



February 18, 2022

**ACTION ALERT:**

**Call Your Representative in the Assembly to Oppose AB 122  
The Creation of “Microschools” in Wisconsin**

WHPA’s Board of Directors has been monitoring and providing information to you, our members and the greater homeschooling community, regarding AB 122, the proposed bill to create “micro education pods” (formerly “microschools”) in Wisconsin. **WHPA is asking our members and all homeschool supporters to take action, outlined below.**

***NOTE: Please share this alert with non-WHPA members who wish to support Wisconsin homeschoolers.***

**ACTION NEEDED:** AB 122, which would create “micro education pods” (formerly “microschools”) in Wisconsin will be going before the full Assembly on **Tuesday, February 22, beginning at 1:00 PM.** Please contact your Representative in the Assembly, and let them know you **OPPOSE** AB 122 for the following reasons:

- 1. It is unnecessary.**
  - Homeschooling families already get together for activities.
  - Families already have the option to legally form small private schools under our current law.
  - Under our current law, a homeschool administrator may already designate someone to teach their children, provided that person isn’t instructing children from other family units.
  - Small private schools are already allowed in Wisconsin. According to DPI’s Private School statistics for the 2020-21 school year, over 70 private schools were legally operating with enrollments of 20 or fewer students.
  - No specific “red tape” or “burdensome regulations” have been detailed since it was raised at the March 18, 2021 public hearing on this bill.
- 2. It is unworkable.**
  - Under the version of AB 122 which will be going to the full Assembly, both a parent and an administrator are listed as being responsible for a “micro education pod.”
  - It is impossible for an educational program in Wisconsin to have a parent take both full responsibility for the education of their child, and also fully delegate the education of their child to another administrator.
- 3. It puts our reasonable law at risk.**

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**Wisconsin Homeschooling Parents Association • PO Box 2502 • Madison, WI 53701**  
**[www.homeschooling-wpa.org](http://www.homeschooling-wpa.org)**

- Confusion already exists. Parents are being led to believe that they can both homeschool and have their children enrolled in one or more “micro education pods” simultaneously.
- AB 122 removes the clear legal distinction between homeschools and private schools.

You can find your Representative’s information here: <https://maps.legis.wisconsin.gov/>

Please call your Representative, and respectfully tell them that you OPPOSE AB 122. Phone calls are the most effective way to contact your Representative. If you are unable to call, please send an email.

*Please watch for an action alert regarding a public hearing for the companion Senate bill for “micro education pods,” SB 201, which may be scheduled in the coming days or weeks. Having WHPA members testify in person at this hearing will help send a powerful message to our legislature.*

## Background and Analysis

WHPA is opposed to AB 122. This bill proposes the creation of a new class of unregulated private schools in Wisconsin, called “micro education pods” (formerly “microschools”). These private schools could be run by anyone, from any physical location, for up to twenty children from two to five families, without meeting any current private school regulations other than those that apply to homeschools.

This new type of private school, defined almost identically to homeschools, violates the intent of our long-standing, reasonable homeschool and private school laws, which were written explicitly to differentiate between homeschools (one family unit) and private schools (more than one family unit). So-called “micro education pods,” as proposed, are unregulated private schools, period. To quote Rep. Sortwell, from his public social media, “They would essentially be small, unregulated private schools held accountable by the parents forming it [sic].”

**The creation of small unregulated private schools is totally unnecessary.** Anyone who wants to start a private school of any size, anywhere in Wisconsin, may already do so. **There simply are no burdensome regulations preventing the legal operation of small private schools.** According to DPI’s Private School statistics for the 2020-21 school year, there were over 70 private schools with an enrollment of under 20 students legally operating in Wisconsin.

Unfortunately, AB 122 is being offered to Wisconsin homeschool families as a “hybrid” type of school, between homeschools and private schools. In fact, in their call for co-sponsors, the bill’s author, Rep. Sortwell, and co-sponsors Rep. Thiesfeldt and Sen. Nass called “microschools” “[a] happy-medium between a homeschool and a private school.”

The fact is **a hybrid between a homeschool and a private school simply cannot exist under Wisconsin law.** The clear legal difference between homeschools and other schools is explicitly intended to protect the rights of parents and children.

First, **there is no such thing as “dual-enrollment” in Wisconsin schools**, with the exception of certain high school students attending classes at certain institutions of higher education. That is, every child must attend school, under our compulsory attendance law, and no child may be enrolled in more than one school at the same time. Therefore, students enrolled in a “micro education pod” cannot, under law, also be enrolled in a homeschool. But parents are being led to believe their children can be enrolled in more than one educational program at the same time.

Second, **it is impossible for an educational program in Wisconsin to be both home-based**, where the parent takes full responsibility for the education of their child, **and also a private school**, where the parent delegates the education of their child to another entity.

A homeschool, or home-based private educational program, is defined to ensure that parents who choose to homeschool accept and meet the full responsibility of educating their own children. The right to homeschool one’s own children is an inherent right, recognized at the federal level by the Supreme Court of the United States, who ruled that parents have an inherent right to direct their own children’s education, according to their own principles and beliefs. This right was codified into law in Wisconsin 38 years ago. The inherent right of parents to homeschool is limited by our reasonable law in Wisconsin, requiring a specified number of hours of instruction, subject areas, and legitimate educational intent.

