,

10. *Id.*

11. *Id.*

12. Scott W. Somerville, *The Politics of Survival: Home Schoolers and the Law*, Home Legal Defense Association, at <http://www.hsllda.org/docs/nche/000010/politicsofsurvival.asp> (last visited Jan. 3, 2005).

13. *Id.*

14. *Id.*

15. 501 N.W.2d 127 (Mich. 1993).

16. Somerville, *supra* note 12.

17. 411 U.S. 1 (1973).

18. 457 U.S. 202 (1982).

19. *Plyler v. Doe*, 457 U.S. 202, 221 (1982).

20. *Brown*, 347 U.S. at 493.

21. *Id.*

accordingly, all states now recognize the right of parents to homeschool their children.²²

Requirements for the administration of homeschool instruction vary from virtually no regulation or oversight in some states, to very rigorous standards of control and oversight in others.²³ An example of a state having minimal requirements is Michigan. The Michigan Legislature has recognized that it is "the natural, fundamental right of parents and legal guardians to determine and direct the care, teaching, and education of their children."²⁴ In that regard, Michigan has created an exception to the compulsory attendance law if the "child is being educated at the child's home by his or her parent or legal guardian in an organized educational program in the subject areas of reading, spelling, mathematics, science, history, civics, literature, writing, and English grammar."²⁵

An example of rigorous control is found in Pennsylvania,²⁶ which has an extensive oversight mechanism requiring all homeschool students to register with the local public school superintendent,²⁷ to complete specific courses,²⁸ to provide a portfolio documenting "reading materials used, samples of any writings, worksheets, workbooks or creative materials used or developed by the student and in grades three, five and eight results of nationally normed standardized achievement tests in reading/language arts and mathematics or the results of Statewide tests administered in these grade levels"²⁹ for review by outside evaluators, and to provide "an annual written evaluation of the student's educational progress as determined by a licensed clinical or school psychologist or a teacher certified by the Commonwealth . . ."³⁰

22. Eugene C. Bjorklund, *Home Schooled Students: Access to Public School Extracurricular Activities*, 109 ED. LAW REP. 1, 4 (1996); David W. Fuller, *Public School Access: The Constitutional Right of Home-Schoolers to "Opt-in" to Public Education on a Part-Time Basis*, 82 MINN. L. REV. 1599, 1610 (1998).

23. A summary of law relating to home schooling in each state and territory is available from the Home School Legal Defense Association, *State Laws*, at <http://www.hslda.org/laws/default.asp> (last visited Mar. 7, 2005).

24. MICH. COMP. LAWS ANN. § 380.10 (West 2005).

25. *Id.* § 380.1561(3)(f).

26. PA. CONS. STAT. ANN. tit. 24 §13-1327.1 (West 2005).

27. *Id.* § 13-1327.1(b)(1).

28. *Id.* § 13-1327.1(d).

29. *Id.* § 13-1327.1(e)(1).

30. *Id.* § 13-1327.1(e)(2).

The degree of state control and involvement in homeschool education among the various states reflects the philosophical differences among legislators, and their constituents, in those states. Two statements represent the divergent opinions on the proper amount of state control.

In a legislative declaration, the Colorado legislature has summarized the viewpoint of those parents who seek to homeschool their children:

The general assembly hereby declares that it is the primary right and obligation of the parent to choose the proper education and training for children under his care and supervision. It is recognized that home-based education is a legitimate alternative to classroom attendance for the instruction of children and that any regulation of nonpublic home-based educational programs should be sufficiently flexible to accommodate a variety of circumstances. The general assembly further declares that nonpublic home-based educational programs shall be subject only to minimum state controls which are currently applicable to other forms of nonpublic education.³¹

The opposing viewpoint is summarized by the National Educational Association:

The National Education Association believes that home schooling programs cannot provide the student with a comprehensive education experience. When home schooling occurs, students enrolled must meet all state requirements. Home schooling should be limited to the children of the immediate family, with all expenses being borne by the parents/guardians. Instruction should be by persons who are licensed by the appropriate state education licensure agency, and a curriculum approved by the state department of education should be used.³²

Clearly, parents and educators supporting one of these two points of view have little philosophical room for compromise on the manner of delivering an education to American students. While public school administrators have generally opposed homeschooling, many parents have taken advantage of the opportunity to educate their children outside the public school setting. Estimates of the number of homeschool children in America vary from 1.1 million by the U. S. Department of Education's National Center for Education Statistics,³³ to 2.1 million by the National Home Education Research

31. COLO. REV. STAT. § 22-33-104.5 (2004).

32. Somerville, *supra* note 12, at 14.

33. NATIONAL CENTER FOR EDUCATION STATISTICS., 1.1 MILLION HOMESCHOOLED STUDENTS IN THE UNITED STATES IN 2003 (JULY 2004), available at <http://nces.ed.gov/pubs2004/2004115.pdf>.

Institute,³⁴ with growth at an approximate rate of 7 percent per year.³⁵ These figures do not include students in traditional private schools who do not meet the criteria to be considered homeschool students.

Although all citizens pay taxes either directly or indirectly to support public schools, students are not required to provide any additional payment to attend school.³⁶ In the 1999-2000 school year, there were 92,012 public elementary and secondary schools,³⁷ and over 27,000 private schools in the U.S.³⁸ Obviously, parents are presented with abundant choices of public and private schools to which they can send their children. Therefore, what factors motivate parents to choose home schooling over traditional schools?

While most people assume that the majority of parents homeschool their children for religious reasons, when asked in a recent U.S. Department of Education survey whether particular reasons applied to them, almost half (47%) of the parents of homeschool students responded that they homeschool because of the social and educational environment at school.³⁹ The results of the study indicate that 31% of parents homeschool their children because of concern about the environment of other schools, 30% in order to provide religious or moral instruction, 16% because of dissatisfaction with academic instruction at other schools, 9% for other reasons (including family unity and

34. Brian D. Ray, *Facts on Homeschooling*, National Home Education Research Institute (2003) at <http://www.nheri.org/modules.php?name=Content&pa=showpage&pid=21> (last visited Jan. 5, 2005). An accurate account of homeschool students is impossible because not all states require such students to register with the state or notify local school authorities of the decision to homeschool.

35. NATIONAL CENTER FOR EDUCATION STATISTICS, *supra* note 33, reporting a "29 percent relative increase over the 4-year period" of 1999-2003.

36. This generally holds true as long as students attend the school within their residential zone. It should be noted that although students are not required to provide additional payment to attend public schools, many public school districts are now charging fees for participation in extracurricular activities, including athletics. See, Erik Brady & Ray Glier, *No Free Ride: Many Students Pay to Play Sports*, USA TODAY, July 30, 2004, at A1 (reporting that many public school districts facing budgetary shortfalls are now charging participation and equipment fees to students for the purpose of offsetting the costs of providing athletic and other extra-curricular activities). For additional information on this practice, see Scott James Smith, *An Investigation of Athletic Participation Fee Practices in Ohio Public High Schools* (2001) (Unpublished Ph.D. dissertation, University of Missouri-Columbia) (on file with ProQuest Dissertations and Theses, AAT 3013025).

37. NATIONAL CENTER FOR EDUCATION STATISTICS, OVERVIEW OF PUBLIC ELEMENTARY AND SECONDARY SCHOOLS AND DISTRICTS: SCHOOL YEAR 1999-2000 (Sept. 2001), available at <http://nces.ed.gov/pubs2001/2001339r.pdf>.

38. NATIONAL CENTER FOR EDUCATION STATISTICS, PRIVATE SCHOOL UNIVERSE SURVEY: 1999-2000 (Aug. 2001), available at <http://nces.ed.gov/pubs2001/2001330.pdf>.

39. NATIONAL CENTER FOR EDUCATION STATISTICS, *supra* note 33, at 1.

individualized teaching), 7% because the child has a physical or mental health problem, and 7% because the child has other special needs.⁴⁰

As early as 1992, authors identified the issue of homeschool student participation in public school extracurricular activities as an issue facing parents and public school administrators.⁴¹ One of the primary motivating factors for parents seeking participation for their children is the inability of homeschool parents to provide "enrichment activities – such as band, orchestra, choral activities, forensics, and many sports – without cooperation from some established education institution."⁴² One study has indicated that as many as 81% of homeschool educators desire to have their children participate in extracurricular activities in public schools.⁴³

While the Supreme Court has recognized that the "freedom to enter into and carry on certain intimate or private relationships" such as "child rearing and education" is a "fundamental element of liberty protected by the Bill of Rights,"⁴⁴ no court has held that a homeschool child has a federal constitutional "right" to participate in public school extracurricular activities.⁴⁵ To the contrary, courts have held that students have no constitutionally protected property right to participate in interscholastic athletics, whether in public, private or home school.⁴⁶

Therefore, parents have been left with only two options: seek permission from the local public school for the homeschool child to participate, or petition the state legislature to enact a statute mandating that public schools accept participation by homeschoolers. There are persuasive arguments on both sides of the debate whether homeschool students should be allowed to participate in public school extracurricular activities. Previous articles have provided

40. *Id* at figure 2.

41. Jo Anna Natale, *Understanding Home Schooling*, AM. SCH. BD. J., Sept. 1992, at 26.

42. Betty Jo Simmons, *Classroom at Home*, AM. SCH. BD. J., Feb. 1994, at 47.

43. Lisa M. Lukasik, *The Latest Home Education Challenge: The Relationship Between Home Schools and Public Schools*, 74 N.C.L. REV. 1913, 1915 (1996).

44. Board of Dir.'s of Rotary Int'l v. Rotary Club of Duarte, 481 U.S. 537, 545 (1987).

45. See cases discussed *infra* Part III.B.2.

46. Walsh v. La. High Sch. Athletic Ass'n., 616 F.2d 152 (5th Cir. 1980); Mitchell v. La. High Sch. Athletic Ass'n, 430 F.2d 1155 (5th Cir. 1970); Moreland v. W. Pa. Interscholastic Athletic League, 572 F.2d 121 (3d Cir. 1978); Hamilton v. Tenn. Secondary Sch. Athletic Ass'n, 552 F.2d 681 (6th Cir. 1976); Albach v. Odle, 531 F.2d 983 (10th Cir. 1976); Blue v. Univ. Interscholastic League, 503 F. Supp. 1030 (N.D. Tex. 1980); Dallam v. Cumberland Valley Sch. Dist., 391 F.Supp 358 (M.D. Pa. 1975); Scott v. Kilpatrick, 237 So.2d 652 (Ala. 1970); Miss. High Sch. Activities Ass'n. v. Farris, 501 So. 2d 393 (Miss. 1987).

detailed arguments of the pros and cons,⁴⁷ but a summary of the arguments would be appropriate here.

