

## A HYBRID WAY OF LEARNING: TAUGHT AT HOME AND TAUGHT AT SCHOOL

**Charles Waggoner**  
*Eastern New Mexico University*

*There can be a natural conflict between home schoolers and the school district's attempt to restrict their freedom. Home schooling is an age-old educational method that was primarily utilized by parents seeking to teach their own children at home in order to restore traditional values and bring what they perceived to be an order to the family.*

*Presently, a few parents for reasons unique to themselves are now requesting home schooling for other than religious instruction. This type of parental request may place administrators and school boards under rigorous community and faculty scrutiny. Blueville High School is completely fictitious as are the names referenced. The events did occur.*

My meeting with Mrs. Brown was cordial, but she was adamant in her decision. Mrs. Brown's daughter, Charlene Brown, a current sophomore at Blueville High School, would be taught her junior year of American History at home during the next year.

Our conversation took place on April 15, which is prior to the May 1 deadline established in the Illinois School Code, as to when a parent may make application for part-time attendance in a public school district (Illinois Compiled Statutes).

This request, in reality, was for part-time home instruction, not for part-time school attendance. Mrs. Brown wanted Charlene to attend the public school full-time, except for one class, American History. The Brown family had what they considered to be an unfortunate experience with the American History teacher a few years previously with an older daughter. Mrs. Brown was under the distinct impression that because of the other daughter's difficulties, Charlene would also not have a good experience in the American History class.

Unfortunately, being a relatively small district with one teacher qualified to teach American History, there was not the luxury of placing Charlene in another class. Junior year American History was under the direction of Mr. Dark, all five sections of it. There was not a way to circumvent the situation. Every junior was required to take American History at Blueville High; there was no substitution available. Furthermore, Mrs. Brown made it clear that Charlene would continue to play on the varsity volleyball team, on which she was an all-conference performer with the opportunity for a college scholarship in that sport.

Mrs. Brown was not asking the superintendent for permission. She was telling the superintendent what her and Charlene's plans were for the coming school year. Certainly, this was an atypical request on the part of a parent. Other students were home schooled in the district, but they were totally home schooled. There was no mixing and matching.

The Blueville District Policy concerning home schooling strictly followed the Illinois School Code; "All requests for part-time attendance in the following school year must be submitted before May 1." Mrs. Brown had complied with the law. The policy further stated that, "Students accepted for partial enrollment must comply with all discipline and attendance requirements established by the school. The parent of a student accepted for part-time attendance is responsible for all fees, pro-rated on the basis of a percentage of full-time fees. Transportation to and/or from school is provided to non-public school students on regular bus routes to or from a point on the route nearest or most easily accessible to the non-public school or student's home."

Nothing contained in this policy concerning home-schooled students was going to present a difficulty for Mrs. Brown, at this point. The Illinois High School Association (IHSA), the governing body of interscholastic sports in Illinois, addressed the issue of home schooling in two ways. First, their by-laws state that students "shall be doing passing work in at least twenty credit hours of high school work per week" to be eligible to participate (Illinois High School Association Handbook, 2001-2002). The IHSA policy would have no affect on Charlene Brown. Discounting American History, Charlene would be taking five classes at Blueville High, all meeting five days per week, which would give her twenty-five credit hours per week, well over the minimum requirement of the IHSA.

Second, in a companion publication the IHSA published a casebook, which addressed questions of eligibility. Home schooling is circuitously addressed in two instances. Does the work of a student placed on homebound instruction count toward athletic eligibility? The answer is yes, if the student receives credit toward graduation for the work (Illinois High School Association Casebook, 2001-2002). Concerning the eligibility of students who take part in shared-time instructional programs at two schools, the IHSA casebook states that "such student will be eligible at his/her

home high school, provided he/she is enrolled there, all credit earned at other attendance centers is recorded toward graduation from the home high school, and the student is meeting all of the IHSA academic and other eligibility requirements”.

