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Home Schooling and Sports Participation

By Charles J. Russo, J.D., Ed.D.

Local board policies should be consistent with state athletic association rules.

As the popularity of home schooling grows, its supporters increasingly seek opportunities for their children to access programming offered by their local public school districts. Home-schooling parents have been most vocal in their wish for their children to participate in extracurricular activities in public schools—particularly sports.

Because parents who homeschool have failed in litigation regarding their children's ability to participate in extracurricular activities, they have turned their efforts to state legislative action with a fair degree of success. In fact, when the Ohio General Assembly (2013) recently enacted a statute directing school boards to allow participation in sports and other extracurricular activities by children who are home-schooled and who can meet the same requirements as their peers who attend public schools, it joined the ranks of a growing number of states with similar laws in place.

Based on the most recent updates of their statutes, states such as Arizona (2011), Arkansas (2013), Colorado (2013), Florida (2012), Maine (2013), Minnesota (2004), Nevada (2004), New Hampshire (2004), New Mexico (2012), North Dakota (2001), Oregon (2003), Utah (2011), and Vermont (2013) allow students who are home-schooled to participate in extracurricular activities, including sports. Yet permitting students to participate raises important equity issues about the appropriateness of allowing children whose academic progress may not be measured as stringently as in public schools in light of the eligibility requirements of the state athletic association.

Litigation on Sports Participation

West Virginia's highest court found that state athletic association rules prohibiting

home-schooled students from participating in interscholastic athletics did not violate their rights under the equal protection clause of the state constitution (*Jones v. West Virginia State Board of Education* 2005). Consistent with the prevailing national judicial perspective, the court recognized that insofar as participation in extracurricular activities, including interscholastic athletics, was not a fundamental right under the state constitution, the rule prohibiting participation was constitutional and was rationally related to a legitimate state purpose.

The rule passed constitutional muster because it prevented parents from withdrawing their children from school because they may have been struggling academically simply so that they could maintain athletic eligibility. Since local boards receive funding only for students who are actually enrolled in classes, and being required to offer services to home-schooled children would have strained their budgets, the court concluded that the rule protected the financial well-being of school systems.

A year earlier, applying a similar rationale, the Third Circuit rejected the claims of a student in Pennsylvania who attended a cyber charter school (*Angstadt v. Midd-West School District* 2004). The court held that the student lacked the right to participate in interscholastic basketball because she did not have a constitutionally protected interest in playing the sport.

In the same year, parents of students who were homeschooled in Michigan failed in their challenge to a rule of the state athletic association that would have required the students to attend school in order to be eligible to participate in interscholastic athletic programs (*Reid v. Kenowa Hills Public Schools* 2004). An appellate court affirmed that the students lacked a statutory right to



participate in the athletic programs because such activities are not required elements of the school program.

Reflections

Statutes designed to permit students who are homeschooled to participate in extracurricular activities, most notably interscholastic sports, require participants to meet the same qualifications as their peers who attend public schools. Those requirements typically are (1) good academic standing, (2) payment of required fees, and, of course, (3) ability to demonstrate the necessary talent to make the teams on which they hope to participate.

Those statutes also address residency, with some requiring students to live within the districts wherein they seek to participate in activities. Although conceding that students who are homeschooled would be likely to benefit from the socialization gained by participating in extracurricular activities, the following three interrelated issues should provide school business officials (SBOs) with some food for thought.

1. In requiring students who are homeschooled to maintain their academic standing, a question emerges about whether they are meeting the same rigorous standards that are mandated under state athletic association rules. Put another way, since those rules ordinarily require prospective student athletes to

complete specified classes each academic term and to achieve minimum grade point averages before they can participate on teams, it is unclear how students who are being homeschooled measure up against those standards.

2. In a related point, although certainly not questioning the integrity or intentions of parents who educate their children at home, one must wonder whether those students are meeting the same academic standards as their peers who attend public schools. That concern emerges insofar as many parents who practice home schooling lack formal academic credentials to teach. Further, is it fair to student athletes who attend public schools to be measured academically against peers who are not graded against the same established grading norms?

