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Equal Access: A Proposal for Homeschooled Students and Athletics

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A prevalent issue that homeschooled students face is access to interscholastic athletics at public schools. Over the past several decades, the United States has seen an upward trend in the number of children who are homeschooled. In Illinois, the local public school determines whether homeschooled students may participate in activities at public schools. While this Comment explores a sample of varying laws and regulations on homeschooled student participation in public school athletics, the purpose is to examine the debate on homeschooler's access to public schools and why the Illinois Legislature should create a minimum standard that would allow homeschooled students to participate in interscholastic athletics in public schools.

I. INTRODUCTION.....	2
II. HISTORY ON THE RIGHT TO HOMESCHOOL.....	5
III. DISCUSSION OF STATE STATUTES AND REGULATIONS OF HOMESCHOOLED STUDENTS PARTICIPATION IN PUBLIC SCHOOL ATHLETICS.....	7
A. FLORIDA.....	9
B. NEVADA.....	10
C. ARKANSAS.....	10
D. PENNSYLVANIA.....	11
E. MAINE.....	12
F. MONTANA.....	13
G. CALIFORNIA.....	14
IV. ILLINOIS HOMESCHOOLING LAWS AND REGULATION.....	15
A. HOMESCHOOLING EDUCATIONAL RIGHTS IN ILLINOIS....	15
1. ILLINOIS COMPULSORY ATTENDANCE LAWS.....	15
2. ILLINOIS GOVERNING ATHLETIC ORGANIZATION BY-LAWS.....	17

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i. ILLINOIS ELEMENTARY SCHOOL ASSOCIATION.....	17
ii. ILLINOIS HIGH SCHOOL ASSOCIATION.....	18
B. THE DEBATE ON HOMESCHOOLED STUDENTS PARTICIPATING IN PUBLIC SCHOOL ATHLETICS.....	19
1. ARGUMENTS AGAINST PERMITTING HOMESCHOOLERS TO PARTICIPATE IN PUBLIC SCHOOL ATHLETICS.....	19
2. ARGUMENTS ALLOWING HOMESCHOOLERS TO PARTICIPATE IN PUBLIC SCHOOL ATHLETICS.....	23
V. PROPOSED HOMESCHOOL STUDENT ATHLETIC REGULATION.....	24
VI. CONCLUSION.....	27

I. INTRODUCTION

Sports and other forms of vigorous physical activity provide educational experience which cannot be duplicated in the classroom. They are an uncompromising laboratory in which we must think and act quickly and efficiently under pressure and then force us to meet our own inadequacies face-to-face and to do something about them, as nothing else does...Sports resemble life in capsule form and the participant quickly learns that his performance depends upon the development of strength, stamina, self-discipline and a sure and steady judgment.¹

Mike Beasley, Kevin Johnson, Sam Warren, Jason Taylor, and Tim Tebow are just a few professional athletes who were homeschooled students. Although Tim Tebow and Jason Taylor were homeschooled students, they were allowed to play on their high school football teams.² Instrumental to their success as professional athletes was the ability to participate in public school interscholastic athletic activities to develop their athletic talents.

1. Brandin Heidbreder, Senior Project, *Does it Pay to be a High School Athlete?*, XV THE PARK PLACE ECONOMIST 19, 19 (Apr. 2007), perma.cc/2WW7-UPJN (citing John M. Barron et. al., *The Effects of High School Athletic Participation on Education and Labor Market Outcomes*, 82 REV. OF ECON. STAT. 409, 409 (Aug. 2000)).

2. See FLA. STAT. § 1006.15 (2015) (providing that homeschooled students be considered eligible to participate in the extracurricular activities of the public school they would normally attend); 24 PA. CONS. STAT. ANN. § 13-1327.1(f.1)(1) (West 2015) (allowing homeschooled students to participate in extracurricular activities at their public school district of residence).

Their ability to showcase their talents enabled them to receive college athletic scholarships. For example, Jason Taylor received a National Collegiate Athletic Association (NCAA) scholarship and played football at the University of Akron, later playing for the Miami Dolphins.³

Children, are considered to be homeschooled if (1) they are ages 5-7 in a grade equivalent to at least kindergarten and no higher than grade 12; (2) their parents report them as being schooled at home . . . and (3) their part-time enrollment in public or private schools does not exceed 25 hours per week.⁴

In the United States, the number of homeschooled students increased from 850,000 in 1999 to 1.5 million in 2007.⁵ Statistics from a survey completed by the National Household Education Surveys Program show that 3% of students were homeschooled during the 2011-2012 school year.⁶ Although this accounts for approximately 1.77 million students enrolled in kindergarten to twelfth grade,⁷ this may be an underestimation as some states do not require registration of homeschooled students.⁸ An upward trend in the number of homeschoolers has impacted homeschooling regulations across the United States. Homeschoolers' ability to access interscholastic athletics at public schools is becoming a prevalent issue for parents, schools, and athletic associations.

Neither the United States Constitution, the United States Supreme Court, nor any other court has addressed the constitutional status of homeschooling. Each state recognizes the right of parents to homeschool their children.⁹ However, no court has upheld a constitutional right to access public schools or addressed the issue of homeschooled students participat-

3. Christopher J. Klicka, *How Home Schoolers Can Earn Athletic Scholarships*, HSLDA (Apr. 13, 2000), perma.cc/RQ5R-P92U.

4. MICHAEL PLANTY ET AL., NAT'L CTR. FOR EDUC. STATISTICS, *THE CONDITION OF EDUCATION 2009*, 1, 14 (June 2009), perma.cc/5UKU-2KCL.

5. *Id.*

6. AMBER NOEL, PATRICK STARK & JEREMY REDFORD, NAT'L CTR. FOR EDUC. STATISTICS, *PARENT AND FAMILY INVOLVEMENT IN EDUCATION, FROM THE NATIONAL HOUSEHOLD EDUCATION SURVEYS PROGRAM OF 2012* (May 2015), perma.cc/43GF-S8X5.

7. OFFICE OF NON-PUB. EDUC., U.S. DEP'T OF EDUC., *STATISTICS ABOUT NONPUBLIC EDUCATION IN THE UNITED STATES*, perma.cc/BBU5-Z2LA.

8. 105 ILL. COMP. STAT. 5/2-3.25o(b) (2015) ("All non-public elementary and secondary schools in the State of Illinois may voluntarily register with the State Board of Education on an annual basis.").

9. *See Wisconsin v. Yoder*, 406 U.S. 205, 236 (1972).

ing in public school extracurricular activities.¹⁰ Gathering and participating in interscholastic athletic activities can be difficult due to the relatively small population of homeschoolers.¹¹

The ability of homeschooled students to participate in public school activities varies from state to state.¹² Some states have prohibited homeschooled students from participating in any public school activity, including classes, extracurricular activities, and interscholastic activities.¹³ Other states have enacted legislation permitting homeschooled students to participate in public school activities.¹⁴ Generally, these states set out requirements that homeschooled students must meet prior to participating in public school activities.¹⁵

One variation of access allows homeschooled students to participate in athletics at the public school they would have attended, determined by the location of their residence.¹⁶ Some states allow homeschoolers to organize their own athletic teams to compete against other schools; however, homeschooled children are only eligible to participate on teams designated for homeschooled students.¹⁷ In other states, such as Illinois, the local public school determines whether a homeschooled student may participate in classes, extracurricular activities, and/or interscholastic teams.¹⁸

This Comment explores the varying laws and regulations on homeschooled student participation in public school athletics and examines why the Illinois Legislature should create a statute concerning homeschooled

10. *Equal Access: Participation of Homeschooled Students in Public School Activities*, HOME SCH. LEGAL DEF. ASS'N, (Apr. 1, 2011), perma.cc/V2TH-ACRF [hereinafter *HSLDA Equal Access*].

