



March 8, 2021

## **WHPA RESPONSE TO AB122 (2021): PROPOSED LEGISLATION TO CREATE MICROSCHOOLS IN WISCONSIN**

### **Introduction and History**

Wisconsin Assembly Bill 122 (AB122) proposes to create an entirely new class of private schools in Wisconsin, called microschoools. As proposed, microschoools are programs of educational instruction that can be provided by anyone, anywhere, to any group of children, as long as the group consists of two to five family units and no more than twenty children.

Wisconsin Homeschooling Parents Association (WHPA) has serious concerns about the proposed definition and regulation of microschoools. Before addressing these concerns, it is important to understand the current state of Wisconsin law regarding homeschoools and private schools.

Under Wisconsin law, any parent or legal guardian has the right to homeschool their children. While the right to educate one's own children is not explicitly recognized by the U. S. Constitution, the Supreme Court of the United States has repeatedly recognized and upheld this inherent right of all parents. This parental right was codified in Wisconsin in 1984, by the passage of Wisconsin Act 512 (1983), which defines a Home Based Private Education Program, or homeschool, as: "*a program of educational instruction provided to a child by the child's parent or guardian or by a person designated by the parent or guardian. An instructional program provided to more than one family unit does not constitute a home-based private educational program.*" (WI stat 115.001(3g))

At the time AB887 (eventually signed into law as 1983 Wisconsin Act 512) was being discussed and debated, parents who chose to homeschool were being harassed and persecuted for both failing to cause their children to attend school, and for running unauthorized private schools from their homes. Part of the problem was that neither

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private schools nor homeschools were clearly defined in Wisconsin law. In developing a law that for the first time clearly defined homeschools and private schools, one concern from the homeschooling community was that, over time, a situation could develop where extended family groups or other multi-family groups would form small private schools and call them homeschools. These unauthorized schools would essentially recreate the very problems that plagued both homeschoolers and private schools before the passage of our current law. This is why the original authors of our homeschooling law included the important words, *“An instructional program provided to more than one family unit does not constitute a home-based private educational program.”*

Homeschoolers recognized that such unauthorized private schools can further undermine homeschoolers in other important ways. First, the right to homeschool is vested in the right of parents to direct their own children’s education. Allowing situations where multiple families receive instruction at the same time undermines the strength of that parental right, and confuses the role of parents and the role of schools. Second, allowing multiple family groups to skirt the regulations and responsibilities of legitimate private schools creates scrutiny of homeschoolers and raises concerns that homeschools might be subjected to the same requirements and regulations as multi-family private schools. Further, allowing unauthorized private schools can create dangerous situations for families around liability issues that could arise when children from multiple family units are educated together. All these potential pitfalls were acknowledged and addressed with the original crafting of Wisconsin’s homeschooling law.

By adding the right of parents to designate another person to instruct their children, the authors of our original law codified the right of parents to direct their own children’s education, without having to be the sole source of knowledge or scholarship. This important passage - “or by a person designated by the parent or guardian” - has allowed Wisconsin homeschooling parents the ability to take advantage of many opportunities for scholarship and instruction beyond their own skills and expertise. This carefully-crafted and reasonable law has worked for Wisconsin families for thirty-seven years.

### **Analysis: What the new “Microschools” proposal says, and why it’s unclear and unnecessary**

The proposed definition of a microschool in AB122 is:

- 115.001(3p) MICROSCHOOL. “Microschool” means a program of educational instruction provided to a child by the child’s parent or guardian or by a person designated by the parent or guardian that is all of the following:
- (a) Provided to more than one family unit.
  - (b) Provided to no more than 5 family units.

- (c) Provided to no more than 20 children.
- (d) Provided to participating children at a physical location.

Representative Shae Sortwell, one of the authors and sponsors of AB 122, contends **both** that the proposed microschoools are a hybrid of homeschools and private schools, **and** that microschoools and homeschools would remain legally distinct from each other. However, the proposed definition of a microschoool is almost identical to that of a homeschool, and the proposed regulations of microschoools are identical to those of a homeschool. While this bill does not directly address our homeschooling law, we believe that this will blur the distinction, and create confusion among microschoools, home-based private educational programs, and private schools. Such a hybrid, which uses almost identical language to define both home-based private educational programs and the proposed microschoools, puts at risk both the words and the legislative intent of our long-standing homeschool law.

**WHPA's position is that microschoools are an entirely new class of private schools, and should be defined separately from homeschools. These new private schools should be defined clearly as private schools, and should be governed by private school law and regulations.**

WHPA is not privy to the exact reasoning behind this proposal, however, we believe a few families may have asked for this new class of private schools for one or more of the following reasons:

1. They dislike how their current public or private school has operated during the COVID-19 pandemic;
2. They believe under Wisconsin's current law they might have to give up an income to homeschool their children;
3. They are uncomfortable with taking full responsibility for providing the subjects and hours required by Wisconsin's homeschooling law.

