

Homeschool v. Public School: The Battle for Access to Public School Athletics

BY

Shane Keane

I. INTRODUCTION

Parents nowadays choose from countless options when it comes to where their children's education. Maybe they live in an area with a history of having an exceptional school district and choose public education. Or the parents go the private school route, whether it be for religious reasons or not. Some parents prefer to educate their children themselves and they decide to homeschool. Each type of school has its own unique set of pros and cons that must be weighed. Homeschooling, arguably, comes with many more potential pros and cons, especially when it comes to interaction with other children. One of those in particular is whether or not one's child will want or will be able to participate in extracurricular activities similar to public school children or even with the public school children. This becomes especially concerning considering how much kids love after-school activities.¹

Although numerous extracurricular activities exist, sports are a particular activity children and parents may want access to. Athletics, especially in Illinois, can be a hot button issue.² That brings about the question of whether or not homeschooled children should be

¹ Dana Hawkins, *Home School Battles*, U.S. News & World Rep., Feb. 12, 1996, at 57-58.

² See, Timothy Liam Epstein, *Prep Plus: Evaluating the Motivations for and Effects of Enrollment Multipliers and Other Measures in High School Sports*, 10 Tex. Rev. Ent. & Sports L. 1 (2008-2009) (discussing the Illinois High School Athletic Association's decision to implement a multiplier such that all "non-boundaried" schools (mostly private Catholic high schools) will have its actual enrollment multiplied by 1.65 to determine the school's classification in the State's high school playoff system. This causes the "non-boundaried" schools to be forced to compete against much larger public schools, all because private schools had, at least in the eyes of the IHSA, been winning too many state championships. The specific

allowed to compete alongside their public school counterparts. Arguments can and have been made for both sides. Yet, those in charge, the ones making the actual decisions, in my opinion, would be hard-pressed to argue against allowing homeschooled children to play in public school athletics. That is assuming, of course, that those in charge heavily weigh the potential benefits and/or harms to the students themselves. The allowance of homeschooled children in public school athletics seems to benefit both the homeschooled and public school children.

This article argues that courts and legislatures should explicitly allow homeschooled children to participate in public school athletics by examining the current laws, specifically with regards to Illinois public education, concerning homeschooled students and their participation in public school athletics, the arguments against allowing homeschooled children to participate in public school athletics and then an analysis on why homeschooled children should be allowed to participate in public school sports and the benefits to the children, both public and homeschooled, and how participation causes no disruption or excessive burden on the current public school system.

II. THE LAW OF HOMESCHOOL PARTICIPATION IN PUBLIC SCHOOL ATHLETICS

Across the country, non-public schooled children have been trying to gain access to a wide variety of public school offerings and activities over the years.³ These attempts stem from a

“boiling point” may well have been in 2001, when public school Riverside-Brookfield lost to “non-boundaried” school Joliet Catholic in the football playoffs, likely leading then Riverside-Brookfield coach and member of the Football Advisory Committee, to suggest a multiplier be implemented).

³ See, *Thomas v. Allegheny County Board of Education*, 51 Md. App. 312 (Md. Ct. Spec. App. 1982) (where non-public school students sought access to public school extracurricular band program); *Bradstreet v. Sobol*, 630 N.Y.S. 2d 486 (1995) (where a homeschooled student challenged a regulation providing that only students in regular attendance at school could participate in interscholastic sports); *Wehrle v. Plummer*, 21 Pa. D. 182 (1911) (where a non-

lack of extracurricular activities available to non-public schooled children, particularly homeschooled children. The United States is seeing a phenomenal growth in the number of homeschooled students.⁴ With that growth will come an ever-increasing number of requests for access to public school activities⁵, particularly with regard to athletics. As many as 81% of home educators want their children to participate in extracurriculars at public schools.⁶

The constitution of every state provides for a public education system available to all the children of that state.⁷ Furthermore, Courts generally recognize the constitutional right to choose homeschooling.⁸ Although the allowance of homeschooling can be traced back to religious reasons, nowadays many courts recognize that the “right should be afforded equally to parents who choose home education for secular reasons.”⁹

In recent years, states have begun enacting various statutes directly addressing a homeschooled student’s right to participate in public school sports.¹⁰ Under such statutes, homeschooled children generally have to meet certain conditions before being allowed to participate: 1) the student must be legally registered under the home school law; 2) the student

public school student wanted to gain admission to the “manual training school” maintained by the public schools system).

