



## Education Law Monthly (October 2009)

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### What Rights Do Home-Schooled Children Have to Participate in Interscholastic Sports?

What rights do home-schooled children have to participate in interscholastic sports in West Virginia public schools? In 2005, the West Virginia Supreme Court of Appeals in *Jones v. Marion County Board of Education, et al.*, ruled "that treating public and nonpublic school children differently with respect to participation in interscholastic sports does not violate equal protection."

In *Jones*, the home-schooled child was not enrolled in the county school system and did not take any classes at the middle school where he wanted to participate in the wrestling program. The county board of education refused to permit the home-schooled student to participate in the wrestling program. The county board of education asserted numerous grounds in support of its denial, including (1) promoting academics over athletics, and (2) protecting the economic interests of the county school system (i.e., home-schooled students are not considered in the average daily attendance and enrollment numbers for formula purposes).

Also, the county board of education relied upon Rule 127-2-3 of the West Virginia Secondary School Activities Commission ("WVSSAC"), by taking the position that the home-schooled child simply did not meet the legal requirement. Rule 127-2-3 states, "to be eligible for participation in interscholastic athletics, **a student must be enrolled full-time in a member school** as described in Rule 127-2-6 . . .". The county board of education refused to permit the home-schooled child to participate in the wrestling program and the Court's ruling in *Jones* upheld the county board's decision. In doing so, the Court stated, "these parents have also chosen to forego the privileges incidental to a public education, one of which is the opportunity to qualify for participation in interscholastic athletics."

With that said, and even in light of the *Jones* decision, it is important for a county board of education to be aware that **home-schooled children do have certain rights to participate in interscholastic sports**. In particular, Rule 127-2-6 of the WVSSAC provides, among other things, that a child is eligible to participate in interscholastic sports if s/he is doing passing work in at least 20 periods (four subjects with full credit toward graduation/two block courses) per week. In other words, if a home-schooled child is taking four subject or two block courses, s/he is considered "enrolled full-time" and eligible for interscholastic participation (contingent upon meeting other requirements).

As the Court in *Jones* stated, and as the county board of education argued in that case, "home-schooled children do not contribute to the average daily attendance or enrollment numbers of the public schools." If, however, a home-schooled child enrolls in four subjects with full credit toward graduation/two block courses, the county board of education can utilize the child(ren) in its average daily attendance and enrollment numbers for formula purposes.

As such, if a home-schooled child satisfies, among other things, the "enrollment full-time" requirement, a school that is a WVSSAC member school must allow participation (again, contingent upon meeting other requirements). There are, of course, certain limitations as to when a home-schooled child can begin interscholastic participation (i.e., a nine week period of the home-schooled child attended a WVSSAC member school in the past) but, those secondary issues are not the topic of this month's newsletter. You

can find these issues in the WVSSAC Rules and we recommend you review rules if the instant issue every arises. The purpose of this month's newsletter is to remind a county board of education that there are situations in which a home-schooled child has a right to participate in the privilege of interscholastic sports.