11. See, e.g., David W. Fuller, Note, *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, 1599–1600 (1998).

12. WHICH STATES LET HOMESCHOOLERS PARTICIPATE IN PUBLIC SCHOOL ACTIVITIES, HOME SCH. LEGAL DEF. ASS'N, (Aug. 4, 2015), perma.cc/9UBN-MEJS [hereinafter *HSLDA State Laws*].

13. See *id.*; see also *Jones v. W. Va. State Bd. of Educ.*, 622 S.E.2d 289 (W. Va. 2005) (the governing athletic association completely bans homeschoolers from interscholastic competition; homeschoolers are only able to compete amongst other homeschooled students or against schools that are not members of the state's interscholastic athletic federation).

14. See *HSLDA State Laws*, *supra* note 12. There are currently twenty-two states that allow homeschool students public school access: Arizona, Colorado, Florida, Idaho, Illinois, Iowa, Louisiana, Maine, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oregon, Pennsylvania, South Dakota, Utah, Vermont, Washington, and Wyoming.

15. *HSLDA State Laws*, *supra* note 12.

16. FLA. STAT. § 1006.15(3)(c)(3) (2015).

17. See MONT. HIGH SCH. ASS'N 2014-2015 OFFICIAL HANDBOOK art. II, § 2.1 (2015), perma.cc/FK9F-QRBX.

18. 105 ILL. COMP. STAT. 5/10-20.24 (2015).

students' participation in public school interscholastic athletics. Part II provides a brief history on the evolution of homeschooling rights in the United States. It begins with compulsory education laws, then discusses the evolution for parents' rights to homeschool their child.

Part III examines state laws and regulations regarding homeschooled students' rights to participate in public school interscholastic athletics. Part III will briefly discuss various state regulations and how they address the issue of students who are homeschooled and their ability to participate in public school interscholastic athletics. It will summarize the laws of: Florida, Nevada, Arkansas, Pennsylvania, Maine, Montana, and California.

Part IV concerns Illinois homeschooling laws and regulations. It begins by giving a brief summary of current Illinois homeschooling laws and Illinois athletic association by-laws. It also examines the debate on whether or not to permit homeschooled students to participate in public school athletics.

Part V will propose and discuss statutory language that would allow homeschooled students access to public school athletics. It also addresses the concerns of opponents to equal access of public school athletics.

II. HISTORY ON THE RIGHT TO HOMESCHOOL

Education laws in the United States are founded upon English Poor Laws.¹⁹ Under English statutes of the sixteenth and seventeenth centuries, poor children would become productive citizens under the guidance of a master by being taught a trade or profession.²⁰

Massachusetts Bay Colony was the first to establish a compulsory education law in 1642, where parents and masters were responsible for providing a fundamental education for children including reading and religious instruction.²¹ In 1852, Massachusetts was also the first state to establish a compulsory attendance statute requiring children between ages eight and fourteen to attend school.²² Sparking the debate on homeschooling was the enactment of compulsory attendance statutes, as some parents wanted to educate their children at home. Even so, by 1918, all states had compulsory attendance laws.²³

Today, an upward trend in homeschooling may be attributable to parents wanting to provide religious or moral instruction, concerns regarding

19. See generally LAWRENCE KOTIN & WILLIAM F. AIKMAN, *LEGAL FOUNDATIONS OF COMPULSORY ATTENDANCE* (1980); Gerald B. Lotzer, *Texas Homeschooling: An Unresolved Conflict Between Parents and Educators*, 39 *BAYLOR L. REV.* 469, 470 (1987).

20. Lotzer, *supra* note 19, at 470.

21. *Id.*

22. *Id.*

23. *Id.* at 471.

the environment of schools, and/or dissatisfaction with academic instruction at schools.²⁴ What the Constitution does not address is whether states or parents retain the constitutional right to control the education of children. Moreover, the United States Supreme Court has not specifically ruled on homeschooling nor has the Court defined the scope of state homeschooling statutes and regulations. However, the Supreme Court has set guidelines on constitutional limits of state regulation of education.

In *Meyer v. Nebraska*,²⁵ the Court recognized that “[t]he American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted.”²⁶ The *Meyer* Court found that the Fourteenth Amendment included the right to “acquire useful knowledge” and the right to “bring up children.”²⁷

Two years after *Meyer*, in *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*,²⁸ the Supreme Court upheld the right of parents to send their children to private schools.²⁹ To comply with an Oregon law that required all children to attend public schools, students from two private schools were forced to withdraw.³⁰ The Court recognized the “liberty of parents and guardians to direct the upbringing and education of [their] children.”³¹ The Court effectively held that states cannot require children to receive their education only from a public school because parents have the right to make decisions regarding the education of their children.³²

In *Wisconsin v. Yoder*,³³ the Court held that Amish parents were not required to send their children to public schools for religious reasons and allowed parents to educate their children at home.³⁴ States recognize the right of parents to homeschool their children because of the rulings in *Meyer*, *Pierce*, and *Yoder*.³⁵ Courts have yet to rule on the permissive scope of state regulation and whether or not homeschooled students are permitted to participate in public school athletic teams.

24. PLANTY, *supra* note 4, at 135 (Table A-6-2).

25. *Meyer v. Nebraska*, 262 U.S. 390 (1923).

26. *Id.* at 400.

27. *Id.* at 399.

28. *Pierce v. Soc’y of the Sisters of the Holy Name of Jesus and Mary*, 268 U.S. 510 (1925).

29. *Pierce*, 268 U.S. at 534-35.

30. *Id.* at 530-33.

31. *Id.* at 534.

32. *See id.* at 535. (“The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only.”).

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

34. *See id.* at 234 (“For the reasons stated we hold, with the Supreme Court of Wisconsin, that the First and Fourteenth Amendments prevent the State from compelling respondents to cause their children to attend formal high school to age 16.”).

35. *See Yoder*, 406 U.S. at 205; *Pierce*, 268 U.S. at 534-35; *Meyer*, 262 U.S. at 400.

Organizations that support homeschoolers have risen and are reflective of the growing popularity in homeschooling. Parents and interested parties, such as the Home School Legal Defense Association (HSLDA), are created to inform and to keep current with homeschooling legislation. HSLDA is a national organization comprised of parents and attorneys who lobby for homeschoolers' rights.³⁶ One of the prevalent issues that organizations such as HSLDA track is the ability for homeschooled students to participate in public school athletics.

III. DISCUSSION OF STATE STATUTES AND REGULATIONS OF HOMESCHOOLED STUDENTS PARTICIPATION IN PUBLIC SCHOOL ATHLETICS

States vary on how they address public school athletic accessibility by homeschooled students.³⁷ This section examines a small sampling of the range of statutes and regulations regarding homeschoolers' participation in athletics at public schools. Generally, these state homeschooling laws can be classified into three broad categories: private school laws, equivalency laws, and home education laws.³⁸

Private school laws do not make any distinctions between homeschooling and private schools, essentially categorizing homeschooling with private schools.³⁹ These states tend to have broad qualification statutes either allowing or prohibiting student participation in public school activities, including athletics.⁴⁰ Also included in this category are states that do not have any regulations mandating or permitting homeschoolers access to public schools.⁴¹ In these states, individual schools and school districts have the authority to determine whether homeschoolers can participate in public school activities.⁴² There is no standard policy or guidance for homeschoolers, as regulations vary from district to district within the state.⁴³ In some cases, school districts defer to athletic association by-laws.⁴⁴

36. HOME SCH. LEGAL DEF. ASS'N, *About HSLDA*, <http://www.hsllda.org/about/> (last visited Dec. 28, 2014).

37. HSLDA *State Laws*, *supra* note 12.

38. See Judith G. McMullen, *Behind Closed Doors: Should States Regulate Homeschooling?*, 54 S.C. L. REV. 75, 87 (2002) (citations omitted) (discussing the three categories).

