

New Home-School Sports Law Creates Confusion as Districts Work to Clarify their Obligations Prior to the Start of the School Year

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Practice Area: School Law

On July 14, 2015, the 2015-2017 Biennial Budget Bill took effect. The Budget Bill, adopted as 2015 Wisconsin Act 55, created a means for resident students of public school districts who are enrolled in home-based private education programs ("home-schooled students") to participate in school district athletic and extra-curricular programs. Section 118.133, Wis. Stats., was created to provide home-schooled students avenues of participation; in the process, however, the law created confusion, as it conflicts with Wisconsin Interscholastic Athletic Association ("WIAA") eligibility requirements for participation in athletic programs.

The Law's Mandate: Opportunity to Participate in Interscholastic Athletics and Extra-curricular Activities is Required

The new law mandates school districts to allow home-schooled students to participate in interscholastic athletics and extra-curricular activities in the district "on the same basis and to the same extent" as district enrolled students. This means that home-schooled students may be charged fees for uniforms and equipment and may be required to pay expenses associated with participation, but only to the same extent that the district charges fees to and requires the payment of expenses for attending students.

A district may request that the home-based private educational program provide a written statement that the pupil meets the school board's requirements for participation in interscholastic athletics based on age and academic and disciplinary records. Although the law explicitly states that a home-school program may not submit inaccurate information to a district, school boards may not question the accuracy or validity of the statement, nor may school boards request additional information.

Conflict with WIAA Eligibility Requirements

The WIAA, a voluntary organization whose membership consists of public and private schools, works to promote uniformity of standards in interscholastic athletic competition and to formulate and maintain policies that will promote fair competition.

In the past, for students to be eligible to participate in interscholastic athletics at a WIAA member school, the student was required to be a full-time student at that school and adhere to the academic and athletic codes of conduct required by membership in the organization. WIAA eligibility requirements dictate that students be enrolled in a full load of classes, meet age requirements, and have clean disciplinary records. The new law clearly conflicts with this provision, as home-schooled students cannot be considered to be enrolled in a full load of classes at a school district.

Action by WIAA to Harmonize WIAA Eligibility Requirements and the Law

The WIAA Board of Control voted on Friday, August 14, 2015, to approve an executive staff recommendation directed at accommodating eligibility for *bona fide*, private, home-educated children on public school teams. The intent of the Board's action is to provide emergency (temporary) relief to home-schooled students from the eligibility requirements. Note that the WIAA Constitution only permits emergency relief by the Board of Control, with any permanent changes coming from the full membership. The Board of Control's action is temporary, until acted upon by full WIAA membership at its annual meeting in April.

The effect of the Board of Control's emergency action is to suspend the "full time student status" requirement – but only for home-schooled children. All other WIAA Rules of Eligibility remain unaffected, and WIAA member schools are responsible for ensuring home-schooled children meet all other WIAA eligibility criteria. The WIAA has provided guidance to districts, as well, which may be accessed [here](#).

Guidance for Districts

The WIAA has proactively developed a temporary solution to the eligibility rules that conflict with the new law. However, several issues remain in which schools must exercise diligence in addressing. First and foremost, as a guiding principle, school districts should be mindful that participation in interscholastic sports and extra-curricular activities is a privilege, not a right. Therefore, a school district may apply reasonable expectations and policies to all participants, whether enrolled, home-schooled, or otherwise.

Initially, school districts should require verification of registration as a "home-based education program" prior to allowing a home-schooled student to participate. In order to be considered a "home-based private education program," pursuant to Wis. Stat. § 115.001(3g), the program of educational instruction must be provided to the child by the child's parent, guardian, or individual designated by the parent or guardian in order to comply with the state's compulsory attendance law. The instructional program cannot be provided to more than one family unit to be considered a home-based private educational program. Note the distinction between home-schooled students and those students who are merely enrolled in virtual learning programs – students enrolled in virtual learning programs are not afforded the benefits of the new law.

The parent/guardian of the home-based private education program is required to complete the Department of Public Instruction's ("DPI") online PI-1206 Homeschool Enrollment Report before October 15th, indicating that the program meets all of the criteria established in Wis. Stat. § 118.165. School districts should verify through DPI that any home-schooled student wishing to participate in school district athletics and extra-curricular events is attending a program for which PI-1206 has been filed with DPI registering the program. Note that because the school district may not request additional information from the education program, the PI-1206 form should be verified through DPI.

Second, schools must be mindful that home-schooled students are allowed to participate "on the same basis and to the same extent." This, however, does not provide any direction as to what "same basis" and "same extent" mean. A strict interpretation suggests that the same rules apply equally to enrolled students and home-schooled students. For instance, all students may be required to submit to a pre-participation physical exam; attend a pre-activity meeting/orientation; sign parental permission forms; acknowledge receipt of codes of conduct, WIAA eligibility rules, concussion education information, etc.; agree to follow all district, board, and WIAA policies, rules and regulations; and provide emergency contact information.

The WIAA eligibility rules require certain academic standards be met prior to participation. School districts should further define in their policies expectations for academics, such as evidence of a specific number of classes or credits in a grading period. A school district should also seek to utilize the same reporting requirements with home-schooled students as it does with its enrolled students. For example, requiring progress/grade reports on a bi-weekly or quarterly basis. The same academic requirements from enrolled students may be applied to home-schooled students and district policies should reflect these expectations.

Home-schooled students should also be educated about the potential for tryouts and cuts. Although a school district may not utilize tryouts only with respect to home-schooled students, if a school district conducts tryouts and some students suffer the fate of being cut, the practice may be applied uniformly to all participants, enrolled and home-schooled students alike.

Moving Forward

School districts that are WIAA member schools must first ensure home-schooled students meet all of the WIAA eligibility criteria for participation in interscholastic athletics. Establishing and/or updating policies regarding eligibility to participate in interscholastic athletics and extra-curricular activities to reflect home-based private education program student participation is key. Additionally, school districts should consider development and implementation of a verification process for home-schooled students to ensure eligibility to participate and payment of appropriate fees (an example of such verification form may be accessed [here](#)). School districts must ensure that the established eligibility criteria and fees (if any) are the same for home-schooled students as they are for students attending the school.

A few tangential issues that school districts should be aware of as the school year begins include notifying your insurance provider if/when home-schooled students participate in district athletic events and extra-curricular activities; updating codes of conduct, addressing student records issues under state law and FERPA; and residency and recruitment considerations. Ultimately, schools must be vigilant in accepting the home-based educational program's statement of eligibility without question. However, school districts must be proactive in ensuring home-schooled students' participation does not create legal issues in other areas.

We will continue to monitor any new developments in DPI and WIAA guidance regarding the new law. It is important to remember that enrolled and home-schooled students must be allowed to participate "on the same basis and to the same extent" as district enrolled students. We encourage districts to revise policies and develop procedures for compliance with the new law.

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