

## Position of the Virginia Association of Secondary School Principals on Homeschool Students Participation in Public School Athletics – HB 2395 November 22, 2011

The Virginia Association of Secondary School Principals (VASSP) is the leading organization of and state voice for middle level and high school principals, and assistant principals. The Association was founded in 1906 and provides research-based professional development and resources, networking, and advocacy to build the capacity of middle level and high school leaders to continually improve student performance in the Commonwealth. Reflecting its long-standing commitment to student leadership development as well, VASSP administers the nation's oldest state student council organization – the Virginia Student Councils Association.

Every student in Virginia has a constitutional right to a free elementary and secondary education. That right is granted in Virginia through the operation of a strong public school system that is driven by standards, individual student accountability, school accountability, and school division accountability. Strong public schools have been supported by the General Assembly, the Virginia Board of Education, and every Governor. Thus, every homeschooled student has a constitutional right to attend a public school. When such students and their parents choose not to attend, they assume responsibility for their education. They have been given the right to homeschool their children under lower standards than those required for public school students. Parents can homeschool as long as they have a high school degree. For accountability of homeschooled students, Virginia homeschool law directs a division superintendent to accept "an evaluation letter from a person licensed to teach in any state, or a person with a master's degree or higher in an academic discipline, having knowledge of the child's academic progress, stating that the child is achieving an adequate level of educational growth and progress" (§ 22.1-254.1 C (ii)(a), Code of Virginia). There are no requirements for testing or even that the person writing the letter has ever taught the student. Students in public schools are required by law to demonstrate significantly higher academic achievement through Standards of Learning and other testing assessments. Thus, there is no way to ascertain that all homeschooled students meet the same academic standards as required by public school students.

A number of individuals attempt to dilute this argument by stating that studies indicate that homeschooled students outperform public school students on norm referenced assessments such as the California Achievement Test (CAT) and the Iowa Test of Basic Skills (ITBS). While a cursory, non-academic, glance of those studies would support this statement, a hard look at the research would indicate that such statements may not be valid. For example, one of the most recent studies published in the fall 2010 in Academic Leadership (http://www.academicleadership.org/article/Academic Achievement and Demographic Traits of\_Homeschool\_Students\_A\_Nationwide\_Study) on academic achievement of homeschooled students has a research design and methodology which can be challenged. While the study attempted to assess the educational achievement of homeschooled students using norm referenced tests, the participants in the study ended up being primarily children who were tested in a one-to-one testing environment by their parents. Almost no students who were given the CAT or ITBS in a large group setting proctored by a non-parent were included in the study. Furthermore, parents opted in or opted out of the study. They could choose for their children's scores to be included or not. In fact, it is noted in the study that 27% of parents with children in the study already knew the score their child received on the assessment before deciding whether or not to participate. It stands to reason that some parents would have chosen not to participate because of low scores received by their students.

In this study, it was noted that there was "a statistically significant difference in the achievement of homeschooled students based on family income." Less than 5% of families who homeschool their children had income levels below \$30,000 in that study. Thus, very few students from lower socio-economic environments are included in the aggregate data for homeschool students. Public school data includes all students.

Even if you overlook the flaws of research design and methodology, which would not be recommended, there are no studies that demonstrate a cause and effect relationship between homeschooling and academic achievement. In fact, it is quite possible that some homeschooled students who do well on norm referenced tests may have actually performed at a higher level if they attended public schools.

The point here is a simple one. Although a research study may indicate homeschooled students have higher levels of achievement, a critical look at the research design and methodology is important. If the design and methodology do meet an acceptable standard, the study results may not be reliable. VASSP is not convinced that the requirements for educating homeschooled students is on par with the expectations of students in public schools.

Some homeschool advocates argue for homeschooled students to be involved in high school athletics because they have a constitutional right to participation. That is simply not true. As previously noted, homeschooled students do have a constitutional right to an education by attending a public school; however, they have no constitutional right to participation in athletics or extra-curricular activities. Even students enrolled in public schools do not have a constitutional right to participate in athletics or extra-curricular activities (see *Vernonia v. Acton, 515 U.S. 646 and Pottawatomie County v. Earls, 536 U.S. 822*). In Vernonia, the United States