39. Christina Sim Keddie, *Homeschoolers and Public School Facilities: Proposals for Providing Fairer Access*, 10 N.Y.U. J. LEGIS. & PUB. POL'Y 603, 611 (2007).

40. *Id.*

41. HSLDA *Equal Access*, *supra* note 10.

42. *Id.*

43. *Id.*

44. *Id.*

Equivalency laws generally allow homeschoolers to participate in interscholastic activities at public schools with additional layers of regulation.⁴⁵ In order for a homeschooled student to qualify for participation, homeschoolers need to receive academic instruction equivalent to that provided by the public school system.⁴⁶ These states tend to require more documentation from parents to show that the homeschooled student meets the standards. Some of the requirements that homeschoolers would follow in these states include: complying with state homeschool laws, meeting the same eligibility requirements as public school students, and documentation that verifies the student is passing core subjects.⁴⁷ Requirements are often part of the public school's policy or by state athletic association's by-laws.⁴⁸

Lastly, there are home education laws. These states generally single out homeschoolers for specific regulations.⁴⁹ Under this category, there is a wide array of requirements ranging from lenient to strict depending upon the state. For example, Wisconsin's homeschooling laws require annual submission of a statement of enrollment.⁵⁰ In contrast, Pennsylvania's homeschooling law requires annual reports and evaluations of the homeschooled student's progress by a qualified teacher or psychologist.⁵¹

Currently, there are nineteen states that allow homeschooled students access to interscholastic activities.⁵² Five states allow homeschooled students to participate in interscholastic activities with the approval of the local school district.⁵³ Another five states allow homeschooled students to participate in interscholastic activities if they are enrolled part time or are dual enrolled.⁵⁴ There are twenty-one states where athletic associations prohibit homeschooled students from participating in interscholastic activities.⁵⁵ Some states and athletic associations may not outright prohibit homeschooled students from participating; however, requirements for interscholastic athletic participation may include being enrolled full time at the

45. Keddie, *supra* note 39, at 642.

46. See McMullen, *supra* note 38, at 88-89.

47. HSLDA *Equal Access*, *supra* note 10.

48. *Id.*

49. See McMullen, *supra* note 38, at 89-91.

50. WIS. STAT. § 115.30(3) (2015).

51. 24 PA. CONS. STAT. ANN. § 13-1327.1(e)(2) (West 2015).

52. COAL. FOR RESPONSIBLE HOME EDUC., LET THE CHILDREN PLAY: HOMESCHOOL SPORTS ACCESS BY STATE (Jan. 30, 2014), perma.cc/2H5G-C5N6.

53. *Id.*

54. *Id.*

55. *Id.*

member school.⁵⁶ This would effectively bar homeschooled students from being eligible to participate in public school athletics.⁵⁷

A. FLORIDA

One example of a state with private school laws is Florida. The Florida Legislature passed the Craig Dickinson Act in 1996, making no distinction between students who attend private school or receive home education.⁵⁸ The Craig Dickinson Act forbids the governing public school athletic organization from discriminating against students based on their choice of education.⁵⁹ Under the Craig Dickinson Act, homeschooled students are able to participate in public school extracurricular activities, including athletics.⁶⁰ Homeschooled children are able to “participate at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend pursuant to district or interdistrict controlled open enrollment provisions”⁶¹

Under this Act, homeschooled students must meet the standards required of public school students⁶² and demonstrate educational progress⁶³ in order to participate in public school sports. Parents need to submit a letter of intent to homeschool their child and maintain an academic portfolio of the child’s work.⁶⁴ Furthermore, the parent and school principal will agree to the method of demonstrating educational progress.⁶⁵ The Act suggests several options such as having a certified teacher chosen by the parent to review the student’s work⁶⁶ or submission of standardized test scores.⁶⁷

B. NEVADA

Nevada is an example of a state with equivalency laws. As of 2003, both the Nevada Revised Statutes and the Nevada Interscholastic Activities Association allow homeschoolers to participate in public school sports.⁶⁸ In

56. *Id.*

57. COAL. FOR RESPONSIBLE HOME EDUC., LET THE CHILDREN PLAY: HOMESCHOOL SPORTS ACCESS BY STATE (Jan. 30, 2014), perma.cc/2H5G-C5N6.

58. FLA. STAT. § 1006.15(5) (2015).

59. *Id.*

60. FLA. STAT. § 1006.15(5)(b) (2015).

61. FLA. STAT. § 1006.15(3)(c) (2015).

62. FLA. STAT. § 1006.15(3)(c)(1) (2015).

63. FLA. STAT. § 1006.15(3)(c)(2) (2015).

64. FLA. STAT. § 1002.41(1) (2015).

65. FLA. STAT. § 1006.15(3)(c)(2) (2015).

66. *Id.*

67. *Id.*

68. NEV. REV. STAT. § 392.070 (2015).

Nevada, legislation allows homeschooled children to participate in interscholastic activities, subject to statutory requirements.⁶⁹ This includes filing a notice of intent of a homeschooled student to participate in programs and activities with the school district.⁷⁰

Additionally, homeschooled students are only allowed to participate at a public school within the school district of the child's residence.⁷¹ The Nevada Revised Statutes further outline what rules and regulations apply to homeschoolers if they choose to participate in interscholastic activities. These requirements include qualifying to play on the sport team, fees for participation, having insurance, transportation, and disciplinary procedures.⁷² Interestingly, the statute states: "Neither the school district nor a public school may prescribe any regulations . . . governing the eligibility or participation of the homeschooled child that are more restrictive than the provisions governing [public school students]."⁷³ The Nevada Revised Statute also provides that a homeschooled student's participation in athletics may be revoked if the student fails to comply with the requirements set forth by governing statutes, or applicable rules and regulations.⁷⁴

C. ARKANSAS

Prior to April 2013, Arkansas did not have any laws or regulations regarding homeschoolers and their ability to participate in public school athletics. When homeschooling became legal in Arkansas, the Pulaski County Flames formed in 1985.⁷⁵ The Pulaski County Flames is a program that organizes activities and events for homeschool students.⁷⁶ Here, homeschooled students are able to participate and compete in athletic programs.⁷⁷

On August 1, 2012, the Arkansas Activities Association (AAA) voted to allow homeschooled students to play on public school athletic teams.⁷⁸ On April 22, 2013, House Bill 1789 was approved, allowing homeschooled students to participate in public school interscholastic activities, including

69. NEV. REV. STAT. § 392.070(5) (2015).

70. NEV. REV. STAT. §§ 386.462, 386.580(5)-(7), 392.070; NEV. ADMIN. CODE ch. 386, §§ 793, 802, 804 (2015).

71. NEV. REV. STAT. § 392.070(5) (2015).

72. *Id.*

73. NEV. REV. STAT. § 392.070(6)(b) (2015).

74. NEV. REV. STAT. § 386.580(6) (2015).

75. *Home school students now eligible to play high school sports*, THV11.COM (Aug. 1, 2012), perma.cc/EE5Z-8WJ3.