Those who argue in favor of participation frequently use the following justifications:

- Prohibiting students from participating is a violation of constitutional rights. According to this reasoning, denying access to some citizens (homeschool students) while allowing access to others (public school students) violates the due process and equal protection clauses of the 5th and 14th Amendments. Also, if parents homeschool based on a sincere religious belief, prohibiting participation violates the free exercise clause of the 1st Amendment. (These constitutional claims have been uniformly rejected.)⁴⁸
- Homeschool families pay taxes to support the local public school's programs and, therefore, should be allowed to use them.
- Other tax supported entities such as playgrounds, libraries, and hospitals are not allowed to prohibit use by members of the public, so neither should public schools.

47. See Lotzer, *supra* note 4; Bjorklun, *supra* note 22; Lukasik, *supra* note 43; Fuller, *supra* note 22 (arguing that courts should apply the doctrine of unconstitutional conditions in such cases, and recognize that federal constitutional law provides a right to public school access for homeschool students); Derwin L. Webb, *Home-Schools and Interscholastic Sports: Denying Participation Violates United States Constitutional Due Process and Equal Protection Rights*, 26 J. L. & EDUC. 123 (1997); Johnathan Pucci Diggin, *School District Policy That Restricts Participation in Extracurricular Activities to Public School Students Does Not Violate A Private School Student's Equal Protection Rights*, 8 SETON HALL J. SPORT L. 327 (1998); Jens Preston Nielson, *Excessive Judicial Scrutiny of School Board Rules in Kaptein v. Conrad School District*, 31 CREIGHTON L. REV. 1301 (1998); Michael Brian Dailey, *Home Schooled Children Gaining Limited Access to Public Schools*, 28 J. L. & EDUC. 25 (1999); Brian J. Wigley & Frank B. Ashley III, *A Review of Legislative Action Concerning Home-schooled Students and Participation in Public School Athletics*, 9 J. LEGAL ASPECTS OF SPORT 19 (1999); Jeff Prather, *Part-Time Public School Attendance and the Freedom of Religion: Yoder's Impact Upon Swanson*, 29 J. L. & EDUC. 553 (2000); William Grob, *Access Denied: Prohibiting Homeschooled Students From Participating in Public School Athletics and Activities*, 16 GA. ST. U. L. REV. 823 (2000); Kathryn Gardner & Allison J. McFarland, *Legal Precedents and Strategies Shaping Home Schooled Students' Participation in Public School Sports*, 11 J. LEGAL ASPECTS OF SPORT 25 (2001); Darryl C. Wilson, *Home Field Disadvantage: The Negative Impact Of Allowing Home-Schoolers To Participate In Mainstream Sports*, 3 VA. J. SPORTS & L. 1 (2001); Home School Legal Defense Association, *Equal Access: Participation of Home Schooled Students in Public School Activities* (Aug. 20, 2004), available at <http://www.hsllda.org/docs/nche/000000/00000049.asp> (last visited Jan. 7, 2005).

48. The articles cited in note 47 also contain descriptions and analyses of the legal bases and arguments advanced by both proponents and opponents of participation by homeschool students. See Grob, *supra* note 47, at 803 (labeling the constitutional issues argument as "The Constitutional Labyrinth: A Maze of Dead-Ends").

Those who oppose allowing homeschool students to participate cite the following reasons:

- Regularly enrolled students must comply with all rules and regulations of school in order to be eligible to participate, while homeschoolers may not.
- Limited financial and other resources should be spent on participation opportunities for regularly enrolled students.
- The inability to monitor classroom activities, grades and attendance affects competitive balance among competing teams.
- Having students who do not attend a specific school enables teams to recruit outstanding players who might live within another school's attendance district.
- Allowing non-enrolled students to participate dilutes loyalty and school spirit.

Three alternatives exist as potential solutions to the dilemma whether homeschool students should be allowed to participate in public school extracurricular activities: (1) allow all interested children to participate; (2) prohibit all homeschool student participation; or (3) allow each public school the discretion to determine if homeschool students will be allowed to participate.⁴⁹ Upon analysis of statutes, court cases and rules of state high school athletic/activities associations of the fifty states, each of these alternatives has been selected as the outcome by more than one state.

III. STATE SPECIFICATIONS RELATING TO HOMESCHOOL STUDENT ATHLETIC PARTICIPATION

Emily is fortunate to live in a state that allows a homeschool student such as her to participate on the public school volleyball team with her friend Susan. In many states, Emily would not be so lucky. The determination whether homeschool students such as Susan can participate in each state has been made either by the legislature, the courts, or the state interscholastic athletic or activities association. As this article goes to press, states are divided almost evenly: 23 states allow homeschool students to compete on public school athletic teams and in other school extracurricular activities, while 27 prohibit such participation.

49. Lukasic, *supra*, note 43, at 1957-58 (proposing essentially the same potential solutions for students seeking to enroll part-time in public schools in order to take one or two specific classes).

A. States Allowing Participation

In 16 of the 23 states that allow homeschool students to participate, state legislatures have adopted statutory provisions allowing participation. The states with existing statutes are Arizona, Colorado, Florida, Idaho, Illinois, Iowa, Maine, Minnesota, Nevada, New Hampshire, North Dakota, Oregon, South Dakota, Utah, Vermont and Washington. In the other seven states allowing participation, Alaska, California, Louisiana, Massachusetts, Pennsylvania, Rhode Island and Wyoming, statutes do not exist, but participation is authorized by rules of the state high school athletic/activities association.

1. Participation Authorized by Statute

The first legislative enactment specifically authorizing participation by homeschool students was passed by Colorado in 1988. Although each of the 16 state statutes contains somewhat different provisions, all of the statutes ultimately result in allowing participation.

*Arizona*⁵⁰(1995).⁵¹ Students being schooled at home in Arizona are referred to as "home schooled students" or a "child who is being instructed at home."⁵² A home schooled child who resides within the attendance area of a public school is allowed to "try out" for interscholastic activities at that school in the same manner as any other student.⁵³ The home schooled student must meet the same qualifications as public school students with regard to registration, age eligibility, fees, insurance, transportation, physical condition, qualifications, responsibilities, event schedules, standards of behavior and performance policies.⁵⁴ However, a home schooled student who was previously enrolled in a public school for any portion of a school year is ineligible to participate in interscholastic activities for the remainder of that school year.⁵⁵

Home schooled students have the additional requirement of submitting written verification from the person providing the student's "primary instruction" substantiating that he or she is receiving a passing grade in each

50. ARIZ. REV. STAT. § 15-802.01 (2004).

51. The year in parenthesis for each state is the year in which the law first became effective.

52. ARIZ. REV. STAT. § 15-802.01(A).

53. *Id.* § 15-802.01(A).

54. *Id.*

55. *Id.* § 15-802.01(B).

course, and is maintaining satisfactory progress towards advancement or promotion to the next grade.⁵⁶

*Colorado*⁵⁷ (1988). The Colorado home-based education statute includes provisions regarding participation in extracurricular activities.⁵⁸ A homeschool student in Colorado is referred to as a "child who is participating in a home based educational program."⁵⁹ Such a student has the same rights to participate in any extracurricular or interscholastic activity offered by a public school on an equal basis with students enrolled in public school.⁶⁰ Activity is defined as "any extracurricular or interscholastic activity, including but not limited to any academic, artistic, athletic, recreational, or other activity offered by a school."⁶¹

Homeschool students are subject to the same rules and regulations of the interscholastic organization or association of which the school is a member, in the same manner as participating students enrolled in the public school.⁶² In order to establish "a nonpublic home-based educational program," the parent or guardian must give written notification of the intent to do so to "a school district within the state" at least fourteen days prior to the establishment of such a program.⁶³

Colorado does not require a homeschool student to reside within the public school district in which the student participates. The student's parent is allowed to select the school district in which the student participates, by notifying that public school district that the student intends to participate.⁶⁴ This right to choose schools is not absolute. A student who has attended a public or private school for more than fifteen days during a school year, then withdraws to enter a home based education program, is considered a student of the public or private school for the remainder of that school year, and extracurricular participation must be in that district.⁶⁵

56. *Id.* § 15-802.01(A).

57. COLO. REV. STAT. § 22-33-104.5.

58. *Id.*

59. *Id.* § 22-33-104.5(6)(b)(I).

60. *Id.* § 22-33-104.5(6)(b)(I).

61. COLO. REV. STAT. § 22-32-116.5(10) & § 22-33-104.5(6)(d) (2004).

62. *Id.*

63. *Id.* § 22-33-104.5(3)(e).

64. *Id.* § 22-33-104.5(6)(b)(II)(A).

65. *Id.* § 22-33-104.5(6)(b)(II)(B).

*Florida*⁶⁶ (2002). In Florida, a homeschool child is referred to as a "home educated student."⁶⁷ Students educated at home in Florida are eligible to participate in extracurricular activities at the school to which the student would be assigned if enrolled in public school.⁶⁸ All students, including homeschool students, participating in extracurricular activities are required to meet certain academic grade point and conduct requirements.⁶⁹ In addition, home education students are required to satisfy additional prerequisites including meeting the state criteria for homeschool students,⁷⁰ demonstrating educational progress by maintaining the required grade point average and passing all courses,⁷¹ and registering with the school of the student's intent to participate in the activities.⁷² Further, homeschool students must meet the same residency requirements⁷³ and standards of acceptance, behavior and performance⁷⁴ required of other students in the public school. However, a public school student who is academically ineligible, then leaves the public school to become a home educated student, is not eligible to participate in extracurricular activities until successfully completing one grading period as a homeschool student.⁷⁵

Florida also has a statutory provision that prohibits any organization that regulates or governs interscholastic extracurricular activities of public schools from excluding home education associations as members,⁷⁶ or from discriminating against any eligible student based on "an educational choice of public, private, or home education."⁷⁷

*Idaho*⁷⁸ (1995). A homeschool child in Idaho is referred to as a "nonpublic student."⁷⁹ The Idaho legislature has established a system known as the "dual

66. FLA. STAT. ch. 1002.20(18)(b) (2005).

67. *Id.*

68. *Id.*

69. *Id.* ch. 1006.15(3)(a).

70. *Id.* ch. 1006.15(3)(c)(1). The statute refers to FLA. STAT. ch. 1002.41 (2005) which includes notification to the local county school superintendent that the parent has established the home education program, maintenance of a portfolio of educational records and materials, and furnishing an annual educational evaluation of the progress of each home schooled student.

71. *Id.* ch. 1006.15(3)(c)(2).

72. *Id.* ch. 1006.15(3)(c)(5).

73. *Id.* ch. 1006.15(3)(c)(3).

74. *Id.* ch. 1006.15(3)(c)(4).

75. *Id.* ch. 1006.15(3)(c)(7).

76. *Id.* ch. 1006.15(5)(a).

77. *Id.* ch. 1006.15(5)(b).