As far as the IHSA was concerned, and as far as I could determine, there was not a problem with Charlene Brown continuing her volleyball career at Blueville and being home-schooled for one class, except that the board of education had a policy statement that forbade participation in interscholastic sports for a student attending less than full-time. The problem was that policy in the Blueville board policy manual also included the following, “Nonpublic students, regardless of whether they attend a District school part-time, will not be allowed to participate in extracurricular activities.” This was obviously not acceptable to Mrs. Brown. Interscholastic volleyball was seen as vital to Charlene’s future.

Regulations of home schooling throughout the United States can be categorized into three distinct approaches. The first approach is a state constitutional provision that gives the state the power to regulate only public schools. The second, slightly stricter approach involves states enacting statutes that expressly allow for home schooling but also provide for some form of state approval or notification by the parents to the local school board. The strictest approach requires state permission to home school and certification of home school teachers (Campbell, 2001). The Illinois General Assembly has taken the position that they would not interfere with home schooling and have not enacted any legislation on the subject. Section 26-1 of the Illinois State statutes offers some guidelines for parental assurances concerning the home schooling of their child, but all of the guidelines are voluntary on the part of the parent.

Parents all over the nation have elected to home-school their children for a wide variety of reasons. Often the motivation is entirely religious. Other families choose home education for completely secular reasons, such as in the case of Charlene Brown and her family’s disenchantment with the quality of an instructor (Klicka, 1995).

The home education movement has grown rapidly over the past few years, yet it is by no account a new phenomenon. In the years prior to compulsory education laws (prior to 1920 in most states) many prominent Americans were educated at home (Talbot, 2001).

The ability of the parent to control the education of his children has been a constitutionally recognized right in a long line of cases beginning with *Meyer v. Nebraska* in 1923. This case involved a state statute that prohibited the use of any language other than English in public elementary schools. Employing the Fourteenth Amendment substantive due process analysis, the Supreme Court found the statute’s attempt to impose cultural and social homogeneity on children unconstitutional and struck down the state law as an infringement on the fundamental rights of parents.

Two cases decided after *Meyer* reaffirmed and amplified the right of parents to guide and direct the education of their children. Probably the clearest statement of this doctrine came in *Pierce v. Society of Sisters* (1925) in which the Court examined an Oregon statute mandating public school attendance by all children in the state of Oregon. In *Pierce*, response to a challenge brought by private schools, the Supreme Court struck down the statute because it “unreasonably interfered with the liberty of parents and guardians to direct the upbringing and education of children under their control”.

In *Farrington v. Tokushige* (1927), the Court further extended the authority of parents over educational decisions concerning their children by invalidating a Hawaii regulation that excessively interfered with the selection of teachers at private schools.

*Troxel v. Granville* (2000) established the nuclear family as the locus of family privacy. In *Troxel*, the U.S. Supreme Court expressed the view that the right of parents to make decisions concerning the care, custody, and control of their children is fundamental. Together, *Meyer*, *Pierce*, *Farrington*, and *Troxel* have established the basic constitutional right of parents to fundamentally rear their own children as they see fit, particularly in the context of fundamental schooling decisions.

The only Supreme Court case that directly addressed a situation resembling home-schooling is *Wisconsin v. Yoder* (1972). *Yoder* involved a challenge to a Wisconsin statute that required parents to send their children to school until the age of sixteen. The plaintiffs, Old Order Amish parents who disdained “worldly influences upon their children,” felt that schooling would interfere with the family and religious development of their children. The Court granted them an exemption from the law. The Supreme Court, while asserting the right of the Amish parents to educate their children privately, also established with the *Yoder* decision a state interest in the education process. The interest that was established by *Yoder* was that children must grow up to be “literate” and “self-sufficient.” A thorough reading of *Yoder* reveals that the parents’ right to direct the religious upbringing of their children is superior to the parents’ right to do so for non-religious reasons. Therefore, parents who are motivated by other than religious reasons, have, in some degree, a less fundamental right to control their children’s education (Cox, 1997). Quoting *Yoder*, “A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations.”