76. *Id.*

77. *Id.*

78. *Id.*

athletics.⁷⁹ Provided that the homeschooled student meets applicable requirements, they are eligible to participate at their local public school.⁸⁰ Requirements that homeschooled students must meet include: a “require[ment] to be at school not more than one (1) period per school day,”⁸¹ scores at the thirtieth percentile or higher on a nationally recognized standardized test, and that the student makes the team.⁸² However, the school district has the discretion to allow a student to participate with a lower score or no test score.⁸³

D. PENNSYLVANIA

In addition to Pennsylvania’s home education law, the PA Equal Access Bill was signed on November 10, 2005, and went into effect January 1, 2006.⁸⁴ Under section 511, homeschoolers have full access to participation in any activity subject to provisions of section 511; this includes athletics.⁸⁵ Homeschooled students must meet the same eligibility requirements as public school students in order to be eligible to participate in extracurricular activities at their neighborhood school.⁸⁶ Homeschoolers must also comply with all policies, rules, and regulations of the governing athletic organization.

The Pennsylvania Interscholastic Athletic Association (PIAA) establishes the policies and procedures for interscholastic athletics in public schools.⁸⁷ PIAA also has requirements that homeschoolers must meet, including completion of a physical examination, pursuing a full-time academic curriculum, and passing at least four full-credit subjects.⁸⁸ As homeschooling does not necessarily have a formal grading system, proving that a homeschooler meets the minimal standards of academic eligibility may be difficult.⁸⁹ Parents may need to implement a grading system based upon the system used by public schools.⁹⁰ Parents would also need to submit docu-

79. ARK. STATE LEG., *HB1789 – To Allow Home-Schooled Students to Participate in Interscholastic Activities*, perma.cc/7YM4-6KJH.

80. ARK. CODE ANN. § 6-15-509 (West 2015).

81. *Id.*

82. *Id.*

83. *Id.*

84. 24 PA. CONS. STAT. ANN. § 13-1327.1(f.1) (West 2015).

85. 24 PA. CONS. STAT. ANN. §§ 5-511, 13-1327.1(f.1) (West 2015).

86. *Id.*

87. PA. INTERSCHOLASTIC ATHLETIC ASS’N, INC., *Introduction*, perma.cc/Y62L-4KJ7.

88. PA. INTERSCHOLASTIC ATHLETIC ASS’N, INC., *Eligibility Rules* (July 1, 2011), perma.cc/M2HE-3U8G.

89. Beth Phillips, *Equal Access Law for PA Homeschoolers*, PA HOMESCHOOL LAW BLOG, perma.cc/XF3Z-CTH2.

90. *Id.*

mentation to verify their child's academic progress in order for their child to be eligible to participate in public school athletics.⁹¹

In Pennsylvania, the latter requirement should not be difficult to meet, as current homeschoolers need to submit a portfolio.⁹² The portfolio documents indicate that compulsory attendance laws have been observed and that the student had an appropriate education.⁹³ Evaluations are made based upon a portfolio review, an interview with the child, and accompanying documentation.⁹⁴ The evaluation would certify whether or not an appropriate education is occurring and the report would include documentation submitted.⁹⁵ Factors that evaluators would consider are: "a program consisting of instruction in the required subjects[,] the time required in this act[,] and . . . the student demonstrates sustained progress in the overall program."⁹⁶

E. MAINE

Maine home education laws allow homeschooled students to participate in both co-curricular and extracurricular activities.⁹⁷ While the statute provides reimbursement to the public school if a homeschooled student enrolls in equivalent instruction problems, the statute does not provide reimbursements when a homeschooled student participates in athletics.⁹⁸ Should a homeschooled student wish to participate in public school athletics in Maine, they may enroll at the local school of their residence.⁹⁹ Although a homeschooled student needs a superintendent's approval for co-curricular activities,¹⁰⁰ approval is not needed for extracurricular activities, this includes athletics.¹⁰¹ There are certain requirements that homeschoolers need to meet in order to qualify for participation at their local school. These requirements include applying to the local school in writing, abiding by the same eligibility rules as public school students, complying with the

91. *Id.*

92. PA. DEP'T OF EDUC., *Overview of Homeschooling*, http://www.portal.state.pa.us/portal/server.pt/community/overview_of_homeschooling/20312 (last visited Dec. 28, 2014).

93. *Id.*

94. PA. DEP'T OF EDUC., *Evaluators*, http://www.portal.state.pa.us/portal/server.pt/community/home_education_and_private_tutoring/20311/evaluators/973998 (last visited Dec. 28, 2014).

95. *Id.*

96. 24 PA. CONS. STAT. ANN. § 13-1327.1(a) (West 2015).

97. ME. REV. STAT. tit. 20-A, § 5021-A (2015).

98. ME. REV. STAT. tit. 20-A, § 5021(8) (2015).

99. *Id.*

100. ME. REV. STAT. tit. 20-A, §§ 5021.1.A, .4.A (2015).

101. ME. REV. STAT. tit. 20-A, § 5021.5.A (2015).

same physical examinations and medical requirements as public school students, and abiding by the same transportation policy as public school students.¹⁰²

Maine also has a separate provision that allows homeschoolers to use public school facilities and equipment.¹⁰³ Requirements include approval from the school's principal, usage must not disrupt regular school activities or create additional expenses to the school, and usage of hazardous areas must be supervised by school administration.¹⁰⁴ Although Maine has allowed homeschoolers to participate in public school athletics, a Maine federal court ruled that the state sports association could disqualify a private school team that a homeschooler plays on.¹⁰⁵

F. MONTANA

Montana does not have laws that address whether or not homeschoolers can access public school athletics. In states such as Montana, local schools and school districts are left to determine whether homeschoolers are eligible to participate.¹⁰⁶ This is problematic because decisions can vary depending on the school district, and state athletic associations generally develop rules and regulations on student eligibility.¹⁰⁷ However, there are private and independent athletic associations available for homeschooled students to join. Because these organizations are private, homeschoolers are allowed to participate because organizations are able to develop their own rules and regulations.¹⁰⁸

High school sports are an exception to the above. The Montana High School Association (MHSA) determines whether homeschooled students are eligible to participate or not.¹⁰⁹ MHSA by-law states: "A home school student is not eligible to participate for an MHSA member school."¹¹⁰ Un-

102. *Id.*

103. ME. REV. STAT. tit. 20-A, § 5021.6.A (2015).

104. *Id.*

105. *Pelletier v. Maine Principals' Ass'n*, 261 F. Supp. 2d 10, 12 (D. Me. 2003) ("Maine statutes do not require that private schools admit home-schooled students to their athletic programs. The Maine Principals Association does not permit private schools (or, for that matter, other public schools outside the relevant attendance area) to field unenrolled home-schooled athletics except as exhibition participants.").