78. IDAHO CODE § 33-203 (Michie 2005).

enrollment."⁸⁰ Nonpublic students are allowed to enroll in public school in order to enter into any nonacademic public school activity available to public school students, subject to their compliance with educational and behavioral standards for all students.⁸¹ In order to establish academic proficiency, the nonpublic student must demonstrate "composite grade-level academic proficiency" in the manner required by state board of education rules (usually by standardized test scores).⁸² The nonpublic student must reside in the attendance boundaries of the school in which he/she resides.⁸³ However, a public school student who is ineligible to participate in nonacademic activities is not allowed to participate as a nonpublic student for the remainder of the school year in which he/she becomes ineligible, or the following academic year.⁸⁴

*Illinois*⁸⁵ (1961). Although the Illinois legislature has not explicitly required public schools to allow homeschool students to participate in public school activities, it has authorized public school boards⁸⁶ to allow nonpublic school students to enroll and attend public school part-time if there is sufficient space in the public school system.⁸⁷ The decision to allow students to enroll in "the regular education program of the district" is left to the discretion of the individual school board.⁸⁸ In order to be considered for acceptance, the nonpublic school student must request admittance prior to May 1 of the year before admittance is requested, and the request must be made to a public school in the school district in which the nonpublic student resides.⁸⁹

Since the Illinois legislature has delegated the decision regarding homeschool students to individual school boards, the Illinois High School Association (IHSA) has addressed the issue of athletic eligibility in its by-laws. The IHSA is an association of public and nonpublic schools in Illinois.⁹⁰

79. *Id.* § 33-203(9).

80. *Id.*

81. *Id.* § 33-203(2).

82. *Id.* § 33-203(4).

83. *Id.* § 33-203(6).

84. *Id.* § 33-203(5).

85. 105 ILL. COMP. STAT. 5/10-20.24 (2005).

86. *Id.* § 5/10-20.

87. *Id.* § 5/10-20.24.

88. *Id.*

89. *Id.*

90. ILLINOIS HIGH SCHOOL ASSOCIATION, 2004-05 IHSA HANDBOOK: CONSTITUTION, BY-LAWS WITH ILLUSTRATIONS, AND POLICIES, § 1.210, .250 at 15-16, available at <http://www.ihsa.org/org/policy/2004-05/sec1.pdf> (last visited Aug. 15, 2005).

Although the by-laws of the IHSA do not specifically mention homeschool students, the illustrations included with the by-laws indicate a homeschool student may participate by meeting certain criteria.⁹¹ Among the provisions allowing participation include the requirement that the student must "attend" the member school for which he/she participates.⁹² The term "attend" has been defined to mean that the student is enrolled at the member school taking a minimum of 20 credit hours of work that will count toward high school graduation.⁹³ The IHSA also considers a student to be in attendance if the student is taking 20 credit hours "under arrangements approved by the member school," including approval to take those hours as a homeschool student.⁹⁴ The school has the sole responsibility to determine the student's compliance with academic and other participation eligibility requirements.⁹⁵

*Iowa*⁹⁶ (1991). The Iowa statute refers to a homeschool student as "a child who is receiving competent private instruction."⁹⁷ In the event that a parent, guardian or legal custodian submits a request that the student be dual enrolled in a public school, the child shall be registered.⁹⁸ When the child is enrolled, he/she may participate in any academic or extracurricular activity offered by the school to students in the same grade or group as the homeschool child.⁹⁹

*Maine*¹⁰⁰ (1995). If Maine "students receiving home-school instruction" apply in writing to participate in extracurricular activities, they are eligible to try out for the teams or activities at public schools.¹⁰¹ A homeschool student may apply only to the public school serving the community in which the student resides.¹⁰² Such students are required to meet equivalent rules of participation as public school students, must comply with the same physical examination, immunization, insurance, age and semester eligibility requirements as public school students, must meet equivalent academic standards as public school students, must prove that those academic standards

91. *Id.* § 3.011, Illustration 78, at 41.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. IOWA CODE § 299A.8 (2004).

97. *Id.*

98. *Id.*

99. *Id.*

100. ME. REV. STAT. ANN. Tit. 20-A, § 5021 (West 2005).

101. *Id.*

102. *Id.*

are being met, and are subject to the same transportation policy as public school students.¹⁰³

While Maine has created a specific provision allowing homeschool students to participate on public school teams, the same is not true for such students seeking to participate on private school teams. In *Pelletier v. Maine Principals' Association*,¹⁰⁴ the U.S. District Court was faced with two homeschool students seeking to participate on the track team at a private religious school that was a member of the Maine Principals Association (MPA). The MPA rules followed the Maine statute allowing homeschool students to participate on public school athletic teams in their local district, but did not allow homeschool students to participate at private school members of the MPA.

The plaintiffs challenged the rule, raising "three major constitutional challenges" to the MPA's rule: "(1) that the rule violates their Fourteenth Amendment substantive due process right of parental educational choice; (2) that it violates Seacoast's (the private school) Fourteenth Amendment right to equal protection of the laws; and (3) that it violates their First Amendment right to free exercise of religion."¹⁰⁵ On the first (due process) issue, the court held that the rule did not deny due process since the MPA did not restrict plaintiffs' educational choice.¹⁰⁶ On the second (equal protection) issue, the court held that the plaintiffs did not have standing to argue that Seacoast was not receiving equal protection.¹⁰⁷ On the third (free exercise) issue, the court held that because the MPA has given plaintiffs several choices to attend school and participate, the MPA has not "burdened the Pelletiers' free exercise of religion."¹⁰⁸ Therefore, the court concluded that "the MPA rule does not

103. *Id.*

104. 261 F.Supp.2d 10 (D.Me. 2003).

105. *Id.* at 13.

106. *Id.*, at 13-14, explaining that "The Pelletiers are free to send Douglas and Laura to public school, or to send them to Seacoast or any other private school, or to educate them at home. They have freely chosen the latter," and

[t]he fact that Maine has gone the extra step and required public high schools to permit home-schooled students to participate in the public school athletic programs and represent the high school at interscholastic events does not 'coerce' the Pelletiers. . . Maine's decision to open the public school athletic programs to home-schooled students without at the same time opening the private school programs does not create a burden on parental educational choice.

107. *Id.* at 15.

108. *Id.* at 16.

infringe upon the free exercise of religion and parental choice in education, and does not violate the United States Constitution."¹⁰⁹

*Minnesota*¹¹⁰ (1998). The Minnesota legislature has passed a statute mandating that all "resident pupils receiving instruction in a home school" are eligible to fully participate in extracurricular activities on the same basis as public school students.¹¹¹

*Nevada*¹¹² (2003). The Nevada legislature has authorized the county school district trustees to form a nonprofit association to regulate all interscholastic events in the public schools.¹¹³ The Nevada Interscholastic Activities Association (NIAA) was incorporated in 1973 in order to "promote, control, supervise and regulate all interscholastic athletic events and other interscholastic events in the public schools."¹¹⁴ In 2003, the legislature instructed the NIAA to include "provisions governing the eligibility and participation of homeschooled children in interscholastic activities and events."¹¹⁵

The legislature also implemented statutes specifying the regulations that should be adopted, directing the NIAA to implement regulations providing that a "homeschooled child must be allowed to participate in interscholastic activities,"¹¹⁶ and requiring that the rules and regulations adopted by the NIAA would apply to homeschool students in the same manner they apply to public school students.¹¹⁷ Among the regulations enumerated by the legislature were rules regarding eligibility, fees for participation, insurance, transportation, participant behavior and discipline.¹¹⁸

Apparently seeking to prevent litigation concerning homeschool student eligibility, the legislature prohibited litigation brought by the NIAA, a school district, a public or private school, a student in a public or private school or his parent, or any other "entity or person" claiming that an interscholastic activity

109. *Id.* at 17.

110. MINN. STAT. § 123B.49(4)(a) (2004).

111. *Id.*

112. NEV. REV. STAT. § 386.430 (2004).

113. NEV. REV. STAT. § 386.420 (2004).

114. NEVADA INTERSCHOLASTIC ACTIVITIES ASSOCIATION, NIAA HANDBOOK 2005-2006, Articles of Incorporation, Article Second, <http://www.nevada.ihigh.com/images/2005-2006%20Handbook.DOC> (last visited Aug. 24, 2005).

115. NEV. REV. STAT. § 386.430.

116. NEV. REV. STAT. § 386.462(1) (2004).

117. *Id.* § 386.462(2).

118. *Id.*

or event is invalid based on participation by a homeschool student.¹¹⁹ The legislature also prohibited a school district, public school or private school from establishing any rules, regulations or policies more restrictive than the NIAA regarding eligibility or participation by homeschool students.¹²⁰

The NIAA rules relating to homeschool student eligibility became effective in June 2003, and followed the guidelines of the statutes.¹²¹ The parent of a homeschool student must submit a notice that the child will be schooled at home to the school district where the child lives.¹²² In order to be eligible, the student's academic program must conform to the Nevada State Board of Education academic requirements, and the parent must submit academic eligibility information to the school district for which the student will participate.¹²³

*New Hampshire*¹²⁴ (2002). In New Hampshire, "nonpublic or home educated pupils" have access to "cocurricular programs" offered by the local school system in which the student resides.¹²⁵ A "cocurricular" program is defined as one that supplements or enriches academic programs of study, provides opportunities for social development, and encourages participation in clubs, athletics, performing groups, and service to the school and community.¹²⁶ The local school board may establish policies regulating participation, but the policy must not be more restrictive for homeschool or nonpublic students.¹²⁷

*North Dakota*¹²⁸ (2001). A "child receiving home education" in North Dakota is allowed to participate in public school extracurricular activities in the school district of which the child is a resident, or in a nonpublic school if allowed by the nonpublic school's administrator.¹²⁹ A "parent intending to supervise" a student in home education is required to file a statement to that effect with the superintendent of the child's school district of residence at least fourteen days before beginning the home education, or within fourteen days of

119. *Id.* § 386.463.

120. *Id.* § 386.464.