Perhaps board policies can require prospective participants to complete formal academic assessments throughout a season.

As reflected by the case from West Virginia discussed earlier, legitimate concerns can be raised about parents who may withdraw their children from public schools who are in danger of losing their eligibility to play sports and homeschool them in order to preserve that athletic eligibility. Rather than declare students who are homeschooled ineligible to participate in sports or other activities in states with laws permitting them to take part on teams and in other activities, perhaps board policies can require prospective participants to complete formal academic assessments throughout a season to ensure that they are meeting the same standards set by the athletic associations of their states.

3. The third concern focuses on whether children who are homeschooled are actually satisfying the attendance requirements expected of peers who attend schools, both regularly and on the day of activities. Since attendance expectations are the norm for students who attend public schools, board policies should seek to ensure transparency, such as by permitting home visitations in order to ensure that students who are homeschooled meet equivalent requirements with regard to hours and amount of instruction in designated subject areas.

When addressing home-schooling parents who would like to have their children declared eligible to participate in interscholastic sports and other extracurricular activities, education leaders may wish to keep the following points in mind.

General Recommendations

1. Schools boards should create broad-based policy development teams that include a board member, their attorney, coaches, sponsors and moderators, the SBO, teachers, parents, community members, and a student representative who should serve in a nonvoting capacity. Having such broad-based teams can help ensure community support on this possibly contentious topic.
2. Local board policies should be consistent with state athletic association rules, specifying eligibility requirements for all students who wish to participate in interscholastic sports.
3. Boards should review and, if necessary, revise their policies on an annual or biannual basis. By regularly reviewing policies, if litigation arises, that approach should demonstrate to courts that boards are trying to keep pace with state athletic association rules and legal developments designed to safeguard student well-being.

Recommendations in States Not Permitting Participation

1. Board policies should reiterate the general legal principle that participation in interscholastic athletics is a privilege, not a right. Policies should explain that a rational basis exists for expecting student athletes to be enrolled in schools as a precondition of taking part in interscholastic sports. Put another way, policies should stipulate that as important as sports may be in the lives of students, extracurricular activities must remain subordinate to academics as reflected by maintaining satisfactory academic success.
2. Policies should note that insofar as local boards are typically funded based on the number of students enrolled in their schools rather than those who reside in their districts, participation is limited to full-time students in an attempt to avoid unnecessary costs for such items as equipment and insurance.
3. Alternatively, policies should consider offering students who are homeschooled the opportunity to participate in intramural activities as long as their parents are willing to pay for costs such as liability insurance and participation fees for their children.

Recommendations in States Permitting Participation

1. School boards should develop policies, consistent with state athletic association rules, specifying eligibility requirements for academic qualifications such as grade point averages and for all students who wish to participate in interscholastic sports. Policy provisions should include how to measure academic progress of possible participants and hours of instruction mirroring requirements expected of students who attend public schools.

2. Boards should ensure that policies are facially neutral. In other words, policies should avoid singling out home-schooled students but should make it clear that all students must meet the same combination of board and state athletic association eligibility rules.
3. Policies should address participation fees and related costs, such as liability insurance for students.
4. A related topic that may raise concerns for parents who homeschool their children may arise in districts where student athletes are subjected to drug testing. If boards mandate drug testing of student athletes, policies should make it clear that those who are home-schooled must meet the same requirements as their peers who attend public schools, even if it means that they must come to schools to undergo testing.

Conclusion

Permitting students who are homeschooled to participate in extracurricular activities, including, and perhaps most notably, interscholastic sports, seems to be a growing trend. As such, education leaders should start thinking about how they will deal with such a change should it move to their jurisdictions. The sooner district officials start planning for what may occur should that practice materialize, then the better situated they will be to deal with legal issues that may arise in the event that the trend of permitting students who are homeschooled to take part in extracurricular activities becomes a reality in their states.

References

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