106. HSLDA *State Laws*, *supra* note 12.

107. *Id.*

108. *Id.*

109. MONT. HIGH SCH. ASS'N 2014-2015 OFFICIAL HANDBOOK, art. II. § 2.1, perma.cc/Z4B5-V755 (last updated Oct. 15, 2014).

110. *Id.*

der MHSAs rules, only full-time district students with a passing grade are allowed to participate.¹¹¹

Interestingly, the Supreme Court of Montana ruled that a school district policy preventing non-public students from participating in athletic programs was reasonable.¹¹² The Kapteins filed suit asking the court to enter a judgment requiring that Conrad School District allow their seventh grade daughter to participate in public school sports programs.¹¹³ The school district argued that the school's educational interests in permitting only students enrolled in the school district to participate in school-sponsored extracurricular activities outweighed any right a non-public school student had to participate.¹¹⁴ The court reasoned that "in order to effectively integrate academics and extracurricular activities [the school district] need[ed] to restrict participation to those students who [were] enrolled in the public school system."¹¹⁵

G. CALIFORNIA

California statutes do not distinguish between homeschoolers and students who attend private school. Parents who intend to homeschool their child must file a private school affidavit allowing their child exemption from attendance in a public school.¹¹⁶ Furthermore, records must be kept of the child's courses of study¹¹⁷ and attendance.¹¹⁸

Because California does not have a law addressing whether homeschooled students have access to public school athletics, deference is given to individual schools and school districts that then defer to the California Interscholastic Federation (CIF). Under section 35179 of the California Education Code, CIF is the governing body of interscholastic athletic programs.¹¹⁹ CIF By-law 301 prohibits homeschooled students from participating in public school athletics.¹²⁰ In order for a homeschool student to be

111. *Id.* at art. II, § 2.

112. *Kaptein v. Conrad School Dist.*, 931 P.2d 1311, 1317 (Mont. 1997).

113. *Id.* at 1312.

114. *Id.* at 1313.

115. *Id.* at 1317.

116. CAL. EDUC. CODE §§ 33190, 48222 (West 2015).

117. CAL. EDUC. CODE § 33190 (West 2015).

118. CAL. EDUC. CODE § 48222 (West 2015).

119. CAL. EDUC. CODE § 35179 (West 2015).

120. CAL. INTERSCHOLASTIC FED'N, CONSTITUTION, BYLAWS, & STATE CHAMPIONSHIP REGULATIONS 2014-2015, BY-LAW § 301 (June 9, 2014), www.cifstate.org/governance/constitution/300_Series.pdf ("Students who are not enrolled in programs under the jurisdiction of a member school's governing body are not eligible to participate in CIF competition. Such programs would include, but not be limited to, home schooling or home study.").

eligible to participate in CIF athletic programs, students must be enrolled in a public or private high school, independent study program, or charter school.¹²¹ Consequentially, organizations such as California Athletics for Home Schools (CAHS) and the California Home School Sports (CHSS) were created to meet the needs of home schooling families.¹²²

IV. ILLINOIS HOMESCHOOLING LAWS AND REGULATIONS

A. HOMESCHOOLING EDUCATIONAL RIGHTS IN ILLINOIS

Illinois does not require public schools to allow homeschooled students to participate in extracurricular activities, including interscholastic athletics.¹²³ As such, schools defer to the athletic governing organizations, Illinois Elementary School Association (IESA) and Illinois High School Association (IHSA), to determine whether homeschoolers are allowed to participate in public school athletics.¹²⁴

1. *Illinois Compulsory Attendance Law*

Illinois law requires children between the ages of seven and seventeen years to attend public school for the entire time that school is in session.¹²⁵ However, an exception is made for “[a]ny child attending a private or parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools, and where the instruction of the child in the branches of education is in the English language.”¹²⁶

In landmark case *Illinois v. Levisen*,¹²⁷ the Illinois Supreme Court held that “private school” included homeschooling, provided that instruction

121. *Id.* at BY-LAW §§ 201, 302.

122. California Athletics, *Sports Teams/Leagues*, perma.cc/93WR-GB27.

123. ILL. STATE BD. OF EDUC., *Questions you may have on Illinois Home Schooling*, (Jan. 2014), perma.cc/SK59-JFKB.

Public schools have no obligation to make extracurricular activities, including athletics, open to students attending private schools. In addition, many Illinois public elementary and high schools belong to intramural sports organizations, i.e., the Illinois Elementary School Association (IESA) or the Illinois High School Association (IHSA). Both organizations have specific bylaws that limit the conditions under which homeschooled students may participate in interscholastic athletics.

Id.

124. *Id.*

125. 105 ILL. COMP. STAT. 5/26-1 et seq. (2015).

126. 105 ILL. COMP. STAT. 5/26-1.1 (2015).

127. *Illinois v. Levisen*, 90 N.E.2d 213 (Ill. 1950).

complied with compulsory attendance laws.¹²⁸ To comply with the ruling, this requires having a competent teacher, teaching required subjects, and students receiving an education at least equivalent to public schooling.¹²⁹ The Illinois Supreme Court's opinion in *Levisen* emphasized the recognition of the right of parents to control their children's education. The court stated:

Compulsory education laws are enacted to enforce the natural obligation of parents to provide an education for their young, an obligation which corresponds to the parents' right of control over the child. (*citing* *Meyer v. Nebraska*, 262 U.S. 390, 400) The object is that all children shall be educated, not that they shall be educated in any particular manner or place.¹³⁰

However, the Illinois Supreme Court has also said that parents who prefer to teach their children at home "have the burden of showing that they have in good faith provided an adequate course of instruction in the prescribed branches of learning."¹³¹

Although Illinois law does not set a minimum amount of hours per day or days of instruction per year, Illinois does require homeschoolers to receive an education equivalent to public school standards.¹³² There are no academic requirements, only that classes are taught in the English language¹³³ and include the subjects of: language arts, mathematics, biological and physical science, social sciences, fine arts, and physical development and health.¹³⁴ Further, Illinois does not require that homeschooled students be tested.¹³⁵ Even if the student were to be tested, they would not be required to submit his or her score to a school official.¹³⁶ Additionally, parents may voluntarily register that their child is receiving homeschooled education to the Illinois State Board of Education, but they are not required to do so.¹³⁷ Because homeschooling requirements in Illinois are minimal,

128. *See Levisen*, 90 N.E.2d at 215.

129. ILL. STATE BD. OF EDUC., *supra* note 123.

130. *Levisen*, 90 N.E.2d at 215.

131. *Id.*

132. *See, e.g., Scoma v. Chicago Bd. of Educ.*, 391 F. Supp. 452 (N.D. Ill. 1974); *Levisen*, 90 N.E.2d at 215.

133. 105 ILL. COMP. STAT. 5/26-1.1 (2015).

134. *See* ILL. STATE BD. OF EDUC., *supra* note 123.

135. *Id.*

136. *Id.*

137. *Id.*

there is no record or proof that parents are actually educating their children unless the parents keep a portfolio of the child's work.¹³⁸

Illinois Legislature recognized the need for homeschooling registration in the 1980s when Illinois Senate Bill 1202¹³⁹ and Illinois House Bill 1265¹⁴⁰ were introduced. These bills would have required registration of homeschoolers, but did not pass due to lack of support¹⁴¹ and the influence of homeschooling lobbyists.¹⁴² Failure of the bills indicates the difficulty in passing any regulation for homeschoolers. Homeschooled students' ability to participate in public school athletics needs to be addressed as homeschooling has grown in population.

As mentioned earlier, in Illinois, public schools have no obligation to allow homeschoolers access to public school activities.¹⁴³ Therefore, deference is given to the governing athletic organization: Illinois Elementary School Association (IESA) and Illinois High School Association (IHSA). The IESA and IHSA by-laws limit homeschooled students' participation in interscholastic athletics at public schools.¹⁴⁴

2. *Illinois Governing Athletic Organization By-Laws*

i. Illinois Elementary School Association

The Illinois Elementary School Association (IESA) allows homeschooled students to participate in interscholastic athletics at the public school which the student would have regularly attended, provided that they also fulfill other requirements set by IESA.¹⁴⁵ Additional requirements include:

[A]ll eligibility By-Laws other than the attendance By-Law, the home schooled student's work must be accepted by the school district in which the student resides and be granted credit toward graduation by that school district, the school district shall establish a method to monitor the academic performance of the home schooled student on the same basis as

138. Erica Mynarich, *An Argument for the Adoption of an Illinois Homeschooling Statute*, 20 DUPAGE COUNTY B. ASS'N (Oct. 2007), perma.cc/V8Y3-MYED.