121. NEVADA INTERSCHOLASTIC ACTIVITIES ASSOCIATION, *supra* note 114, § 386.793, at 72-73.

122. *Id.*

123. *Id.*

124. N.H. REV. STAT. ANN. § 193:1-c (2004).

125. *Id.*

126. *Id.*

127. *Id.*

128. N.D. CENT. CODE § 15.1-23-16 (2005).

129. *Id.*

establishing residence in a school district.¹³⁰ Additionally, the parent is required to file such a statement once a year thereafter as long as the home education continues.¹³¹ The homeschool student is subject to the same eligibility standards as public school students, including the transfer rules of the North Dakota High School Activities Association.¹³²

*Oregon*¹³³ (1991). In 2003, the Oregon legislature amended its statute by changing the reference from "home school students" to "homeschooled students."¹³⁴ Public school districts are prohibited from denying homeschooled students the opportunity to participate in all interscholastic activities, provided that such students meet all school district eligibility requirements, except attendance requirements.¹³⁵ Students also must reside within the attendance boundaries of the public school for which they participate.¹³⁶

Homeschooled students must also meet academic eligibility by achieving a minimum score on an Oregon Board of Education approved achievement test,¹³⁷ or meeting a school district's alternative requirements which require submission of a portfolio containing a sample of the student's academic work product.¹³⁸ The required examination must be taken at the end of each school year, and the student's score is the basis for eligibility for the following academic year.¹³⁹ In order to be eligible, the student's composite test score must be at or above the 23rd percentile based on national averages.¹⁴⁰

Any public school student who is ineligible to participate may not become eligible as a homeschooled student for the remainder of the year the student becomes ineligible, as well as the following year.¹⁴¹ The student may take the examinations at the end of the second year to become eligible for the next year.¹⁴² Homeschooled students must conform to the public school's behavior

130. N.D. CENT. CODE § 15.1-23-02 (2005).

131. *Id.*

132. *Id.* § 15.1-23-16.

133. OR. REV. STAT. § 339.460 (2003).

134. *Id.*

135. *Id.* § 339.460(1).

136. *Id.* § 339.460(1)(f).

137. *Id.* § 339.460(1)(b)(A).

138. *Id.* § 339.460(1)(b)(B).

139. *Id.* § 339.460(1)(b)(A).

140. *Id.*

141. *Id.* § 339.460(1)(d).

142. *Id.*

and performance standards for team members trying out to make the team, and during interscholastic competitions.¹⁴³

*South Dakota*¹⁴⁴ (2003). Statutes relating to interscholastic participation by homeschool students in South Dakota refer to "a student receiving alternative instruction."¹⁴⁵ Unlike most other states, the South Dakota legislature confers discretion upon the "school board or other governing body" to decide whether alternative instruction students are allowed to participate in public school extracurricular activities.¹⁴⁶ The South Dakota High School Activities Association has promulgated eligibility requirements for alternative instruction students who have been approved to participate, and the requirements are essentially the same as those for public school students.¹⁴⁷

The statute explicitly states that alternative instruction students have no "vested right" to be selected for participation in the activity in which the student applies to participate.¹⁴⁸ Further, any public school student who leaves school during an academic year "for any reason" to enter into an alternative instruction program is ineligible for participation for a period of one year from the date of leaving the public school.¹⁴⁹

*Utah*¹⁵⁰ (1993). Homeschool students who are minors are allowed to dual enroll in public schools in Utah.¹⁵¹ It is interesting to note that the statute is limited to "minors," and makes no provisions for dual enrollment by adult students.¹⁵²

Although the legislature has established the system of dual enrollment, it has directed the Utah State Board of Education to establish policies and procedures authorizing extracurricular participation by homeschool students in

143. *Id.* § 339.460(1)(e).

144. S. D. CODIFIED LAWS § 13-36-7 (Michie 2005).

145. *Id.*

146. *Id.*

147. SOUTH DAKOTA HIGH SCHOOL ACTIVITIES ASSOCIATION, Bylaws, Chapter 1, Part IV, Section 1(d)(2) (July 1, 2005), available at <http://www.sdhsaa.com/Publications/Handbook/Athletics/Const%20&%20bylaws.pdf>, at 8 (last visited Aug. 22, 2005). The requirements and forms for participation by alternative instruction students are available at <http://www.sdhsaa.com/Publications/Handbook/Athletics/Eligibility.PDF>, at 3-4 (last visited Aug. 12, 2005).

148. S. D. CODIFIED LAWS § 13-36-7.

149. *Id.*

150. UTAH CODE ANN. § 53A-11-102.5 (2003).

151. *Id.* § 53A-11-102.5(1).

152. *Id.* Note: The legislature has made no provisions for students who turn 18 before enrolling in public schools for dual enrollment purposes. Accordingly, it appears there is no legislative authority for dual enrollment of a high school senior who turns 18 before the beginning of the academic year.

public schools.¹⁵³ The state Board of Education has promulgated rules codified in the Utah Administrative Code.¹⁵⁴ The stated purpose of the rule relating to dual enrollment is to provide consistent statewide requirements permitting homeschool students and private school students to participate in public school activities.¹⁵⁵

Homeschool students are required to take academic courses comparable to traditional public school courses in order to be eligible for extracurricular activities,¹⁵⁶ and may participate only in the school district in which the student's custodial parent or guardian resides.¹⁵⁷ In the event a public school student becomes ineligible to participate, he/she is not eligible to participate as a dual enrollment student until he/she complies with the rules and regulations of the Utah High School Activities Association.¹⁵⁸

*Vermont*¹⁵⁹ (1995). Local school boards in Vermont are required to adopt a policy that "will integrate home study students into its schools through enrollment in courses, participation in cocurricular and extracurricular activities and use of facilities."¹⁶⁰ Therefore, home-study students are considered eligible students to participate in public school interscholastic and extra-curricular activities if the student is enrolled in a home-study program in compliance with state law, and is a resident of the school district for which he/she participates.¹⁶¹ A home-study student wishing to participate at a public school must provide written notification to the principal, prior to the beginning of the sport's season, that the student has chosen to participate.¹⁶² The student must comply with the same requirements for participation,¹⁶³ as well as all behavioral and performance standards,¹⁶⁴ as other participants.

Washington.¹⁶⁵ (1990) A student receiving home-based instruction is defined as a "part-time student" in Washington.¹⁶⁶ The school board of

153. *Id.* § 53A-11-102.5(6).

154. UTAH ADMIN. CODE § 277-438 (2005).

155. *Id.* § 277-438-2.

156. *Id.* § 277-438-4(A).

157. *Id.* § 277-438-2(B).

158. *Id.* § 277-438-2(C).

159. VT. STAT. ANN. tit. 16, § 563(24) (2004).

160. *Id.*

161. VERMONT PRINCIPALS' ASSOCIATION, POLICIES AND BYLAWS, Art. III, § 2(B) (2003), available at <http://www.vpaonline.org/bylaws/bylaws4.html#eligibility> (last visited Aug. 5, 2005).

162. *Id.* § (2)(B)(3).

163. *Id.* § (2)(B)(2).

164. *Id.* § (2)(B)(4).

165. WASH. REV. CODE § 28A.150.350 (2004).

directors is required to permit the enrollment of part-time students in the same manner as other public school students, and to provide the same ancillary services to part-time students.¹⁶⁷ The state Superintendent of Public Instruction was authorized by the legislature to adopt rules and regulations to carry out the purpose of the statute.¹⁶⁸

The Superintendent defined ancillary services to include "sports activities,"¹⁶⁹ and provided that all ancillary services be provided to part-time students at the same level and quality as those provided to full-time students.¹⁷⁰

Legislators in these 16 states have determined that it is good public policy to allow homeschool students to participate on public school athletic teams. The remaining state legislatures have either failed to enact laws authorizing participation or have not addressed the issue.

2. Participation Allowed by Rule of State Interscholastic Athletic/Activities Association

When the issue is not resolved by the state legislature, the determination of homeschool eligibility must be addressed by the individual state interscholastic athletic or activities association. Seven state associations have rules allowing homeschool student participation.

Alaska. The Alaska legislature has approved a dual enrollment provision that allows homeschool students to enroll as part-time students in the local public school.¹⁷¹ However, the statute specifically provides that it does not apply to interscholastic or extracurricular student activities.¹⁷² Therefore, participation is governed by the bylaws of the Alaska School Activities Association (ASAA).

In Alaska, public schools operate "district correspondence" programs which include homeschool students within the district.¹⁷³ The ASAA eligibility rules allow students enrolled in the correspondence program of a school to participate on the school's athletic teams, thus allowing homeschool

166. *Id.* § 28A.150.350(1)(d).

167. *Id.*

168. *Id.* § 28A.150.350(5).

169. WASH. ADMIN. CODE § 392-134-005(1) (2004).

170. *Id.* § 392-134-020(1).

171. ALASKA STAT. § 14.03.095(a) (Michie 2005).

172. *Id.* § 14.03.095(d).

173. E-mail from Gary Matthews, Executive Director, Alaska School Activities Association, to author (May 28, 2004, 11:57 a.m., AKDT) (on file with author).

students to participate.¹⁷⁴ Further, private home schools are allowed to form teams and become members of ASAA, thereby allowing them to compete against other ASAA member schools.¹⁷⁵ Students in private home schools participate primarily in individual sports since most private home schools do not have a sufficient number of students to form teams.¹⁷⁶ In addition, small schools (including public, private and home schools) may join together in a cooperative program to jointly sponsor athletic teams.¹⁷⁷

California. Athletic eligibility of public and private school students is governed by the California Interscholastic Federation (CIF). The bylaws of the CIF provide that only students regularly enrolled in CIF member schools are eligible to participate in CIF athletic contests,¹⁷⁸ and specifically prohibit participation by homeschool students.¹⁷⁹ However, the CIF bylaws provide two exceptions which allow homeschool students to participate in CIF events. Under both provisions, the student must be under the administrative responsibility of the principal of the CIF member school for which the student participates.

The first provision allows a CIF member school to allow participation by students enrolled in a non-CIF member school, or in programs which do not offer any interscholastic athletic programs.¹⁸⁰ In order for the student to be allowed to participate, the school must request approval for the student's participation.¹⁸¹ The conditions precedent to receiving approval are that the principal of the CIF member school must have "administrative responsibility" of the student, and the principal must verify that the student is a resident of the public school district for which he/she will be participating. Additionally, the student must meet the school eligibility requirements, must use the regular grading period of the public school to determine scholastic eligibility, and must meet all other eligibility requirements under CIF bylaws.¹⁸²

174. ALASKA SCHOOL ACTIVITIES ASSOCIATION, 2005-2006 BYLAWS AND CONSTITUTION, Article 12, § 2(A), available at http://www.asaa.org/handbook/pdf/sections/Bylaws_Constitution.pdf, at 33 (last visited Aug. 12, 2005).

175. Matthews, *supra* note 173.

176. *Id.*

177. *Id.*

178. CALIFORNIA INTERSCHOLASTIC FEDERATION, 2005-2006 CONSTITUTION AND BYLAWS, Bylaws, Article 2, § 200(A), available at <http://www.cifstate.org/> at 1 (last visited Aug. 12, 2005).

179. *Id.* Article 3, § 304.

180. *Id.* § 302.