⁴ Hawkins, *supra* note 1.

⁵ Gardner and McFarland, *supra* 43.

⁶ Kathryn Gardner and Allison J. McFarland, *Legal Precedents and Strategies Shaping Home Schooled Students’ Participation in Public School Sports*, 11 J. Legal Aspects Sport 25, 29 (2001), citing Lisa M. Lukasik, *the Latest Home Education Challenge: The Relationship Between Home Schools and Public Schools*, 74 N.C.L. Rev. 1913, 1915 (1996).

⁷ 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, 1602 (1997-1998).

⁸ *Id.* at 1610, *See also, Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972) (where Old Order Amish parents challenged a Wisconsin statute that required parents to send their children to school until the age of sixteen. The Supreme Court granted them an exemption from that particular Wisconsin law).

⁹ Fuller, *supra* 1611. *See, Michigan v. DeJonge*, 501 N.W. 2d 127 (Mich. 1993) (where the Michigan Supreme Court struck down the instructor certification requirement for homeschooling under compulsory education law).

¹⁰ Fuller, *supra*, 1615.

must meet all the eligibility requirements of a public school student (but for full-time attendance); and 3) the student's test scores or periodical academic reports must be submitted to the public school.¹¹

Illinois does not explicitly allow homeschooled students to participate in public school athletics:

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 home-schooled students may participate in interscholastic athletics.¹²

The IESA Handbook, School By-Law 2.036 states:

Students who are receiving their education through home schooling may be eligible at the public school at which the student would regularly attend, providing they are in full compliance with the following requirements: all 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 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.¹³

According to the IHSA Handbook, Athletic By-law 3.010:

A student must attend a member school and may only represent in interscholastic competition the member school the student attends. For purposes of this by-law,

¹¹ Gardner and McFarland, *supra* 42; citing Michael Smith, *Participation of Home School Students in Public School Activities, Scholastic and Sports Activities*, Home School Legal Defense Association, Paeonian Springs, Virginia (1996).

¹² Illinois State Board of Education, *Questions you may have on Illinois Home Schooling* (Revised January 2014), <http://www.isbe.state.il.us/%5C/HomeSchool/faq.pdf>.

¹³ Illinois Elementary School Association Handbook, School By-Law 2.036 (Effective July 1, 2013).

the term “attend” shall mean that 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. The school which enrolls the student shall be exclusively responsible to verify the student’s compliance with all of the eligibility requirements of all IHSA by-laws.¹⁴

According to the *Illustrations for Section 3.010 of the By-laws*:

HOME SCHOOL STUDENT ELIGIBILITY

Q. May a student who is home schooled, participate on a high school team?
A. Yes, provided the student is enrolled at the member high school, the student is taking a minimum of twenty five (25) credit hours of work at the member school or in a program approved by the member school, and, the student must be granted credit for the work taken either at the member school or in a program it approved. The student must also pay applicable tuition and fees at the member high school. (By-law 3.011)¹⁵

Although Illinois does not have a statute in place that openly allows homeschooled children to participate in public school athletics, they are allowed under certain circumstances.

III. ARGUMENTS AGAINST ALLOWING HOMESCHOOLED CHILDREN TO PARTICIPATE IN PUBLIC SCHOOL ATHLETICS

Although this article does not delve into every possible argument against participation, it does attempt to discuss some of the main topics. One argument is that homeschooled children only want certain aspects of the public school system or simply want the best aspects of it without dealing with everything else.¹⁶ The argument is that either you’re all in, or you’re not in

¹⁴ Illinois High School Association Handbook, Athletic By-law 3.010 (Effective July 1, 2013).

¹⁵ *Id.* at Illustrations for Section 3.010.

