

## Nonpublic Student Participation in Public School Sports

For many parents, it is very important for their homeschooled children to participate in sports. In the early days of homeschooling there was little available for those desiring to play on teams sports. The only opportunities were available in public schools. But, much has changed over the years. In nearly every community there are many opportunities available. Generally only football remains as a public school sport. In most communities there are volleyball and basketball teams. And in the Spring, there are several statewide and national competitions. Other sports available include; swimming, track, skiing, boating, climbing, biking and hiking. In the summer there are homeschool adventure camps, backpack trips, rock climbing, and more.

### **Can homeschool students participate in public school sports ?**

In 1997, the issue of allowing nonpublic students the opportunity to participate in public school sports was considered by the Montana Supreme Court. The Montana high court (Kaptein v. Conrad School District) ruled unanimously in favor of the school districts.

Across the country, there are two other states that have similar Supreme Court decisions as Montana; Louisiana and West Virginia.

Part of the case presented by the Kaptein's was related to status as taxpayers to the local school district, and that they should be allowed to use the facilities. (Their daughter was not being home schooled, but was in a local private school. The high court's decision included language that related also to home school students, dropout and adults who may also want equal access.) In a footnote at the bottom of page 3 of the Kaptein decision, the court addressed the taxpayer issue:

*'Although Kapteins' brief contains considerable discussion of their status as taxpayers, they ultimately concede that their daughter either has a constitutional right to participate in extracurricular activities under Article X, Section 1, of the Montana Constitution or she does not, regardless of her parents' status as taxpayers. Thus, we do not treat taxpayer status as relevant to the resolution of this appeal'*

There were several separate 'concurring' opinions included in the unanimous decision that added some additional perspectives. Justice Gray concurred with the other Justices in her discussion of the violation of the Montana Constitution

Art X, Sec 6. (That language is in our Constitution and likely not other states) To provide the opportunity to participate, involves spending tax dollars for non-public purposes. The Kaptein case included a lot of analysis of other cases in other states. It was not decided in a vacuum.

It was surprising that the court's decision strayed from the original athletic question, and ultimately included academics. Though the fear was that those school districts that were presently allowing homeschool students access to classes would now be denied. That did not happen. But when it came to sports, the Montana Supreme Court ruled that it was 'reasonable' for school districts to prohibit nonpublic students from participation.

Footnote: Presently, there are efforts being worked on in other states to pass 'Tim Tebow' laws that would provide opportunity for nonpublic students to participate in public school sports (As football star Tim Tebow did in Florida while being home schooled). But these states do not have a 23 year old high court case like Montana has to deal with.

If you are interested in reading the entire 1997 Kaptein Supreme Court decision:  
[CLICK HERE](#)