181. *Id.*

182. *Id.*

If all of the student eligibility requirements are met, the principal of the public school may make application to the CIF for the student to participate.¹⁸³ As part of the approval process, the principal must verify that all conditions listed are met, and the application must be approved not only by the principal, but also by the public school governing board and the program administrator in charge of the homeschool student's education.¹⁸⁴ After these prerequisites are completed, approvals must be obtained from the CIF member school's League and Section, and from the CIF State Executive Committee.¹⁸⁵

The second provision applies to a student enrolled in an Independent Study Program, who is eligible to participate for the school in whose attendance area he/she resides.¹⁸⁶ The requirements for participation include the student's academic registration being accepted by the local school board,¹⁸⁷ the student's compliance with local and Education Code requirements relating to required academic courses,¹⁸⁸ the student authorizing the principal of the school to have "administrative responsibility for the student,"¹⁸⁹ and the student meeting all other eligibility requirements of the CIF and its member sections.¹⁹⁰

Louisiana. A student in Louisiana must be a bona fide student of the school for which he/she participates, according to the Louisiana High School Athletic Association (LHSAA).¹⁹¹ However, a homeschool student may become a bona fide student by enrolling in his/her local public school and having his/her grades transferred to, and recorded on, the student's official school transcript.¹⁹² Although the student must register with the public school, he/she is not required to attend classes, but must adhere to all other LHSAA eligibility rules and regulations.¹⁹³

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.* § 305.

187. *Id.* § 305(A).

188. *Id.* § 305(B).

189. *Id.* § 305(C).

190. *Id.* § 305(D).

191. LOUISIANA HIGH SCHOOL ATHLETIC ASSOCIATION, BYLAWS, § 1.3.1 (2005-2006).

192. *Id.* § 1.3.2.

193. Memorandum from Tommy Henry, Commissioner, Louisiana High School Athletic Association, to author (May 29, 2003) (on file with author).

Massachusetts. Home-educated students are allowed to participate on public school teams in Massachusetts.¹⁹⁴ In order for such students to participate, the Massachusetts Interscholastic Athletic Association requires the local school committee to adopt a policy allowing participation by all homeschoolers in the local district, the local school superintendent to approve the Educational Plan of the home educated student, the public school principal to determine that the student has been placed at an appropriate grade level, the student to live with his/her parents or legal guardian in the school district that serves the school for which the student participates, the student to meet all other eligibility requirements, and the principal to certify that the student is academically eligible.¹⁹⁵ If all these conditions exist, the local school principal may declare the student eligible to participate in interscholastic competition.¹⁹⁶

Pennsylvania. The Pennsylvania Interscholastic Athletic Association allows each local school board to make the determination whether homeschool students residing in their district are eligible to participate or not.¹⁹⁷ Individual local school boards have the discretion to adopt a local policy, thereby determining whether or not students participating in a home education program are eligible to participate on public school teams.¹⁹⁸

Rhode Island. The Rhode Island Interscholastic League (RIIL) permits homeschool students to be eligible for RIIL events and competitions upon the student's request and compliance with eligibility requirements.¹⁹⁹ In order to be eligible, the student "must be listed on the rolls of the school and certified to the Rhode Island Department of Education as a student."²⁰⁰ The homeschool must furnish and certify the student's academic grades to the school, which must record them quarterly on the official school records.²⁰¹ If these requirements are met, and the student complies with all other rules and regulations of the RIIL, the school is required to approve the request of the

194. MASSACHUSETTS INTERSCHOLASTIC ATHLETIC ASSOCIATION, RULES AND REGULATIONS GOVERNING ATHLETICS, Part IV, Rule 54, available at <http://www.miaa.net/Bluebook-03-05.pdf>, at 43 (last visited Aug. 5, 2005).

195. *Id.*

196. *Id.* p. 43-44.

197. PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION, 2005-2006 PIAA CONSTITUTION AND BYLAWS, Art. III, § 7 (2005-2006), available at <http://www.piaa.org/About/overview/hdbk/Section%20I%20-%20Constitution%20&%20By-Laws.pdf>, at 14 (last visited Aug. 12, 2005).

198. *Id.*

199. RHODE ISLAND INTERSCHOLASTIC LEAGUE. RULES AND REGULATIONS, Art. 3, § 1(I) (Oct. 18, 2004), available at <http://www.riil.org/>, at 16.

200. *Id.* § 1(I)(1).

201. *Id.* § 1(I)(2).

homeschool student to compete on its teams.²⁰² However, if the student becomes ineligible for academic or disciplinary reasons, the student cannot become eligible to compete as a homeschool student during the period of ineligibility.²⁰³

Wyoming. The Wyoming High School Activities Association (WHSAA) has created a system that allows home schools to become "Affiliate Members" of the WHSAA for purposes of interscholastic participation.²⁰⁴ The WHSAA Constitution defines a home school as "a program of educational instruction provided to a child by the child's parent or legal guardian or by a person designated by the parent or legal guardian,"²⁰⁵ but excludes from this definition an "instructional program provided to more than one (1) family unit."²⁰⁶ Such home schools may join the WHSAA as Affiliate Members by applying for membership each year before the first competition of the season,²⁰⁷ paying an enrollment fee,²⁰⁸ and satisfying the Wyoming statutory requirements for homeschool educational programs.²⁰⁹

The homeschool student must establish academic eligibility prior to participation either by attaining a composite score not less than the twenty-fifth percentile on a national achievement test,²¹⁰ or by submitting grades and assessments meeting the same academic standards as public school students, provided by a certified teacher who has at least twenty class hours of contact with the homeschool student each week.²¹¹

An Affiliate Member home school may also combine with another member school in order to allow the homeschool students to participate.²¹² In this event, the homeschool student is required to submit proof of work to the host member school that the homeschool student is complying with the same subject and class hour requirements as eligible students in the host school.²¹³

202. *Id.* § 1(I)(4).

203. *Id.* § 1(I)(3).

204. WYOMING HIGH SCHOOL ACTIVITIES ASSOCIATION, 2005-2006 HANDBOOK, § 2.6.4, available at <http://www.whsaa.org/handbook/handbook.asp>, at 17 (last visited Aug. 5, 2005).

205. *Id.*

206. *Id.*

207. *Id.* § 2.6.4.1.

208. *Id.* § 2.6.4.3.

209. *Id.* § 2.6.4.4.

210. *Id.* § 6.2.91(a).

211. *Id.* § 6.2.91(b).

212. *Id.* § 3.1.31.

213. *Id.* § 6.2.92.

Associations governing athletic participation eligibility in these seven states have determined that homeschool students should not be prohibited from participating in public school athletic events. However, they are in the minority. The majority of state athletic associations that determine eligibility have rules prohibiting homeschool student participation.

B. States Prohibiting Participation

In 23 states, homeschool students are prohibited from competing on public school athletic teams by virtue of the rules of the state high school athletic/activities association: Alabama, Arkansas, Connecticut, Delaware, Georgia, Hawaii, Indiana, Kansas, Kentucky, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. State courts in four other states (Maryland, Michigan, Montana, and New York) have determined that state law does not allow homeschool students to participate.

I. Participation Prohibited by Rule of State Interscholastic Athletic/Activities Association

The state athletic associations that prohibit participation by homeschool students typically require that participants must be full-time students attending the public school for which they compete. In most instances, there is no mention of homeschool students in the state association regulations.

Alabama. In order to be eligible to compete in interscholastic athletics, the Alabama High School Athletic Association requires that a student be a "regular student" in the school system where the student will participate.²¹⁴ A regular student is one who is enrolled at the school and taking six new subjects.²¹⁵

Arkansas. In order to be eligible for participation in interscholastic activities, a student must be a bona fide student of a public school, or accredited nonpublic school, to participate in activities sanctioned by the Arkansas Activities Association.²¹⁶

214. ALABAMA HIGH SCHOOL ATHLETIC ASSOCIATION, BASIC ELIGIBILITY RULES, available at <http://www.ahsaa.com/eligibility/basicrules-eligibility.asp> (last visited Aug. 3, 2005).

215. *Id.*

216. ARKANSAS ACTIVITIES ASSOCIATION BYLAWS, 2004-2005 AAA HANDBOOK, Article III, Rule 4(A), available at <http://www.ahsaa.org/2004-2005%20AAA%20Handbook.PDF>, at 22 (last visited Aug. 5, 2005).

Connecticut. Homeschool students are specifically prohibited from participating in interscholastic athletics organized under the bylaws of the Connecticut Interscholastic Athletic Conference.²¹⁷

Delaware. The Delaware legislature designated the state Department of Education (DOE) to adopt rules and regulations "governing the conduct of interscholastic athletics between all public schools and such nonpublic schools as shall become member schools in the Delaware Interscholastic Athletic Association" (DIAA).²¹⁸ The Secretary of Education was required to promulgate rules and regulations, and to delegate authority to the DIAA to implement those rules and regulations.²¹⁹ The regulations adopted by the DIAA state that only a student who is legally enrolled in the high school which he/she represents is permitted to participate in interscholastic activities.²²⁰

Georgia. The Georgia High School Association regulates competitions for public school teams in Georgia, and homeschool students are not eligible for competition. Eligibility for competition requires that students must be registered for classes in the public school that seeks eligibility for that student, that students must be in regular attendance, and that students must be taking at least five subjects that count toward graduation.²²¹

Hawaii. The regulations of the Hawaii High School Athletic Association provide that a student must be enrolled in the school he/she represents.²²² The regulations specifically exclude "students exempted from compulsory education," which includes homeschool students.²²³

Indiana. A student must be enrolled in a member school of the Indiana High School Athletics Association during the first 15 days of the semester in

217. CONNECTICUT INTERSCHOLASTIC ATHLETIC CONFERENCE, Bylaws, Article IX, Section II(A) (July 1 2005), available at <http://www.casciac.org/pdfs/eligrules070104.pdf>, at 1 (last visited Aug. 12, 2005).

218. DEL. CODE ANN. tit. 14, § 122(b)(15) (2005).

219. *Id.*

220. DELAWARE INTERSCHOLASTIC ATHLETIC ASSOCIATION, OFFICIAL HANDBOOK, Regulations, 1051, §1.2.1, at 18 (2003-2004) available at <http://www.doe.state.de.us/DIAASite/CurrentHandbook/DIAA0304Hndbk.pdf>, at 20 (last visited August 24, 2005).

221. GEORGIA HIGH SCHOOL ASSOCIATION, BYLAWS, § 1.21 (2005-2006).

222. HAWAII HIGH SCHOOL ATHLETIC ASSOCIATION, ADMINISTRATIVE REGULATIONS, § 2(A)(2) (2004-2005).

223. *Id.* § 2(A)(3).

which the contest occurs,²²⁴ and be academically eligible²²⁵ in order to participate. Homeschool students do not meet the criteria.