¹⁶ Gardner and McFarland, *supra* 29, citing Hawkins, *supra* note 1, at 57 Bob Cook, *Homeschool parents deservedly lose battle to get kids on public school teams*, <http://trueslant.com/bobcook/2010/05/11/homeschool-parents-deservedly-lose-battle-to-get-kids-on-public-school-teams/> (claiming that homeschooling parents already made their choice regarding public schools and don’t get the right to cherry pick); Andrew J. Rotherham, *Tim Tebow Debate: Should Homeschoolers Be Allowed on Public-School Sports Teams?*, TIME

at all.¹⁷ Some “view homeschool participation as granting homeschoolers the untethered freedom to determine when and how they will use the public education system.”¹⁸ However, those arguments don’t usually tend to go into much detail as to why that is, or should be, the case.

Others argue that “[a]llowing homeschool students to play sports would shortchange the public school students who work hard for grades. As one Virginia high school league said, homeschoolers would be “playing by a different set of rules.”¹⁹ The IHSA mandates that, in order to participate in athletics, a student “shall be doing passing work in at least twenty five (25) credit hours of high school work per week.”²⁰ If public school students are required to meet certain educational standards in order to be allowed to participate in athletics then shouldn’t homeschooled children as well? Ensuring homeschooled students meet certain standards and prioritize academics over athletics seem to be valid objectives.²¹ That should be the goal regardless of whether the student is educated in a homeschool setting, public school, private

February 16, 2012 (noting that public school advocates are decrying homeschoolers for being separatists); Home School Legal Defense Association, *Sports and Public School Classes*, http://www.hslda.org/docs/nche/issues/s/state_sports.asp (noting the argument that homeschooled children have chosen to opt out of the public education system, which also entails forgoing certain privileges), *citing* Grace Chen, *Can Homeschoolers be Team Players for Public Schools?*, Public School Review, <http://www.publicschoolreview.com/articles/192>.

¹⁷ Cook, *supra* (stating “Look, homeschool parents: you’re either all-in, or you’re out.”).

¹⁸ Joshua Roberts, *Dispelling the Rational Basis for Homeschooler Exclusion from High School Interscholastic Athletics-Chalk Talk*, 38 J.L. & Educ. 195, 201 (2009); *citing* Fuller, *supra* note 24, at 1600.

¹⁹ Home School Legal Defense Association, *Sports and Public School Classes*, http://www.hslda.org/docs/nche/issues/s/state_sports.asp; *See also*, Chen, *supra* (discussing that in Illinois, the district 301 (which is located mainly in Kane County, Illinois) school board heard arguments both for and against allowance with one board member arguing that it would not be fair to public school students who must meet certain grade point average requirements to play sports); Roberts, *supra* at 198 (noting that the “state’s interest is implemented by making a student’s athletic eligibility contingent upon achieving certain academic standards.”).

²⁰ Illinois High School Association Handbook, Athletic By-law 3.020 (Effective July 1, 2013).

²¹ Roberts, *supra* at 198.

school or any other imaginable type of school. The issue that arises though is how that can be done, which leads to the next opposing argument.

Public schools and their supporters claim an already limited amount of resources would be increasingly depleted if homeschoolers participated in public school athletics.²² Additionally, homeschooler participation would create an administrative inconvenience and burden.²³ With additional student-athletes, schools may have to take on some additional expenses as well as providing adequate faculty to supervise the extra children. Some argue this creates an “unreasonable burden on them” and an “administrative nightmare.”²⁴ Others state that “because funding laws generally ignore homeschoolers, requiring public schools to allocate scarce fiscal resources to support homeschoolers’ access to athletics and activities would provide homeschoolers with an unfair advantage-in essence, homeschoolers would receive the benefits of each education alternative’s positive features.”(which coincides with the above stated argument regarding cherry picking).²⁵

²² Roberts, *supra* at 196;

²³ Fuller, *supra* at 1626; *See* John T. Plecnik, *EQUAL ACCES TO PUBLIC EDUCATION: AN EXAMINATION OF THE STATE CONSTITUTION & STATUTORY RIGHTS OF NONPUBLIC STUDENTS TO PARTICIPATE IN PUBLIC SCHOOL PROGRAMS ON A PART-TIME BASIS IN NORTH CAROLINA & ACROSS THE NATION*, 13 Tex. J. on C.L. & C.R. 1, 27 (2007) (discussing *Thomas v. Allegheny County Board of Education*, *supra*, where the court refused to recognize a right to attend public school programs in order to avoid placing an “unreasonable burden” on the administration).

²⁴ Roberts, *supra* at 199.

