

# Outdated Microschool Laws Turn Parents into Criminals

*By over-regulating the pandemic-era schooling alternative, states ignore families' constitutional rights*

By ERICA SMITH EWING

**P**UBLIC SCHOOLS do not work for everyone. But options have increased since 1922, when Oregon tried to ban private education. The Supreme Court shut down that scheme fast. But now, after more than 100 years, political insiders are rallying again to stop a new source of choice.

The target this time is microschooling, a Covid-era

alternative that has outlasted the pandemic. Key players in the movement gathered May 8–9, 2025, at the International Microschools Conference in Washington, D.C. I joined them.

I met educators running all kinds of programs in all kinds of spaces. Some had revived the one-room schoolhouse—like

CONTINUED ON PAGE 87



Teacher Bailey Schissler leads a math lesson for a small group of 4th-grade students at Gem Prep, a microschool based in Emmet, Idaho.

SARAH MILLER

CONTINUED FROM PAGE 88

that portrayed in the 1970s television series *Little House on the Prairie*—a single classroom where children of different ages learn together. Others reported how they refuse to be confined inside and instead drive their students around their cities in vans, exploring art museums, visiting historic sites, and even taking surfing lessons.

What these enterprises have in common is size. Microschools are tiny by design, averaging just 16 students. That intimacy allows teachers—often called “guides”—to tailor learning to each child’s interests and pace and to find fun ways to do so. In microschools, kids don’t dread the school day—they look forward to it.

Educators are energized, too. Their enthusiasm was unmistakable at the National Museum of the American Indian, where the conference took place. Dozens of microschool founders and guides were so deeply engaged in sharing their stories and swapping ideas that they didn’t want to break for lunch.

But while excitement is growing among educators and families, not everyone welcomes this new approach. Although the microschool footprint is small, industry insiders see a big threat. And they want to crush it.

The National Education Association produced an internal “opposition report” targeting microschool providers, claiming they lack accountability and may discriminate. But what the union is really afraid of is competition.

The Wisconsin Education Association Council, the state’s largest teachers union, did not try to hide its agenda in 2021 when state lawmakers considered Assembly Bill 122, a failed measure that would have legalized microschooling for up to 20 students from five families.

“While at this point the bill does not shift tax dollars to these schools, as happens in the voucher programs, local public schools would lose per-pupil state funding for students who leave to attend microschools,” the union warned.

State lawmakers have heeded the call, doing what they can to stifle the movement. The result is that most states have yet to legally recognize microschools as an educational alternative. The sector occupies a legal gray area—too small and too unconventional to fit neatly into existing education categories. Families using microschools struggle to satisfy compulsory schooling laws, and state officials often treat them as little more than daycare centers. This can make it legally risky—or even criminal—for parents

to rely on them to educate their children.

Rather than being recognized for what they are—innovative educational models—microschools are often forced to register as full-fledged private schools. That triggers a cascade of outdated requirements: registration rules, zoning laws, fire codes, and building standards designed for institutions serving hundreds of students on sprawling campuses—not a dozen kids in a living room or church basement.

These mismatched regulations saddle microschools with red tape, costly upgrades, and endless inspections. I’ve spoken with more than a dozen founders who face imminent shutdown—or can’t even open their doors—because the law fails to account for their unique model.

These obstacles don’t serve students. They serve entrenched interests. Teachers unions and charter school operators control about 84 percent of the K–12 market, commanding \$857 billion nationwide. But they want more.

What they overlook is the Constitution, the document that tripped up Oregon once the Supreme Court got

involved in 1925. The landmark decision, *Pierce v. Society of Sisters*, and a 1923 ruling, *Meyer v. Nebraska*, affirm a basic principle: Parents have a right to direct the upbringing and education of their children.

States cannot interfere without good reason. If they do, my public interest law firm, the Institute for Justice, stands ready to defend microschools with free legal services. Yet litigation should not be necessary.

Competition drives innovation and keeps service providers sharp. States win when they get out of the way and let enterprising individuals test their ideas.

The good news? The tide is turning. Florida, Texas, Georgia, Utah, and West Virginia have already passed laws to protect microschools from overregulation, and Tennessee joined them in May. More states are poised to follow, with new bills expected in 2026 as support surges across the country.

Let’s keep the momentum going. Instead of clinging to outdated rules, policymakers should embrace the future of education. Rather than crushing the creativity of educators like those I met in D.C., they should clear the path and let microschools flourish. That way, both kids and educators can look forward to waking up for school in the morning.

*Erica Smith Ewing is a senior attorney at the Institute for Justice in Arlington, Virginia.*