Kansas. The Kansas State High School Activities Association rules require that a student be a bona fide undergraduate student in good standing at the school for which he/she participates.²²⁶

Kentucky. The Bylaws of the Kentucky High School Athletic Association (KHSAA) require that students be bona fide full-time undergraduate students at a member school to be eligible for athletics.²²⁷ An interpretation of this bylaw by the KHSSA provides that homeschool students may not participate in KHSAA interscholastic activities.²²⁸

Mississippi. Homeschool students are not eligible to participate in public school contests according to the Mississippi High School Activities Association (MHSAA). Eligibility rules of the MHSAA provide that a student must be a bona fide student enrolled in five major subjects at his/her school.²²⁹

Missouri. In order to participate in public school interscholastic activities, the Missouri State High School Activities Association requires that a student be a bona fide student of the public school he/she desires to represent, and he/she must be enrolled in and attending classes at a member school.²³⁰ Therefore, homeschool students are not eligible to participate.

Nebraska. The Nebraska School Activities Association (NSAA) provides that only bona fide students of a member high school are permitted to participate in NSAA activities.²³¹ Therefore, homeschool students are not allowed to participate.

224. INDIANA HIGH SCHOOL ATHLETIC ASSOCIATION, BYLAWS, Part 1, Rule C-12-1 (2003-2004), available at http://www.ihsaa.org/about_ihsaa/by_laws/0304articles.pdf, at 33 (last visited Aug. 5, 2005).

225. *Id.* Rule c-18-1, at 56.

226. KANSAS STATE HIGH SCHOOL ACTIVITIES ASSOCIATION, KSHSA HANDBOOK 2005-2006 EDITION, Bylaws, Rule 14, § 1, art. 1, available at <http://www.kshsaa.org/FORMS/KSHSAAhandbook.pdf>, at 27 (last visited Aug. 5, 2005).

227. KENTUCKY HIGH SCHOOL ATHLETIC ASSOCIATION, 2004-2005 HANDBOOK, Bylaw 4, available at <http://www.khsaa.org/handbook/bylaws/bylaw4.pdf> (last visited Aug. 5, 2005).

228. *Id.* § BL-4-14, available at <http://www.khsaa.org/handbook/casesforbylaws.pdf>, at 21 (last visited Aug. 10, 2005).

229. MISSISSIPPI HIGH SCHOOL ACTIVITIES ASSOCIATION, INC., HANDBOOK, Bylaws, Part II, Art. I, § (B) (1)(a), available at <http://www.misshsaa.com/Publications/Handbook.pdf>, at 9 (last visited Aug. 5, 2005).

230. Mississippi High School Activities Association, *MSHSAA Eligibility Area* (July 1, 2004 through June 30, 2005), available at <http://www.mshsaa.org/eligibility/> (last visited Aug. 5, 2005).

231. NEBRASKA SCHOOL ACTIVITIES ASSOCIATION, 2004-2005 YEARBOOK OF CONSTITUTION AND BYLAWS, Bylaw § 2.2.1, available at <http://www.nsaahome.org/textfile/yb/yearbook.pdf>, at Art. 2, p. 2 (last visited Aug. 5, 2005).

New Jersey. In order to participate in public school interscholastic activities regulated by the New Jersey State Interscholastic Athletic Association, a student must be enrolled in the school for which he/she will participate.²³² Homeschool students are not eligible for competitions because they are not enrolled.²³³

New Mexico. The New Mexico Activities Association requires a student to be a bona fide student of the member school for which the student will participate.²³⁴

North Carolina. The North Carolina legislature has authorized the State Board of Education to adopt rules governing interscholastic activities, or designate an organization to do so.²³⁵ As a result, the Board of Education has authorized the North Carolina High School Athletic Association (NCHSAA) to regulate interscholastic activities in North Carolina.²³⁶ NCHSAA eligibility rules require that a student must be a regularly enrolled member of the school's student body,²³⁷ must be in regular attendance for the present semester in order to be eligible for interscholastic competition,²³⁸ and must participate for the school to which the local board of education has assigned him/her based on his/her place of residence.²³⁹

Ohio. The Ohio High School Athletic Association (OHSAA) oversees interscholastic competition in Ohio. In order to participate in a public school athletic event, the student must be enrolled in and attending the school which sponsors the team, according to the rules of the OHSAA.²⁴⁰

Oklahoma. The Oklahoma Secondary Schools Activity Association (OSSAA) requires students to be enrolled in a member school, and be a full-

232. NEW JERSEY STATE INTERSCHOLASTIC ATHLETIC ASSOCIATION, HANDBOOK 2004-2005, CONSTITUTION, BYLAWS AND RULES AND REGULATIONS, Article V, § 1, available at <http://www.njsiaa.org/> at 43 (last visited Aug. 12, 2005).

233. *Id.*, containing a clarifying comment.

234. NEW MEXICO ACTIVITIES ASSOCIATION, NMMA HANDBOOK, Article XI, § 6.8.1 (2005-2006), available at <http://www.sports-net.org/NM/NMAA/cgi/InfoFiles/handbooks/section6-eligibility.pdf?200508121353> at VI-12 (last visited Aug. 12, 2005).

235. N. C. GEN. STAT. § 115C-12(23) (2005).

236. 16 N.C. ADMIN. CODE 6E.0202 (2005).

237. NORTH CAROLINA HIGH SCHOOL ATHLETIC ASSOCIATION, 2005-2006 NCHSAA HANDBOOK, Combined Rules and Regulations, Eligibility, ¶ 5(b), available at <http://www.nchsaa.unc.edu/eligibility.pdf>, at 109 (last visited Aug. 15, 2005).

238. *Id.* ¶ 5(c).

239. *Id.* ¶ 4.

240. OHIO HIGH SCHOOL ATHLETIC ASSOCIATION, BYLAWS, Bylaw 4-3-1 (Oct. 2004), available at <http://www.ohsaa.org/general/about/Bylaws.pdf>, at 34 (last visited August 24, 2005).

time student as defined under Oklahoma law.²⁴¹ Homeschool students are not allowed to participate in OSSAA extracurricular activities.

In *Swanson v. Guthrie Independent School District No. I-L*,²⁴² the school board denied a student's request to attend the public school eighth grade part-time, and adopted a policy that prohibited part-time attendance by any students.²⁴³ The student's parents filed suit claiming that the policy violated the Free Exercise Clause of the United States Constitution, the parents' constitutional right to direct the child's education, and the student's rights under Oklahoma state law.²⁴⁴ The Tenth Circuit held that the school board's policy did not violate the Free Exercise Clause because the rule was a neutral policy of general applicability, and not a burden on the student's religious freedom.²⁴⁵

South Carolina. In order to be eligible to compete for a member school of the South Carolina High School League, a student must be enrolled in and attending a member school,²⁴⁶ and must be a full-time Student as defined by the State Department of Education.²⁴⁷ Homeschool students are not eligible for competition.

Tennessee. Homeschool students are not allowed to participate on public school teams since the eligibility rules of the Tennessee Secondary School Athletic Association require that a student be regularly enrolled in the public school, in regular attendance, and carry at least five academic courses (or the equivalent).²⁴⁸

Texas. Public school interscholastic events and competitions are organized under the auspices of the University Interscholastic League (UIL).²⁴⁹ In order

241. Oklahoma Secondary Schools Activity Association, *General eligibility requirements*, § I(a) available at http://www.ossaa.com/partners/ossaa/eligibility/hardship_waiver_1.html (last visited Aug. 5, 2005).

242. 135 F.3d 694 (10th Cir. 1998).

243. *Id.* at 696-7.

244. *Id.* at 696.

245. *Id.* at 698.

246. SOUTH CAROLINA HIGH SCHOOL LEAGUE, 2003-2004 CONSTITUTION OF THE SOUTH CAROLINA HIGH SCHOOL LEAGUE, Art. VII, available at <http://www.schsl.org/2003/Constitution.pdf>, at A-8 (last visited Aug. 5, 2005).

247. *Id.* Art. VII, § 3 (A), at A-9.

248. TENNESSEE SECONDARY SCHOOL ATHLETIC ASSOCIATION, 2005-2006 TSSAA HANDBOOK, Bylaws, Art. II, § (1), available at <http://www.tssaa.org/Handbook/handbook.pdf>, at 11 (last visited Aug. 15, 2005).

249. UNIVERSITY INTERSCHOLASTIC LEAGUE, 2004-2005 CONSTITUTION AND CONTEST RULES, Subchapter B, § 2(c), available at http://www.uil.texas.edu/admin/04-05C&CR/04_05subA_C.pdf, at 19 (last visited Aug. 16, 2005).

to be eligible to participate in UIL sanctioned events, a student must be a full-time, day student who is in regular attendance at the public school in his district of residence.²⁵⁰

Virginia. The Virginia High School League rules require that a student must be a bona fide regular student in good standing in the school he/she represents to be eligible.²⁵¹ "Regular" student is defined as a full-time student who is in regular attendance at the public school.²⁵²

West Virginia. The rules of the West Virginia Secondary School Activities Commission require that a student must be enrolled full-time in a member school in order to be eligible to participate in interscholastic activities.²⁵³

Wisconsin. Only full-time students enrolled in member schools of the Wisconsin Interscholastic Athletic Association are eligible to participate in interscholastic events.²⁵⁴

Since homeschool students are not considered full-time students, these 23 state athletic associations deny eligibility to homeschool students. Similar regulations are not needed in a few state associations because state courts have resolved the issue of homeschool student eligibility.

2. Participation Prohibited by Court Precedent

In several states that have no statutory provisions, students have resorted to filing suit against public schools, seeking court orders that homeschool students are eligible to participate in public school activities, and requiring schools to accept them as participants in the activities.

Maryland. Although *Thomas v. Allegany County Board of Education*²⁵⁵ involved students at private schools rather than homeschool students, the precedent established prohibits homeschool students from participating in public school interscholastic activities. In *Thomas*, three students at a

250. *Id.* Subchapter M, § 400(b).

251. VIRGINIA HIGH SCHOOL LEAGUE, INC., HANDBOOK AND POLICY MANUAL 2005-2006, § 28-1-1, available at <http://www.vhsl.org/Handbook.pdf>, at 56 (last visited Aug. 5, 2005).

252. *Id.* § 28-1-3(1).

253. WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION, RULES AND REGULATIONS, § 127-2-3, available at http://www.wvssac.org/new_site/wvssac_website/html/rulesandregs_old/Eligibility/rulesandregsteamenroll.htm (last visited Aug. 5, 2005).

254. WISCONSIN INTERSCHOLASTIC ATHLETIC ASSOCIATION, 2005-2006 SENIOR HIGH SCHOOL HANDBOOK, Rules of Eligibility, Art. I, § 3(A), available at <http://www.wiaawi.org/publications/handbook.pdf>, p. 31 (last visited Aug. 5, 2005).