139. S.B. 1202, 85th Gen. Assemb., Reg. Sess. (Ill. 1987).

140. H.B. 1265, 86th Gen. Assemb., Reg. Sess. (Ill. 1989).

141. S.B. 1202, at 51.

142. Mynarich, *supra* note 138.

143. ILL. STATE BD. OF EDUC., *supra* note 123.

144. *Id.*

145. ILL. ELEMENTARY SCH. ASS'N HANDBOOK, SCHOOL BY-LAW § 2.036 (effective July 1, 2013), perma.cc/T6TM-249A.

for students in regular attendance at the school, and the school certifies that the student is meeting the minimum academic eligibility standards for participation. The school at which the student will participate is required to keep all records to verify compliance with these requirements in the event the IESA is required to rule on the eligibility of the home schooled student.¹⁴⁶

ii. Illinois High School Association

The Illinois High School Association (IHSA) also allows home-schooled students to participate in public school athletics; however, the “student must attend a member school.”¹⁴⁷ IHSA defines “attend” as:

The student is enrolled at the member school, and is taking at, or under arrangements approved by the member school, a minimum of twenty five (25) credit hours of work for which credit toward high school graduation will be granted by the member school upon the student’s completing and passing the courses.¹⁴⁸

Under By-law 3.011, the homeschooled “student must also pay applicable tuition and fees at the member high school.”¹⁴⁹

Although the governing athletic organization has developed regulations that allow homeschooled students to participate in public school interscholastic athletics, the by-laws inadequately address enforcement of the requirements. Under IHSA By-law 3.010, “the school which enrolls the student shall be exclusively responsible [for] verify[ing] the student’s compliance with all of the eligibility requirements of all IHSA By-laws.”¹⁵⁰ The IHSA handbook outlines what constitutes scholastic standing in order to be eligible to participate in public school athletics.¹⁵¹ A problem arises when homeschoolers use a grading system different than public schools. IHSA does not adequately account for this variation; instead, they defer to the public school.¹⁵²

146. *Id.*

147. ILL. HIGH SCH. ASS’N HANDBOOK, ATHLETIC BY-LAW § 3.010 (effective July 1, 2014), perma.cc/R4J4-BJ3T.

148. *Id.*

149. *Id.* at Illustrations for § 3.010 of the By-laws.

150. *Id.* at BY-LAW § 3.010.

151. *Id.* at BY-LAW § 3.020 et seq.

152. *See* ILL. HIGH SCH. ASS’N HANDBOOK, ATHLETIC BY-LAW § 3.010.

When a homeschooled student enrolls (or re-enrolls) into a public school, evaluation of the child's work would vary from school district to school district.¹⁵³ In other words, some school districts may place the child with students of the same age, or may require competency testing and standardized test scores.¹⁵⁴ Illinois homeschooling laws do not require homeschooled students to be tested.¹⁵⁵ Even if a homeschooled student chose to participate in a state assessment test, it may not be appropriate as the assessment would reflect the curriculum taught at Illinois public schools.¹⁵⁶ While "a reasonable policy for a district to adopt" would be using grade placements, such as competency tests, Illinois laws do not mandate school districts to adopt such a policy.¹⁵⁷

B. THE DEBATE ON HOMESCHOOLED STUDENTS PARTICIPATING IN PUBLIC SCHOOL ATHLETICS

1. *Arguments Against Permitting Homeschoolers to Participate in Public School Athletics*

There are several arguments that those who oppose giving homeschoolers access to public school classes and activities make. One of these arguments is that homeschooled students would be at an unfair advantage to public school students who work hard for their grades.¹⁵⁸ Within the last several years, parents of homeschooled children in Virginia campaigned to gain public school athletic access for their children.¹⁵⁹ The Executive Director of the Virginia High School League opposed this plan because homeschooled children would not meet the same academic standards as other schools.¹⁶⁰

153. See ILL. STATE BD. OF EDUC., *supra* note 123 ("Your public school will determine grade placement for the student based on an evaluation of his work and pursuant to its policies.").

154. See *id.* ("Given the wide variety of home-schooling curricula available in Illinois, public schools may prefer to focus on appropriate grade placement for the student rather than assigning individual course credits.").

155. See ILL. STATE BD. OF EDUC., *supra* note 123.

156. See *id.*

157. See *id.*

158. HOME SCH. LEGAL DEF. ASS'N, *Sports and Public School Classes*, perma.cc/X45C-F8QY (last visited Dec. 28, 2014) [hereinafter HSLDA *Sports and Public School*].

159. Grace Chen, *Can Homeschoolers be Team Players for Public Schools?*, PUB. SCH. REVIEW, perma.cc/DBF2-53XD (last visited Dec. 28, 2014), citing *Homeschoolers push to play sports at public schools*, ABC 13 NEWSNOW.COM (Jan. 27, 2010), perma.cc/3KSE-2LS5.

160. *Id.*

While this may be an issue in Virginia, in Illinois, the IESA and IHSA have set requirements that homeschooled students need to abide by, prior to being eligible to participate in interscholastic athletics.¹⁶¹ Moreover, this would only become an issue if homeschooled students were given complete access to public school activities with no restrictions or regulations. Most states that have allowed homeschoolers to participate in public school athletics have requirements that the students must meet.¹⁶² These requirements generally include compliance with the state's homeschooling laws, meeting eligibility requirements of the athletic organization, and documentation showing that the student is in good academic standing.¹⁶³

Other arguments made in opposition to allowing homeschoolers equal access to public school sports include homeschooled students forfeiting their privileges by virtue of opting to homeschool, and that homeschooled students would take spots away from public school students.¹⁶⁴ Some view that parents opt-out of the privileges and benefits of attending public schools when parents choose to home school their child, as homeschoolers cannot have the best of both worlds.¹⁶⁵ The worry is that parents of homeschooled students would be allowed to move and choose schools that have strong athletic programs.¹⁶⁶ Opponents argue that public schools already have a limited amount of resources; allowing homeschooled students to participate in public school athletics would be an inconvenience and burden to the school or athletic administration.¹⁶⁷ Opponents' reasoning is that the funding public schools receive is allocated based upon the number of students who attend the school.¹⁶⁸ As homeschooled students are not considered to be attending students, the school would not receive compensation for homeschoolers' participation in athletic programs.¹⁶⁹

161. See, e.g., ILL. HIGH SCH. ASS'N HANDBOOK, *supra* note 147.

162. HSLDA *Sports and Public School*, *supra* note 158.

163. See *id.*; ILL. HIGH SCH. ASS'N HANDBOOK, *supra* note 147, at BY-LAW § 3.010 (“The student is enrolled at the member school, and is taking . . . a minimum of twenty five (25) credit hours of work . . .”).

164. HSLDA *Sports and Public School*, *supra* note 158.

165. See Chen, *supra* note 159.

166. Jeff Sentell, *Can the “Tim Tebow Bill” work? Examining home school eligibility across Alabama high school sports*, AL.COM (Mar. 19, 2014), perma.cc/H94E-8FPE.