²⁵ William Grob, *ACCESS DENIED: PROHIBITING HOMESCHOOLED STUDENTS FROM PARTICIPATING IN PUBLIC-SCHOOL ATHLETICS AND ACTIVITIES*, 16 Ga. St. U. L. Rev. 823, 839 (1999-2000); *citing* Lisa M. Lukasik, *The Latest Home Education Challenge: The Relationship Between Home-schools and Public Schools*, 74 N.C.L Rev. 1913, note 7, at 1967-68 (1996).

Additionally, with an influx of homeschooled athletes there is concern public school students might lose their spots on a team.²⁶ Don't the public school children have the right to be on the team instead of homeschoolers? Also, homeschooled children have the opportunity to participate in other, non-public school funded, athletic events and teams.²⁷ There are various sports leagues comprised of only homeschooled children as well as park districts and various "club" type teams that are available to all children, regardless of the type of school they attend.²⁸ Instead of crowding out the public school children and burdening the system, opponents believe homeschoolers would be better off in a league of their own.

IV. WHY HOMESCHOOLED CHILDREN SHOULD BE ALLOWED TO PARTICIPATE IN PUBLIC SCHOOL ATHLETICS

Just as with the opposing position, the arguments in favor of allowing homeschool participation are numerous as well. Unlike the opposing side however, a look at the pro-participation arguments shows a desire to do what is best for the children themselves. The argument regarding the added burden and expense that the school district would incur seems a bit far-fetched. Although there likely will be some additional costs, it would not be overly difficult or costly as there "already exists in every state a ready-made institutional system designed specifically to deliver the benefit of public education to all children residing within the

²⁶ Chen, *supra*; Home School Legal Defense Association, *Sports and Public School Classes*, http://www.hslda.org/docs/nche/issues/s/state_sports.asp;

²⁷ Home School Sports Net, <http://www.hspn.net/hspn.asp>; Cook, *supra* (stating that "[p]lenty of other parents across the country have set up networks of homeschool athletic leagues, bands, choirs, you name it").

²⁸ See Paul LaTour, *Home-schooled football players come together to form their own team*, Chicago Tribune, October 8, 2011, http://articles.chicagotribune.com/2011-10-08/sports/ct-spt-1009-prep-sunday-special-home-school-footba-20111008_1_ihsa-moral-victories-illinois-high-school-association (discussing an Illinois high school football team comprised entirely by homeschooled students that competes against varsity and junior varsity teams from around the state. The team is considered an "approved" school by the IHSA and thus eligible to compete against IHSA member schools).

state.²⁹ Furthermore, it is safe to assume the actual number of homeschooled students of the same exact age, trying to gain access to the same exact sport, at the same exact school would be limited. Because of the typically limited number of players on any given team, the addition of homeschoolers trying out would not actually increase the number of players on a team. As a result, schools would not need to hire any additional staff to supervise the players. Also, homeschooled children would likely be brought to and from games and practices by their parents, eliminating the need to provide transportation to and from a child's home. The parent would also bring their homeschooled child to the school so that he or she can ride the bus to and from an away game if necessary.

Furthermore, the additional costs would fall well short of the potential cost of providing full-time education the homeschoolers are free to demand at any time.³⁰ Homeschooled students actually represent a net monetary savings.³¹ The parents of homeschooled children continue to pay taxes at the same rate as other citizens³², yet they are being declined full access to the public education system that their money funds.

The argument that homeschoolers should not be allowed to participate in public school sports because of the idea of "cherry picking" seems to be based more on their own contempt for homeschooling than any sort of legitimate basis. The main argument is simply that it is not fair to let homeschoolers participate; yet those opponents don't seem to base this on anything and overlook the unfairness of excluding homeschooled children. Why is it not fair? Homeschoolers deserve access just as much as any other child. It seems nothing more than discrimination to prohibit homeschooled children from public school athletics for this reason. Opponents making

²⁹ Fuller, *supra* at 1627.

³⁰ Roberts, *supra* at 201.

³¹ *Id.*

³² Fuller, *supra* at 1627.

this argument are essentially saying “you can’t play because you’re a homeschooler.” That is clear-cut discrimination. The argument that separate leagues and club teams are available for homeschooled children takes the discrimination even further.