255. 443 A.2d 622 (Md. Ct. Spec. App. 1982).

parochial school sought an opportunity to audition for the All-County Band and to participate in an All-County Music Program.²⁵⁶ After allowing both public and private school students to participate in previous years, the sponsor of the program, the Allegany County Board of Education, limited enrollment to public school students, and denied the private school students entry into the program.²⁵⁷ The students alleged the Board's rejection of their application violated their right to free exercise of religion guaranteed by the First Amendment to the U.S. Constitution.²⁵⁸ In addition, the students claimed they were not provided the equal protection afforded by both the U.S. and Maryland Constitutions, contending that they were not treated in the same manner as public school students.²⁵⁹ Finally, the students maintained that a Maryland statute providing that "all individuals who are 5 years old or older and under 21 shall be admitted free of charge to the public schools of this state" required the public school to accept the students for only those programs or classes requested by the private school students.²⁶⁰

Acknowledging the constitutionally protected right of the parents to direct their children's religious training, including their education in parochial schools,²⁶¹ the court held that the right to educate children in a religious school did not "establish a concomitant right for these children to remain eligible for participation in public school programs."²⁶² The court further ruled that the Board policy did not infringe upon the students' freedom of religion, since the rule did not prohibit a parent from enrolling the child in a religious school, but merely prohibited a private school student from benefiting from a public school activity.²⁶³ The court also found that the Board had a legitimate interest in limiting participation in public school activities to public school students, based on the potential administrative disruption if the Board was required to accept non-public students.²⁶⁴

Regarding the Equal Protection and statutory claims, the court rejected the students' assertions, concluding that the "parents and children had a

256. *Id.* at 624.

257. *Id.*

258. *Id.* at 625-26.

259. *Id.* at 626.

260. *Id.* at 627, citing MD. CODE ANN., Education, § 7-101(a) (1982).

261. *Id.* at 625.

262. *Id.*

263. *Id.*

264. *Id.* at 625-6, adding that "we think the school administrators and not courts, should decide how much administrative disruption is too much."

constitutional right to choose where they would receive their education, the choice has been exercised, and now they cannot be heard to complain."²⁶⁵

However, it should be noted that while the court upheld the Board's policy in this case, the court did not prohibit public schools from choosing to allow private school students to participate in public school activities.²⁶⁶ In fact, the court specifically opened the door for admission of private school students to public school activities by stating "[i]f the legislature or the school board wishes to permit parochial students to attend selected classes or programs, we see no impediment."²⁶⁷ In 2003, a bill was submitted in the Maryland legislature that would have allowed homeschool students to participate in public school extracurricular activities, but it was defeated in the House Ways and Means Committee.²⁶⁸

Michigan. The Michigan courts have addressed non-public school students' participation in public school activities in two cases. The first case, *Snyder v. Charlotte Public School District, Eaton County*,²⁶⁹ involved facts virtually identical to Maryland's *Thomas* case, but the Michigan Supreme Court reached the opposite conclusion, allowing a non-public school student to enroll and participate in a public school junior high band class.²⁷⁰ However, a recent case involving homeschool students in the Court of Appeals of Michigan, *Reid v. Kenowa Hills Public Schools*,²⁷¹ distinguished between noncore (nonessential) elective courses and extracurricular activities, and held that homeschool students cannot participate in extracurricular activities.²⁷²

In *Snyder*, the plaintiff was a full-time sixth grade student in a private religious school who attempted to enroll in a sixth grade band course in the local public school.²⁷³ Since the defendant school had a policy limiting enrollment in its classes to full-time students, and did not offer shared time courses or dual enrollment, the school refused Snyder's attempt to enroll in

265. *Id.* at 627.

266. *Id.*

267. *Id.*

268. *Home-School Participation Bill Defeated*, WASHINGTONPOST.COM, March 15, 2003, available at <http://www.washingtonpost.com/ac2/wp-dyn/A27301-2003Mar14> (last visited Jan. 5, 2005). For more information on the proposed Maryland House Bill, see *infra* note 316.

269. 365 N.W.2d 151 (Mich. 1985).

270. *Id.* at 162.

271. 680 N.W.2d 62 (Mich. Ct. App. 2004).

272. *Id.* at 68.

273. *Id.* at 153.

band class.²⁷⁴ Snyder sued claiming the exclusion violated her statutory and constitutional rights to attend public school in the local school district.²⁷⁵

Snyder argued that her "right" to attend public school under Michigan law²⁷⁶ was not conditioned upon her full-time attendance at the public school, and that her "right" to attend allowed her to enroll part-time and attend only the band class.²⁷⁷ She further contended that the school district's refusal to admit her part-time violated the free exercise and equal protection provisions of the First and Fourteenth Amendments, respectively.²⁷⁸ The statutory authority asserted by plaintiff as controlling is found in Michigan Compiled Laws, section 380.1147, which provides that a resident of a school district "shall have a right to attend school in the district," but does not mention full-time attendance.²⁷⁹ The school argued that local school boards are authorized to set curriculum and determine the operating policies of public school districts, and that courts cannot set aside such policies unless they are arbitrary and unreasonable.²⁸⁰

In a 4-3 decision, the Michigan Supreme Court agreed with the student that the statutory provisions did not require full-time attendance for students to enroll in shared time public school courses, and held that allowing plaintiff "and other nonpublic school students to participate in public school classes will not place an unreasonable burden on the public school system."²⁸¹ Although the court discussed the establishment clause issue in great detail, it based its holding on the statutory provisions, not on the constitutional grounds.

Although *Snyder* involved a student in a private school, in March of 2004, the Court of Appeals of Michigan addressed the issue of participation of homeschool students in public school extracurricular activities. In *Reid*, the plaintiffs were parents of students being schooled at home who sought to participate on the Kenowa Hills Public Schools sports teams.²⁸² The school was a member of the Michigan High School Athletic Association (MHSAA), a voluntary association, which required students to attend a member school for at least twenty hours a week in order to be eligible to participate in sanctioned

274. *Id.*

275. *Id.*

276. MICH. COMP. LAWS § 380.1147 (West 2005).

277. *Snyder*, 365 N.W.2d at 153.

278. *Id.*

279. MICH. COMP. LAWS § 380.1147(1).

280. *Snyder*, 365 N.W.2d at 154.

281. *Id.* at 161.

282. *Reid*, 680 N.W.2d at 65.

events.²⁸³ The school district refused to allow the homeschool students to participate, causing the students to file suit against the school district.²⁸⁴

The plaintiffs relied on the Michigan Supreme Court's holding in *Snyder* that they had a statutory right to participate based on Section 380.1147, and further alleged that the refusal violated the same First and Fourteenth Amendment rights that plaintiffs relied on in *Snyder*.²⁸⁵ The Court of Appeals first addressed the statutory right contained in Section 380.1147, distinguishing "noncore classes" such as the band class in *Snyder*, and extracurricular activities such as those in question in *Reid*.²⁸⁶ The court acknowledged that "[o]ur courts have recognized a difference between noncore programs and extracurricular activities within the mandates of . . . (section) 380.1147(1)."²⁸⁷ After discussing this distinction, the court held that "Michigan statutes do not require public schools to admit homeschooled students to their athletic programs and that plaintiffs do not have a statutory right to participate in extracurricular interscholastic athletic events."²⁸⁸ The court discussed the religious freedom and equal protection arguments, but held that plaintiffs' rights were not violated by defendants' actions.²⁸⁹

This case has not been considered by, and is not pending before, the Michigan Supreme Court. Therefore, as of this writing, homeschool students have no statutory right to participate in public school extracurricular activities in Michigan. Prior to the *Reid* decision, the MHSAA provided that individual school districts may set local policy allowing homeschool students to participate under three circumstances; when the home school sponsors and conducts an athletic program,²⁹⁰ when a student is taking courses in both a home school and a member high school,²⁹¹ and when a student is enrolled in a member high school but takes courses at home, as long as the student is passing at least 20 credit hours for which the traditional high school will provide credit on the student's transcript.²⁹²

283. *Id.*

284. *Id.*

285. *Id.*

286. *Id.* at 66-7.

287. *Id.* at 67.

288. *Id.*

289. *Id.* at 68-71.

290. MICHIGAN HIGH SCHOOL ATHLETIC ASSOCIATION, POLICIES AND OPPORTUNITIES FOR NON-TRADITIONAL SCHOOLS & STUDENTS, available at <http://www.mhsaa.com/administration/nontradstudents.pdf> (last visited Aug. 3, 2005).

291. *Id.*

292. *Id.*

Montana. In *Kaptein v. Conrad School District*,²⁹³ a seventh-grade religious school student filed suit after being denied the opportunity to play on the public school volleyball team because of a school board policy limiting participation to full-time public school students.²⁹⁴ The Supreme Court of Montana applied a test balancing the plaintiff's "right" to participate against the school's interest in restricting participation to students enrolled in the public school system.²⁹⁵ The court found that the board policy classifying students by whether or not they were enrolled in the public school system was reasonable.²⁹⁶ Further, the court held that the school district's policy decision to restrict participation in extracurricular activities to those students enrolled in public schools outweighed the student's desire to participate.²⁹⁷

In order to participate in public school extracurricular activities, the Montana High School Association requires that a student must be enrolled and in regular attendance at the school for which he/she participates.²⁹⁸

New York. In *Bradstreet v. Sobol*,²⁹⁹ the mother of a home-schooled child sought a declaratory judgment that her minor daughter should be eligible to participate in public school interscholastic sports. She alleged that refusing to allow her daughter to participate violated a state statute, as well as the equal protection and due process provisions of the federal and state constitutions.³⁰⁰ The trial court granted defendant's motion for summary judgment and dismissed the complaint, whereupon plaintiff appealed.³⁰¹ The appellate court affirmed the summary judgment dismissal.³⁰²

The New York Education Department has promulgated regulations providing that a student is eligible for interscholastic competition if he/she is a bona fide student of the school, is enrolled during the first fifteen school days of the semester, is registered for three regular courses, meets the physical education requirement, and has been in regular attendance for at least eighty

293. 931 P.2d 1311 (Mont. 1997). For an in depth analysis of this case see Nielson, *supra* note 47.

294. *Id.* at 1312.

295. *Id.* at 1316.

296. *Id.* at 1317.

297. *Id.*

298. MONTANA HIGH SCHOOL ASSOCIATION, 2004-2005 HANDBOOK, Bylaws, Article II, § 2, available at http://www.mhsa.org/BY_LAWS.PDF, p. 18-19 (last visited Aug. 15, 2005).

299. 650 N.Y.S.2d 402 (N.Y. App. Div. 1996).

300. *Id.* at 403.

301. 630 N.Y.S.2d 486 (N. Y. Sup. Ct. 1995).