167. Shane Keane, *Homeschool v. Public School: The Battle for Access to Public School Athletics*, 2014 LOY. U. CHI. EDU. LAW & POL'Y INST. FORUM 23 (2014), perma.cc/833W-5XQ8 (citing Joshua Roberts, *Dispelling the Rational Basis for Homeschooler Exclusion from High School Interscholastic Athletics-Chalk Talk*, 38 J.L. & EDUC. 195, 201 (2009)).

168. See ILL. STATE BD. OF EDUC., GENERAL STATE AID (Nov. 2013), perma.cc/FFA4-T59D.

169. *Id.*

As to the latter argument, opponents argue that homeschooled students would have an unfair advantage.¹⁷⁰ The nature of homeschooling allows flexibility for when a student receives academic instruction.¹⁷¹ As opposed to their public school counterpart, homeschooled students have the ability for more practice time to develop their skills.¹⁷² Unlike public school curriculum, homeschooling does not follow a strict schedule where extracurricular and athletic activities only occur after school.¹⁷³ Homeschooled students are not required to spend a full day in the classroom nor are they required to adhere to a formal schedule, thereby being able to practice more than a student who attends public school.¹⁷⁴ Thus, homeschooled students would outperform and over-crowd public school students.

Even among the homeschooling community, there are those who oppose homeschoolers accessing public school athletics.¹⁷⁵ Their view is that accepting government services inherently subjects one to governmental requirements.¹⁷⁶ Private athletic associations that can create their own rules and regulations that allow homeschoolers to participate in athletics have emerged as a result of homeschoolers being prohibited from public school athletics.¹⁷⁷ The concern is that this option may be less likely to occur should public schools allow homeschoolers access.¹⁷⁸

Furthermore, if states required school districts to allow homeschoolers to participate in athletics, then school officials and legislators may want to extend their reach to regulating homeschooling itself.¹⁷⁹ The argument is that those who accept government services will become more dependent and likely to “accept new regulation limiting their freedom.”¹⁸⁰ Those who make this argument usually cite to the hardships of gaining the right to

170. Sentell, *supra* note 166.

171. *See id.*

172. *Id.*

173. *See id.*

174. *See id.*

175. HSLDA *Sports and Public School*, *supra* note 158.

176. *Id.*

177. *See supra* note 68 and accompanying notes.

178. *See* Chris Klicka, *Can Homeschoolers Participate In Public School Programs*, HOMESCHOOL WORLD, perma.cc/F78N-67UE (last visited Dec. 28, 2014).

179. *See* Klicka, *supra* note 178.

Taking government money or services almost always invites government control. . . . In 1996, some Georgia homeschoolers began a campaign for access to the state-funded college scholarships. . . . The following year, the state legislature introduced a new, more intrusive homeschool law which would have required parents to have a college degree, as well as testing and portfolio reviews for homeschooled students.

Id.

180. *Id.*

homeschool their children. By seeking access to public school, athletics for their child would negate the work done by predecessors.¹⁸¹

Supporters of equal access to public school athletics respond to the opposition in a few ways. In addressing the opponents' argument that parents who choose to homeschool their children have opted out of the privileges and benefits of attending public schools,¹⁸² supporters argue that the parents are also taxpayers and should have the right to benefit from public school services.¹⁸³ The analogy is made to homeschooled students having access to publicly-funded areas such as libraries, hospitals, and parks.¹⁸⁴ As homeschooled students are able to access other publicly-funded areas, public school programs should not be excluded.¹⁸⁵

Supporters of equal access to public school sports also argue that homeschooled families may just want the option and opportunity to public school athletics, but not actually use it.¹⁸⁶ According to HSLDA, it is estimated that only three to five percent of homeschoolers actually take advantage of public school services.¹⁸⁷ Furthermore, there are a limited number of players on a sport team. Allowing homeschoolers to participate in public school athletics would still require the student to try out for the team. Additionally, the governing public school organization requires that both homeschooled students and public school students meet the same academic eligibility requirements.¹⁸⁸

2. *Arguments Allowing Homeschoolers to Participate in Public School Athletics*

On the other hand, one of the arguments that supporters of homeschoolers accessing public school sports makes is that, homeschoolers should not be denied the economic and career advantages available to public school students.¹⁸⁹ Students who attend public school are able to earn athletic scholarships.¹⁹⁰ Homeschoolers would be at a disadvantage because of the nature of homeschooling in smaller class sizes. Although there are

181. *Id.*

182. *See* Chen, *supra* note 159.

183. *Id.*

184. HSLDA *Sports and Public School*, *supra* note 158.

185. *Id.*

186. Jack Witthaus, *Debate over home-school participation in public school sports could resurface*, MISSOURIAN (Nov. 7, 2014), perma.cc/ZPH7-D6XT.

187. HSLDA *Equal Access*, *supra* note 10.

188. *See* ILLINOIS HIGH SCH. ASS'N HANDBOOK, *supra* note 147.

189. HSLDA *Sports and Public School*, *supra* note 158.

190. Shane Keane, *Homeschool v. Public School: The Battle for Access to Public School Athletics*, 2014 LOY. U. CHI. EDU. LAW & POL'Y INST. F. 23 (2014), perma.cc/4N6Z-BXS5.

private athletic organizations that allow homeschoolers to participate, athletic scouts may not pay attention to those who play in those leagues as they are not as established as the state governing athletic association. Denying homeschoolers access to public athletics excludes them from the opportunity of earning an athletic scholarship that they may have qualified for if they were public school students, especially considering the rising costs of college education.¹⁹¹

Furthermore, a student is a student regardless of attending a public school, private school, or homeschool.¹⁹² Participating in interscholastic athletics is beneficial as it contributes to student development of social and intellectual skills necessary to become a well-rounded adult.¹⁹³ Because interscholastic activities occur outside of public school academic instruction, a homeschooled student should be able to participate.¹⁹⁴

Opponents of equal access to public school athletics argue that this would allow parents to research and relocate to areas with school districts that have the best athletic program for their children.¹⁹⁵ However, many states who allow homeschoolers to participate in public school athletics also include a provision that does not allow a homeschooled student to participate in sports after the student withdrew from a public school for a period of one year. This prevents parents from shopping around and enrolling their child into only the best public school athletic programs.

Proponents of equal access for homeschooled students who have litigated have made constitutional arguments, although they have not been successful.¹⁹⁶ Constitutional arguments made in support of equal access include: refusing non-public students from part-time activities are unjustifiably discriminated against and denying these students their right to equal protection under the law. If a student is not enrolled in public school because of a sincere religious belief, his right to the free exercise of his religious belief is burdened by the prohibition of access to public school activities.¹⁹⁷ Constitutional arguments have not been successful as most courts rule that school districts have the right to set eligibility requirements for participation in their activities.¹⁹⁸ As the standard of review is generally rational basis, courts usually allow school districts to deny homeschooled students on the basis of limited resources and fair competition.¹⁹⁹

191. *See id.*

192. HSLDA *Equal Access*, *supra* note 10.

193. *See* FLA. STAT. § 1006.15(2) (2015).

194. *See id.*

195. Sentell, *supra* note 166.

196. HSLDA *Equal Access*, *supra* note 10.

197. *Id.*

198. *Id.*

199. *Id.*

V. PROPOSED HOMESCHOOL STUDENT ATHLETIC REGULATION

States across the nation have addressed homeschoolers' right to participate in public school athletics in a variety of ways. An optimal way to address the issue would be to consider and balance arguments made by those who are against equal access to public school athletics and those who are for it. For this reason, setting a minimum standard that school districts should follow may be the best way to address whether a homeschooled student is eligible to participate in public school athletics.