Despite the upheavals caused by the ongoing pandemic, in Wisconsin, **each of these concerns is already addressed under current law.** First, anyone who is dissatisfied with their current school can seek any number of alternatives already available among Wisconsin's public, private, charter, or tribal schools, many of which already offer different types of in-person and online options. Second, Wisconsin's long-standing homeschooling law does not require that instructional hours be held during traditional school hours or on a traditional school calendar, keeping legal homeschooling a reliable option for working parents. Finally, under Wisconsin law, any legally homeschooling parent **can already** designate anyone else to provide instruction to their children on any topic, as long as children from more than one family are not receiving the same instruction at the same time. As discussed above, this reasonable definition of

homeschooling in Wisconsin allows parents to take full responsibility for their children's education, while also taking full advantage of the world of expertise and scholarship available to them. At the same time, by limiting students receiving instruction at any one time to those of a single family unit, our current law maintains a clear distinction between private schools and homeschools, and upholds and respects the rights of parents to educate their own children.

Establishing microschoools that appear to have the same requirements as homeschools but are different in critical ways also creates serious areas of controversy and conflict that homeschools have largely avoided since 1984. Part of the strength of our current homeschooling law is that: (1) decision making is limited to one family unit; and (2) a single family unit takes direct and total responsibility for fulfilling the legal requirements of a home-based private educational program.

With the proposed microschoools, conflict and litigation could easily arise in one or more of the following areas of decision making and operation: (1) decisions about curriculum and hours of instruction; (2) decisions about teaching; (3) decisions about hiring and compensating any staff that a microschoool may hire; (4) whether parents think their children received the education they were promised; and (5) whether parents think they got what they paid for.

In addition to these serious concerns, we have a number of other questions and concerns regarding logistics and accountability:

- This proposal creates an entirely new class of private schools in Wisconsin that is free from private school regulations, without addressing why such a new class of schools is needed.
- It allows any person in any physical location to provide instruction to any children, as long as there are no more than twenty children from two to five families in attendance. Is this a school? Is it a camp? Is it a necessary legal entity? Have unintended applications and consequences been considered?
- This bill has an unfunded mandate which requires the creation and administration of a new kind of school report by the Department of Public Instruction (DPI).
- When asked how this new form could be filed by individual parents but account for the total enrollment, attendance, and hours of instruction of a microschoool, the bill's author said that "DPI would sort that out." We find this answer unsatisfactory. Who is the administrator of a microschoool? If a parent files a report for their child, how is the microschoool accountable? For example, how does a parent know how many other children attend the microschoool on any given day, or how many hours of instruction are provided? How does a parent know whether a microschoool is fulfilling the requirements of the law that the parent will attest to on the form?

- Since this proposal allows microschools to operate without any of the laws and regulations of private schools, there appear to be no protections in place for children, families, or any staff that a microschool might employ. Who is responsible for what, and who is liable when something goes wrong?
- Under this proposal, instruction in a microschool **must be provided to more than one family unit**. This creates an awkward situation in which a parent who is the administrator of a microschool cannot provide instruction to their own children unless children from other families are also in attendance.

Any one of these concerns or conflicts can become a source of public reporting, legislative efforts to further define what is required of a microschool, and/or involvement by the Department of Public Instruction to regulate these private microschools. Increased scrutiny, legislation, or regulation may also result if any of these microschools were to seek taxpayer funded benefits (tax deductions, tax credits, use of tax-favored college funds to pay tuition or other microschool-related expenses) or seek and accept services paid for with tax dollars such as special education screening, evaluation, and services, or testing services, or transportation.

Once even one of these areas of concern or conflict becomes a matter of public concern and legislative or bureaucratic action, homeschools are very likely to be similarly scrutinized, which would provide an opportunity for changing Wisconsin's homeschooling law and increasing state regulation of homeschools. Conventional private schools are not seeking the creation of microschools. Public schools are not seeking the creation of microschools. So if microschools were to be passed into law and then result in conflicts that become public issues, there would be any number of powerful political forces ready to limit and regulate such schools. While homeschoolers might receive spoken assurances that the proposal today is no legal threat to homeschools, the serious problems built into the proposed microschools can easily become public calls for bureaucratic or legislative action. Since these proposed microschools are being based on homeschool law and would appear to the general public and many legislators as similar to or even another kind of homeschool, our homeschool law would be seriously threatened.

## Conclusion

Because the proposed microschools will include children from more than one family unit, WHPA's position is that this is a new class of private schools, which should be defined as private schools, entirely separate from home-based private educational programs. The proposed microschools should likewise be governed by existing private school law and regulations. These regulations exist for the protection of children, parents, and staff, and serve to prevent any legal confusion among home-based private educational programs, private schools, and public schools.

Finally, because the definition and regulation of microschoools as proposed is too similar to that of home-based private educational programs, this proposal puts our homeschool law at risk, as it appears to be in the same category as homeschools.

WHPA's Legislative Watch Committee will continue to monitor this legislation and communicate with legislators, and will issue a call to action if necessary and appropriate.

Wisconsin Homeschooling Parents Association  
Board of Directors