With *Yoder* serving as the model, at least thirty-one states and the District of Columbia statutorily guarantee the right of parents to educate their children at home. Courts have generally never had the opportunity to further iron out attempts to regulate home schooling because by the early 1990s states stopped attempting to prevent parents from exercising their right to home-school. Some courts have gone so far as to indicate that an effort by some states to

impose regulations on home education creates an excessive burden on the parents' constitutional right to home-school. Educational equivalency requirements between home schools and the public schools have been struck down in a few states (Jeffrey v. O'Donnell, 1988).

The Constitution of the United States does not mention the right of parents to educate their children at home. That right is derived from *Yoder* through the Fourteenth Amendment, which guarantees that all citizens have the right to "liberty," which cannot be taken away without due process. Based on the application of the Fourteenth Amendment, the Supreme Court of the United States has held that parents have the fundamental right to direct, at least, the religious upbringing and education of their children.

Today thirteen states, including Illinois, have enacted statutes that specifically guarantee some type of public school access to students on a part time basis. The Illinois Compiled Statutes 5/10-20.24 states that nonpublic school students may request to enroll part-time in public schools. It is interesting to note that although Illinois does not guarantee home schooling through legislation, the law does allow for part time attendance in the public schools.

A 1996 case from Oklahoma illustrates the type of difficulties that administration can encounter when home-schooled children seek admittance to the public schools on a part-time basis (Swanson v. Guthrie, 1988). When home-schooled Annie Swanson reached the seventh grade, her parents decided that she might benefit from attending public school on a limited basis to supplement her education. The superintendent granted the Swansons' request for access, and Annie took two seventh-grade classes. The following year, the superintendent who had given permission for Annie to attend selected classes and had allowed her to enroll for some classes in the coming eighth grade year, had been replaced. The new superintendent referred the issue to the school board. The board excluded Annie from all participation by adopting a policy that required full-time attendance due to state funding. The plaintiffs in *Swanson v. Guthrie Independent School District* pointed out that parents have a constitutional right to raise and educate their children and that the board's part-time attendance policy infringed on this right as well as on the free-exercise right.

The Tenth Circuit had no quarrel with the plaintiffs' assertion that the parents have a constitutional right to direct her education, up to a point. The Court listed numerous cases, which make it clear that this constitutional right is limited in scope. More recently, Federal Courts addressing the issue have held that parents have no right to exempt their children from certain reading programs just because the parents found the program objectionable (*Immediato v. Rye Neck*, 1996) or from a school's community-service requirement (*Fleischfresser v. Directors*, 1994) or from an assembly program that included sexually explicit topics (*Brown v. Hot*, 1995).

The Tenth Circuit Court of Appeals found for the school district in the *Annie Swanson* decision, because the "decision as to how to allocate scarce state resources, as well as what curriculum to offer or require, are uniquely committed to the discretion of local school authorities" (*Swanson v. Guthrie*, 1988). This Court ruled that the claimed constitutional right of parents to send their children to public school on a part-time basis, and to pick and choose which courses their children will take from the public school is clearly not something that public schools would have to allow.

Charlene Brown's request became an inflammatory and contentious topic among the high school staff. A decision that would allow Charlene to take American History at home was seen as undermining the authority and credibility of the entire faculty. The request was also regarded as a personal affront to instructor Dark. If Charlene were allowed to do this, how many students would make a similar request to avoid a teacher?

School boards and administrators have a need to be loyal to staff; however, other than the volleyball participation issue, there did not seem to be any reason to deny Charlene the opportunity to take American History at home or possibly through a correspondence course. The Blueville board policy allowed students to obtain two-credits through correspondence classes that were approved by the principal.