Illinois already allows homeschooled students to participate in public school athletics via governing athletic association by-laws; therefore, the Illinois Legislature should reinforce this sentiment. I would propose the following language for a statute that would allow homeschoolers to participate in public school athletics:

1. Participation in Extracurricular Activities. A student receiving home-school instruction is eligible to try out for extracurricular activities in his or her local school district; provided the student applies in writing before the beginning date of the season for the activity and the following requirements are satisfied.²⁰⁰

A. The homeschooled student must comply with eligibility requirements of the governing athletic association. These same requirements are also applicable to public school students who are participating in the activity.²⁰¹

i. The homeschooled "student must meet the same residency requirements as other students" participating in the activity.²⁰²

ii. The homeschooled student shall maintain satisfactory conduct, as established by district school board policy.²⁰³

B. The homeschooled student's participation must be approved by the principal providing the activity.²⁰⁴

i. The homeschooled student shall participate in any try-outs for such activity at the same time and in the same manner as other students who want to participate in the same activity.²⁰⁵

C. The homeschooled student must satisfy equivalent academic standards as established for regularly enrolled students participating in the activity.²⁰⁶

200. See ME. REV. STAT. tit. 20-A, § 5021-A(5) (2015).

201. *Id.*

202. See FLA. STAT. § 1006.15(3)(c)(3) (2015).

203. See FLA. STAT. § 1006.15(3)(a)(4) (2015).

204. See LA. REV. STAT. ANN. § 17:236.3(B)(2)(a) (2015).

205. See LA. REV. STAT. ANN. § 17:236.3(B)(3) (2015).

206. See ME. REV. STAT. tit. 20-A, § 5021-A(5) (2015).

- i. The homeschooled student shall submit a copy of the study complete or in progress, and the grades earned.²⁰⁷
 - ii. The homeschooled student shall execute and “fulfill the requirements of an academic performance contract between the student, the district school board, the appropriate governing [athletic] association, and the student’s parents.”²⁰⁸
 - iii. During the period of participation, the homeschooled “student must demonstrate educational progress as” agreed upon by his or her parents and the school principal which may include:²⁰⁹
 - a. “[R]eview of the student’s work by a certified teacher chosen by student’s parent[s].”²¹⁰
 - b. “[S]tandardized test scores above the 35th percentile.”²¹¹
 - D. The homeschooled student must comply with all physical and medical standards that are required of regularly enrolled students participating in the activity.²¹²
 - E. The homeschooled student is responsible for all costs that regularly enrolled students participating in the activity must pay, including fees for participation and transportation.²¹³
 - i. Any insurance provided by school districts shall cover the participating homeschool student. “If there is an additional premium for such coverage, the participating homeschool student shall pay the premium.”²¹⁴
2. Neither the school district nor public school may prescribe any regulations, rules, policies, procedures or requirements governing eligibility or participation of the homeschooled student that are more restrictive than the provisions governing the enrolled students participating in the activity.²¹⁵

The goal of the above proposed legislation is setting a minimal standard that would allow parents an ability to predict and prepare for applying for their homeschooled child to participate in public school athletics. Current regulations in Illinois allow too much variation from school district to school district.²¹⁶ In proposing a minimum standard, regulation would not

207. *See id.*

208. *See* FLA. STAT. § 1006.15(5) (2015).

209. *See id.*

210. *See* FLA. STAT. § 1006.15(3)(c)(2) (2015).

211. *Id.*

212. *See* ME. REV. STAT. tit. 20-A, § 5021-A(5) (2015).

213. *See id.*

214. *See* FLA. STAT. § 1006.15(7) (2015).

215. *See* NEV. REV. STAT. § 392.070(6)(b) (2015).

216. *See* ILL. STATE BD. OF EDUC., *supra* note 123.

be constraining upon parents who have chosen to invoke their right to educate their children.²¹⁷

The above proposed legislation also provides that the school district cannot make eligibility or participation requirements more restrictive than those applicable to public school students. Homeschooled students would be held to the same eligibility and participation standards as that of public school students. Furthermore, the proposed legislation would require homeschooled students to try out for athletic teams. While it can be argued that homeschooled students may have more time to practice or that homeschooled students who do make the team would be taking spots away from public school students; under try-outs no student is guaranteed a spot on the team. Thus, all students who try out for athletics would be held to the same standards and in turn would equalize the field.

The proposed legislation also sought to address the issue of preventing parents from picking and choosing only those schools with the best sports programs to enroll their homeschooled child in. To resolve the issue of parents shopping around, the above legislation proposed that the student meet the same residency requirements. Homeschooled students would then be allowed to apply to participate in public school athletics at their local school.

Current Illinois regulations pose the problematic issue of how to resolve academic assessment of the child.²¹⁸ The proposed legislation seeks to resolve this issue by having the school district and parents come to an agreement on the best method to evaluate the homeschooled student's work. The concept behind the proposed rule is to provide parents the autonomy of providing academic instruction according to the curricula they have chosen for their child.²¹⁹ Parents would also be able to create their own grading system and not follow the public school grading system, while still being able to satisfy public school academic standards. To reflect current Illinois homeschooling laws and regulations, the proposed legislation does not prescribe a minimal amount of hours per day or instruction per year that must be dedicated to academic instruction.²²⁰

During the course of my research, the issue of liability should the student be injured while participating in public school sports did not arise. The above proposed legislation sought to address any issue of injury by requiring the homeschooled child to meet the same standards that a public school student would. Additionally, should the insurance coverage cost more to cover a homeschooled student, his or her parents would have the burden of

217. See HSLDA *Equal Access*, *supra* note 10.

218. See ILL. STATE BD. OF EDUC., *supra* note 123.

219. See HSLDA *Sports and Public School*, *supra* note 158.

220. See ILL. STATE BD. OF EDUC., *supra* note 123.

paying the additional cost. In doing so, arguments regarding limited school resources would be addressed. The above proposed legislation also sought to address the issue of fees and funding. To resolve this, the homeschooled student would be responsible for any fees that may arise during the course of participation that a public school student would be responsible for.

VI. CONCLUSION

As the number of homeschoolers rise, recurring issues that face homeschooled parents and homeschooled students need to be addressed. One of the prevalent issues facing homeschooled students today is whether or not they can participate in public school athletics. There are numerous reasons for and against allowing homeschoolers to participate in public school sports.

Illinois has minimal homeschooling laws, allowing the parents to invoke their right to educate their children. As Illinois does not have a statute addressing whether or not homeschoolers can participate in public school athletics, deference is given to the school districts to decide. However, the school districts then defer to the governing athletic association to decide. Although the IESA and IHSA have provided eligibility guidelines and requirements for participation, they defer to the school districts to enforce them. This does not allow a standard system that would be predictable for homeschoolers across Illinois. A student may be allowed to participate in one school district, but be denied in another.

Furthermore, there is a wide range in homeschooling curricula that homeschoolers could follow. Instructing, grading, and assessment vary upon the curriculum the parent decides to follow. Providing some kind of academic minimal standard for parents to take into consideration as they plan their child's curriculum may be helpful if they plan to apply to public school athletics.

The state governing athletic body already allows homeschoolers to participate in interscholastic athletics as long as they meet the requirements, and the Illinois Legislature should follow through. Illinois already allows students to take certain courses, such as driver's education through their local public school, why are athletics any different?