The right to operate a private school as a business is also recognized by SCOTUS, and codified by Wisconsin law. The right to operate a private school is limited by some minimum standards that serve to protect vulnerable children, parents, employees, and business owners.

Our current laws recognize that there is a fundamental difference between “one family unit” and multiple family units. Homeschooling parents have the right to provide education to their own family unit through their relationship to their family. Private schools only have the right to provide education because parents have entered into a legal agreement with them, and they meet the appropriate state standards. Homeschools are designed so that parents take full responsibility for their children’s education in their own family unit. Private schools are designed so that the school takes full responsibility for the education of children from multiple family units. **The heart of Wisconsin’s homeschooling law is that the parent or guardian takes full control of and full responsibility for their own child’s education, and was codified in 1983 Wisconsin Act 512 to provide clear legal definitions and clear legal protections for both home-based private educational programs and private schools.**

This proposal undoes all of Wisconsin’s fundamental, sound legal clarity, by standing on the shoulders of homeschooling parents exercising their inherent parental rights, and saying that the state should undo the legal difference between a parent and a school, and should treat anyone, anywhere, as having the same inherent right as parents.

**WHPA is deeply concerned about the confusion caused by this proposed legal morass.**

The confusion between “micro education pods” and homeschools is already happening. In the Department of Administration’s initial fiscal estimate for this bill, under “Local Estimate,” the Department of Public Instruction (DPI) and Department of Administration wrote regarding the potential impact of micro education pods:

*This bill could lead to increased numbers of students enrolled in home-based private educational programs and potentially reduce the count of pupils enrolled in public schools[.]*

This is a clear misunderstanding of the law. If children are enrolled in a “micro education pod,” they cannot simultaneously be enrolled in a home-based private educational program. Again, this misunderstanding of the law is a direct, foreseeable consequence of both the language of the bill, and the language the bill’s co-sponsors are using to promote it. After WHPA contacted DPI, this language was amended.

Likewise, there is already confusion among Wisconsin citizens about the legal status of proposed “micro education pods.” On Rep. Sortwell’s public social media pages, a citizen asked “Would this be like if I homeschooled other kids besides my son?” to which Rep. Sortwell replied “Yes, that is one way the system could be used. It could also be used by multiple parents working together or several parents hiring a teacher together to teach their kids.” Another person asked if a “microschool” is “Basically an ‘official’ and ‘legal’ homeschooling co-op?” to which Rep. Sortwell replied “That is one way it can be used, yes.” Similar language was used by the bill’s co-sponsors at the March 18, 2021 Assembly Committee on Education’s public hearing. There are many such confusing conversations happening around this proposal. Wisconsin parents are being grossly misled, and legally homeschooling families as well as legitimate private schools are being put at risk.

At the March 18, 2021 Assembly public hearing, such confusion was further propagated by statements from the bill’s sponsors. Although Rep. Sortwell opened his testimony with the statement that “Microschools are unregulated private schools,” the next three hours were spent talking about homeschooling. The bill’s authors and co-sponsors made even more confusing statements, including:

- Microschools are designed for homeschoolers.
- Homeschoolers can both operate their own homeschool and a microschool.
- Homeschoolers are the primary target for microschools.
- Microschools will help homeschoolers.
- “Microschools are under the homeschooling umbrella.”

Because AB 122 creates an entirely new class of unregulated private schools, it also contains an unfunded mandate that the DPI create and administer a new school report form for “micro education pods.” The bill contains no indication of how “micro education pods” could be made to conform to similar school reports as the current PI-1206 Homeschool Report or the PI-1207 Private School Report. When asked directly about these important legal issues by WHPA, Rep. Sortwell responded “DPI will work that out.” This is not a sound basis for legislating, and adds to our confusion and concern about AB 122. Certainly regulatory agencies help enact our laws, but they cannot legislate. These fundamental legal questions must be answered by the legislature, before this proposal can move forward.

In response to DPI’s requirement that there be an administrator for “micro education pods,” an amendment was adopted by the Assembly Committee on Education to add an administrator, while retaining the original language of a parent administrator in the definition of a “micro education pod.” It is impossible under Wisconsin law for a parent to both take full responsibility for their

child's education while simultaneously fully delegating that responsibility to another administrator.

This new type of private school is totally unnecessary. It does not meet any needs of Wisconsin homeschoolers that cannot already be met under our current law. Under our current homeschooling law, a parent may already designate someone to teach their children, provided they are not instructing children from another family at the same time. Homeschooling students can - and frequently do - already participate in enriching group activities. Our law simply clarifies that group activities do not meet the required hours of home-based instruction. Further, anyone who wants to start a private school in Wisconsin may already do so, with absolutely minimal requirements.

This bill actively undermines the current protections for children, families, and employees at legitimate private schools. It also actively undermines the robust market of private schools in Wisconsin, by removing the few state requirements to join the market. The bill causes confusion for public school districts and for DPI related to compulsory attendance, and federally mandated provisions for special education and transportation.

The language used by the authors both around and in this bill attempts to remove the clear legal distinction between homeschools and private schools. This not only re-creates the legal morass of pre-1984 Wisconsin private school law, but also undermines the right of parents to educate their own children according to their own principles and beliefs. This right is the heart of our homeschooling law, and we must speak up to defend it.