Normally, students would not take correspondence classes for subjects offered by the on-campus staff, but on occasion students that were short credits had been allowed to get credits in this manner. The taking of a correspondence course at home had never constituted part-time student status at Blueville. Being home-schooled by a parent for one class crossed the board policy line into part-time student status, rendering Charlene's participation in volleyball impossible.

Mrs. Brown was very articulate in her "not-so-veiled threat" that if the Blueville Board did not change the policy concerning part-time students' participation in interscholastic activities that she would engage counsel and sue the district. According to Mrs. Brown, she had already discussed the matter with an attorney and had been advised that her case was very strong. I could have, and some say should have, washed my administrative hands of the problem and fallen back on existing policy and denied the Brown's request. My belief, however, was that the existing policy did not serve the best interest of Charlene Brown nor the local taxpayers who were going to utilize tax dollars in a legal fight with a problematical outcome.

My recommendation to the board, which was accepted in a 5-2 vote, was to rescind that portion of the local policy, which forbade part-time students from interscholastic competition. Charlene Brown ended up taking her American History class at home through a combination of home instruction and on-line activities. She received one high school credit for her documented efforts. Charlene also avoided any contact with Mr. Dark's class. Charlene

successfully participated in volleyball and was all-conference once again in her junior year.

Obviously, the Blueville District saved significant dollars in lawyer fees in not attempting to fight the Browns on this issue. Would the district have won the case? So far, home educators have mostly been unsuccessful when they asked the courts to fashion a legal remedy that would force schools to accept their children on a part-time basis, but it is hard to predict how any individual case might be resolved. The Blueville board felt that the Illinois High School Association requirement that a student must be passing twenty academic hours per week of classroom work to participate interscholastically was a "good enough" solution to help resolve the question.

Many members of the Blueville faculty were angry over the decision. Some said it showed a "lack of guts" on the part of board and administration. Others said it was all about having a winning volleyball team. Hardly anyone at all thought that it was about the right of the parent to control the education of their child.

As always, the end result was bitter for some and gratifying to others. What is known for certain is that the question of public school access for home-schoolers is not likely to go away anytime soon.

#### References

- Brown V. Hot, Sexy, and Safer Productions, Inc., 68F. 3d 525 (1<sup>st</sup> Cir. 1995)
- Campbell, W. (2001, Winter). Moving Against the Tide: An Analysis of Home School Regulations in Alabama. *Alabama Law Review*, 52, 649.
- Cox, J. (1997, January). Parental Rights and Responsibilities of Control Over Children's Education. *Journal of Law & Education*, 26, 179.
- Farrington v. T. Tokushige, 273 U.S. 284 (1927)
- Fleischfresser v. Directors of School Dist. 200, 15 F. 3d 680 (7<sup>th</sup> Cir. 1994)
- Illinois Compiled Statutes. 105 5/10-20.4,167.
- Illinois High School Association Casebook. (2001-02). Bloomington, IL. IHSA, 16.
- Illinois High School Association Handbook. (2001-02). Bloomington, IL. IHSA, 32.
- Immediato v. Rye Neck School Dist. 73F.3D454, 484 U.S. 1066 (2<sup>nd</sup> Cir. 1996)
- Iowa Code Ann. 281-31.5(299A).
- Jeffrey v. O'Donnell, 702 F. Supp. 516 (1988)
- Klicka, C. (1995). *Home Schooling the Right Choice*. Sisters, Oregon: Loyal Publishing.
- Meyer v. Nebraska, 262 U.S. 390 (1923)
- Pierce v. Society of Sisters, 286 U.S. 510 (1925)
- Swanson v. Guthrie Independent School District, 942 R. Supp. 511 (10<sup>th</sup> Cir. 1988)
- Talbot, M. (2001, November). The New Counterculture. *The Atlantic Monthly*, 288 (4), 136-143.
- Troxel v. Granville, 530 U.S.57 (2000)
- Wisconsin v. Yoder, 406 U.S. 205 (1972)