Supreme Court allowed the random drug testing of student athletes and in Pottawatomie, the Supreme Court allowed the random drug testing of any student representing the school in an extra-curricular competitive activity. The Supreme Court would never allow the random drug testing of student-athletes if participating in high school athletics was a constitutional right. Of course, there are many other courts that have ruled there was no constitutional right to homeschooled student participation on high school athletic teams (see Sanders v. Louisiana High School Athletic Association, La.App., 242 So.2d 19, Bradstreet v. Sobol, 650 N.Y.S.2d 402, 403 [A.D.3 Dept 1996], Kaptein v. Conrad School District, 931 P.2nd 1311, 1317 [Mont 1997]). Thus, the inability to equate academic standards of homeschooled students to Virginia High School League (VHSL) rules or local school board requirements and the fact that there is no constitutional guarantee to participate in athletic programs are two reasons why principals oppose this legislation. These two reasons, however, are far from the only reasons. In addition to the primary responsibility for instruction, principals are responsible for safety and discipline. School board policy establishes standards, and administrators work hard to apply the rules evenly and fairly. If a public school student-athlete violates school board policy during the school day or on the playing field, those actions will have consequences which may include suspension from participation in athletics. Homeschooled students would not be subject to discipline based on in-school behavior. A public school student-athlete who bullies or harasses another student may be suspended from both school and extra-curricular activities. There is no similar standard of conduct for homeschooled students which can be verified by principals. The normal response to our discipline concern is to simply "kick the homeschool student off the team." This is easier said than done when issues of due process are concerned. While students have no constitutional right to be selected to participate in a sport, once they become a member of that sport team due process issues have to be considered.

While discipline is important, principals also recognize that school athletic teams play a key role in creating a positive school culture. The homeschooled student is not part of that culture. When most people go to an athletic contest involving their alma mater (high school or college), they expect their school team to have players who are committed to the institution, who are full-time students, and who are passionate about the school. That is what athletic teams do – they represent the school. Homeschooled students are not part of the traditional school environment. They would simply show up to practice, play, and go home. They have no vested interest in the school they represent. Homeschooled students may have a vested interest in the community where they live, but they are not involved in the daily life of the school.

Potential liability issues also arise since the homeschool player would not be a bona fide student at the school. Transportation could become an issue if the student is not enrolled in the school division. There are so many issues which could emerge – the unintended consequences, so to speak. For example, what if a homeschooled student participating in high school athletics shows up early for practice while public school students are still in school and an altercation occurs because the homeschooled student was not under some type of supervision? What is the school division liability? What if a homeschooled student participating in athletics has an altercation with another student on his way to practice? Can the school discipline the homeschooled athlete? Under Virginia law, school boards may establish policy to discipline students, including

their conduct going to and returning from school (§ 22.1-78, Code of Virginia). However, there is no reference in that law to a non-public school student who is just participating in athletics. Some may say that the power to discipline is assumed, but it is never good advice to assume anything in legal matters.

As noted, one of the consequences for homeschooled students is that they cannot participate in extracurricular activities at the public school. They can, however, still develop their individual skills through recreation programs, Young Men's Christian Association (YMCA) programs, club teams, Amateur Athletic Union (AAU) teams, and, in some cases, even homeschooled teams.

For most high school athletic teams, there is competition to make the team. Even one homeschooled student on the team takes a position away from a public school student who is committed to public education. If their child was bumped from the team or sees little playing time because a homeschooled student(s) is on the team, most parents would be upset. What if your son or daughter was the public student cut from the team so that a homeschooled student could play – how fair would you consider that to be?

Principals believe public schools are one of the few areas that level the playing field for disadvantaged students. This proposed legislation undermines the very sense of fairness and equality that public schools are supporting. If a non-student makes the team, a student attending the school will not. There are only so many seats on the bench.

The proposed legislation itself creates potential problems. VASSP draws your attention to section (ii) in the bill. Does it mean that the student must have been homeschooled for two years and made significant progress during two years of homeschooling? Can a student who has been successful in a public school or private school for two years begin homeschooling and be eligible immediately if the parent notifies the superintendent of their intent to homeschool the student by August 1 as required under § 22.1-254.1, subsection C? Regarding section (ii), who determines criteria for evidence of progress for athletic participation, the VHSL or the local school division? In addition, can a homeschooled student be charged for participation even if regular public school students are not? Who determines the amount which can be charged?

VASSP takes the position that there is no need for this legislation. Currently, local school boards have the constitutional authority to decide on whether or not homeschooled students participate in athletics and/or extracurricular activities within their school division. If parents want to make a case for homeschool participation, it should be done at the local level, not dictated by state law.