Homeschool children will also not crowd out the public school children. As noted above, only a limited number of homeschoolers per school district would likely come forward and try-out for a team. Additionally, a homeschooled child will have to try out just like everyone else so just as without any homeschooled children the best players will be selected for the team. If someone’s public school son or daughter does not get chosen for the team, the same argument the opponents make for exclusion can be made here: there are plenty club teams and park district teams they can play on. More importantly though is that these additional athletes can, and likely will, positively impact a team.³³

Are opponents simply afraid of homeschoolers being too good? As is apparent from the Illinois multiplier rule,³⁴ public schools don’t enjoy losing to their non-public counterparts. But being too good should be no reason for complete exclusion.

One of the key arguments centers around academic standards. Public school students must be passing all of their classes³⁵, and thus brings about the question regarding how to ensure homeschooled children learn up to the required level. It’s clear some sort of testing or monitoring system needs to be implemented to guarantee fairness, but the argument may be blown a bit out of proportion. According to research, homeschool students enjoy higher test scores and an

³³ Chen, *supra* (noting that “the few kids that would like to be on [the sports team] can enrich the team.”)

³⁴ See, Epstein *supra*.

³⁵ Illinois High School Association Handbook, Athletic By-law 3.020 (Effective July 1, 2013).

overall higher level of educational success.³⁶ A 1997 study of 5,402 homeschooled students showed that homeschooled students outperformed their public school counterparts by 30 to 37 percentile points in all subjects.³⁷ Another study showed that homeschooled children do well at college and score higher on the ACT than public school students.³⁸ Just because homeschooled children do not sit in a classroom all day long with their peers does not mean they are not learning at the same or higher level or that they are not also putting in the effort. Particularly when one looks at the requirements for public school student-athletes it becomes apparent that homeschooled children are already way above the required standard: a public high school student in Illinois only needs to be *passing* a class and not excelling or even doing well in it.³⁹ With the implementation of some sort of testing and monitoring system homeschooled children would be able to show that they meet the standard for participation in Illinois athletics.

Also, homeschooled children deserve a chance to earn a college athletic scholarship just as much as public school children do. Denying them access to public athletics excludes them from this opportunity. Particularly with the rising costs of a college education, athletically inclined homeschooled students should have this chance.

The ultimate reason for allowing homeschooled children to participate in public school athletics is for the socialization of the students, both homeschoolers and public school children. Allowing access to public school athletics would “benefit parents, students and society in general by promoting more complete, effective educational choices and opportunities for all students.”⁴⁰

³⁶ Christopher J. Klicka, *Home Schooling in the United States: A Legal Analysis*, Appendix 1 (1999)

³⁷ *Id.*

³⁸ Lynn O’Shaughnessy, *Can Homeschoolers Do Well in College?*, CBS News (July 22, 2010) <http://www.cbsnews.com/news/can-homeschoolers-do-well-in-college/>.

³⁹ Illinois High School Association Handbook, Athletic By-law 3.020 (Effective July 1, 2013).

⁴⁰ Grob, *supra* at 842.

This opportunity would give homeschoolers a better opportunity to establish and maintain relationships with others, become accepted members of society and cooperate with others.⁴¹ It allows the children to work as a team, learn the idea of winning and losing and how to get over a tough defeat. Additionally, public school students have a chance to interact with children with different values and ideas. All sides will benefit from increased interaction between diverse people.

V. CONCLUSION

The opposing arguments, although many, seem to fall short of the intended objection: doing what is best for the children. The arguments against allowing homeschooled children to compete in public school athletics seems to come from a place of animosity and discrimination. It's as if people feel some sort of disdain towards the homeschooled children because they have, in the eyes of the opponents, turned their nose up to public education. But, clearly the homeschooled children fighting for access public school sports have done nothing of the sort. They want to be a part of the public school system, to an extent. Why shouldn't they be allowed to participate? Statistics show that homeschooled children excel in schoolwork so it's not as if they're getting a free pass to play sports without having to put the academic work in. Society as a whole should embrace homeschool participation in public school athletics as another great way to diversify our educational system and give the children a better opportunity to understand and learn from one another.

⁴¹ Samantha Lebeda, *Homeschooling: Depriving Children of Social Development*, 16 J. Contemp. Legal Issues 99, 101 (2007).