302. *Bradstreet*, 650 N.Y.S.2d at 404.

percent of school time.³⁰³ A "bona fide student" is defined as one who is "regularly enrolled . . . who is taking sufficient subjects to make an aggregate amount of three courses."³⁰⁴

According to New York statutes, parents choosing to home school their children must so notify the superintendent of schools in their school district of residence,³⁰⁵ and must submit to the superintendent an individualized home instruction plan (IHIP),³⁰⁶ which the superintendent must either approve or reject based on its compliance with educational requirements set forth in the statute.³⁰⁷ The plaintiff contended that this scheme of public school superintendent oversight over the IHIP established her daughter as a regularly enrolled student.³⁰⁸ The court held that merely because the superintendent oversees and approves the home school instruction does not make plaintiff's daughter enrolled in the public school for interscholastic purposes: "In pursuing the home-schooling alternative to public school education, plaintiff clearly elected not to enroll her daughter in the local school and, therefore, pursuant to the clear and unambiguous wording of the relevant regulations, plaintiff's daughter is not eligible to participate in the local school's interscholastic sports program."³⁰⁹

Plaintiff also alleged that the refusal to let her daughter participate violated the due process and equal protection provisions of the U.S. and New York Constitutions.³¹⁰ Calling the plaintiff's contentions "patently meritless," the court found that the eligibility requirement bears a rational relationship to a legitimate state purpose, holding that "[w]e see nothing irrational in requiring that a student be enrolled in a public school in order for the student to participate in the school's interscholastic sports program."³¹¹

The courts have consistently rejected homeschool students' arguments that there exists either a statutory or constitutional basis for their perceived "right" to participate in public school athletic events. Therefore, unless a state legislature or athletic association provides homeschool students the

303. N.Y. COMP. CODES R. & REGS. tit. 8, § 135.4(c)(7)(ii)(b)(2) (2005).

304. *Id.*, § 135.1.

305. *Id.*, § 100.10(b)(1).

306. *Id.*, § 100.10(c)(2).

307. *Id.*, § 100.10(c)(5).

308. *Bradstreet*, 650 N.Y.S.2d at 403.

309. *Id.*

310. *Id.*

311. *Id.*

opportunity to participate, students have been uniformly unsuccessful when seeking to participate in public school athletic events.

IV. FEDERAL STATUTE FOR MILITARY DEPENDENTS

Because most education law is established by state legislatures, the primary focus of this article is on the laws and rules of the several states. However, mention should be made of the federal educational system operated for dependents of military personnel. Like many states, Congress has considered whether or not homeschool students should be allowed access to this school system.

The United States Congress has directed the Secretary of Defense to provide school systems or other auxiliary educational services for dependents of military personnel stationed in overseas areas.³¹² A student who is eligible to enroll in a Department of Defense (DOD) school, but who is being educated in a homeschool setting, is permitted to receive "auxiliary services" from the school.³¹³ Since auxiliary services is defined to include participation in extracurricular and interscholastic activities, homeschool children of military personnel stationed overseas are allowed to participate in the DOD school activities.³¹⁴

V. RECENT LEGISLATIVE ACTIVITY

In addition to the 16 states listed above with statutory provisions, several states have recently considered proposed legislation that would allow homeschool students to participate in public school extracurricular activities. Although none of the proposed bills passed, it appears legislators will continue to seek approval of state legislatures.

Hawaii. In 2003, the Hawaii legislature considered both Senate and House versions of a bill authorizing homeschool students to participate in extracurricular activities in the state's public schools. Senate Bill 291 would have required the Department of Education to allow a homeschool student to participate in any co-curricular activity in the public school of the student's residence.³¹⁵ House Bill 366 contained similar language, but went further to guarantee that participation by a homeschool student in an amateur association

312. Overseas Defense Dependents Education Act, 20 U.S.C. § 926 (2005).

313. *Id.* § 926(b)(1).

314. *Id.* § 926(b)(2).

315. S.B. 291, 2003 Leg., 22nd Sess., (Haw. 2003) available at http://www.capitol.hawaii.gov/session2004/bills/sb291_.htm.

or league would not affect eligibility of the student.³¹⁶ H.B. 366 would have also authorized public schools to charge homeschool students a participation fee, but limited the fee to 150% of the amount an enrolled student would pay.³¹⁷ Both the Senate bill³¹⁸ and House bill³¹⁹ were referred to the Education Committee where they died in committee, and were carried over to the 2004 session of the Legislature.

Kansas. Senate Bill 327 would have allowed participation in interscholastic activities by homeschool students.³²⁰ S.B. 327 was referred to the Education Committee and died there without action on May 27, 2004.³²¹

Maryland. House Bill 218 would have allowed "nonenrolled home-schooled students" to participate in public school extracurricular activities.³²² The bill was referred to the Ways and Means Committee where it received an unfavorable report.³²³

Mississippi. In 2004, Mississippi had companion bills introduced as Senate Bill 2056³²⁴ and House Bill 1611³²⁵ that would have authorized a homeschool student to dual enroll in a public school in order to participate in any academic activities on a part-time basis, and participate in any extracurricular activities on the same basis as public school students. Both bills were referred to the Education Committee where they died on March 9, 2004.³²⁶

316. H.B. 366, 2003 Leg., 22nd Sess., (Haw. 2003) available at http://www.capitol.hawaii.gov/session2004/bills/hb366_.htm.

317. *Id.*

318. Hawaii State Legislature, *Bill Status, SB291*, available at <http://www.capitol.hawaii.gov/site1/docs/getstatus2.asp?billno=SB291> (last visited Aug. 5, 2005).

319. Hawaii State Legislature, *Bill Status, HB366*, available at <http://www.capitol.hawaii.gov/site1/docs/getstatus2.asp?billno=HB366> (last visited Aug. 5, 2005).

320. S.B. 327, 2003-2004 Leg., (Kan. 2004) available at <http://www.kslegislature.org/bills/2004/327.pdf> (last visited Aug. 5, 2005).

321. Kansas Legislature, *Bill Tracking*, available at <http://www.kslegislature.org/cgi-bin/billtrack/index.cgi> (last visited Aug. 5, 2005).

322. H.B. 218, 2003 Reg. Sess., (Md. 2003) available at <http://mlis.state.md.us/2003rs/bills/hb/hb0218f.rtf> (last visited Aug. 5, 2005).

323. House Bill 218, *History by Legislative Date*, available at <http://mlis.state.md.us/2003rs/billfile/hb0218.htm#History> (last visited Aug. 5, 2005).

324. S.B. 2056, 2004 Reg. Sess. (Miss. 2004) available at <http://billstatus.ls.state.ms.us/documents/2004/html/SB/2001-2099/SB2056IN.htm> (last visited Aug. 5, 2005).

325. H.B. 1611, 2004 Reg. Sess. (Miss. 2004) available at <http://billstatus.ls.state.ms.us/documents/2004/html/HB/1600-1699/HB1611IN.htm> (last visited Aug. 5, 2005).

326. Mississippi Legislature, *2004 Regular Session, Senate Bill 2056*, available at <http://billstatus.ls.state.ms.us/2004/html/history/SB/SB2056.htm> (last visited Aug. 5, 2005), &

Nebraska. Legislative Bill 896 would require public schools to enroll homeschool students on a part-time basis, and allow such students to participate in all co-curricular or extracurricular activities.³²⁷ The bill was referred to the Education Committee, but since no action was taken before the Legislature adjourned on April 15, 2004, the bill died in committee.³²⁸

New York. Senate Bill 1011 would require public school districts to furnish "programs and services," defined to include "all extracurricular activities, and intraschool, intramural and extramural athletics" to students "who are home instructed."³²⁹ The bill was referred to the Education Committee.³³⁰

Pennsylvania. Senate Bill 361 would allow a child "enrolled in a home education program" to participate in extracurricular activities, including clubs, musical ensembles, sports and theatrical productions.³³¹ The bill was referred to the Education Committee on March 4, 2005.³³² A companion Bill was introduced in the House as House Bill 384, which contains an extensive definition of "extracurricular activity."³³³ The bill was referred to the Committee on Education on February 9, 2005.³³⁴

VI. CONCLUSION

With the dramatic growth in the number of homeschool students in the United States, situations involving teammates like Susan and Emily will continue to occur in public schools throughout the country. Homeschool students will continue to seek opportunities to participate in public school extracurricular activities, while administrators will raise objections. The

Mississippi Legislature, 2004 Regular Session, House Bill 1611, available at <http://billstatus.ls.state.ms.us/2004/html/history/HB/HB1611.htm> (last visited Aug. 5, 2005).

327. L.B. 896, 98th Legislature, 2nd Sess. (Neb. 2004) available at <http://srvwww.unicam.state.ne.us/unicam98.html> (last visited Aug. 15, 2005).

328. Nebraska Legislature, *Bill Status*, available at <http://www.unicam.state.ne.us/scripts/dbSInfo.asp?Prefix=LB&BillNumber=896&Suffix=&Session=> (last visited Aug. 5, 2005).

329. S.B. 1011, 2003-2004 Reg. Sess. (N.Y. 2003-4).

330. New York State Legislature, *Legislative Information*, available at <http://public.leginfo.state.ny.us/menugetf.cgi> (last visited Aug. 5, 2005).

331. S.B. 361, 2005 Reg. Sess. (Pa. 2005) available at <http://www.legis.state.pa.us/WU01/LI/BI/BT/2005/0/SB0361P0366.HTM> (last visited Aug. 5, 2005).

332. *Id.*

333. H.B. 384, 2005 Reg. Sess. (Pa. 2005) available at <http://www.legis.state.pa.us/WU01/LI/BI/BT/2005/0/HB0384P0411.HTM> (last visited Aug. 5, 2005).

334. *Id.*

competing agendas of students, parents and school administrators will continue to generate debate and conflict.

Those involved in the debate hold strong opinions, and maintain justifiable concerns. Parents desire the best educational experience for their children, including the benefits of organized athletics. These parents seek to provide the "additional obligations" referred to by Chief Justice Burger, but many parents also consider it the responsibility of the tax-supported public school system to make participation in extracurricular activities available to all students. Conversely, public school administrators express valid concerns over accepting "non-students" as participants on school teams, citing limited resources, fair competition, and control over the school activities for which the administrators are responsible.

As the number of homeschool students continues to increase, this clash between the competing antagonistic viewpoints will persist. Since courts have not been supportive of homeschool students claiming a "right" to participate, the students will continue to petition public school administrators, school boards, and state interscholastic athletic/activities associations seeking participation opportunities. However, it is certain that many public school administrators will continue to deny participation opportunities to homeschool students.

When homeschool students have been rebuffed in the past, some offended students and parents sought relief in the courts. They have been uniformly unsuccessful. However, history shows that homeschool students and parents have received a more positive response from legislators than school administrators or courts. Therefore, many homeschool support organizations encourage their constituents to engage in political activism rather than litigation to achieve their desired objective. With 16 states having previously adopted statutes allowing homeschool student participation in extracurricular activities, and several others considering similar legislation, it is reasonable to expect that students and parents will take their campaign to statehouses rather than courthouses, pressuring states to pass legislation allowing homeschool students to participate in public school extracurricular activities.

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