

Education Entrepreneur Freedom Index



A 2023 Permissionless Education Review

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Executive Summary

Education entrepreneurs (“edupreneurs”) are creating and operating unconventional learning environments in response to growing demand for alternative education options that meet the individual needs of children. Each state has a unique regulatory landscape that imposes more or less complicated regulatory burdens on edupreneurs. Equally unique are the solutions being created by these intrepid founders. They include microschools, private schools, homeschool co-ops, tutoring centers, learning pods and a myriad of other alternatives limited only by the imagination.

This report is a first step toward identifying how regulations affect edupreneurs and key differences among states. While the methodology used in this report cannot capture the intricacy of regulations and their varied application to different types of learning environments, we hope it draws attention to major categories of regulations that impact edupreneurs. Over-regulation means that families have fewer opportunities to access solutions that meet their individual learning needs. Because our goal was to only identify whether certain categories of regulation affected learning environments, we did not weight the questions.

This report is not intended to be a legislative roadmap, but we hope it will inspire a re-examination of the need for the application of certain regulations to unconventional learning environments and lead to policy changes. We plan to update and enhance the report over time.



Introduction

Educational entrepreneurship is exploding across the United States as thousands of innovators are starting unconventional learning environments to meet the unique needs and learning preferences of children and satisfy the demand of families for a different approach to education.¹ We refer to the operators of unconventional learning environments as "edupreneurs." With over 70% of Americans asserting that they want to see a different direction for education in our country, edupreneurs are responding to that demand.²

Although some may lament (perhaps rightfully) the impact of federal regulation in some areas of education, our country has a relatively decentralized education environment. Different states have different regulatory environments that make it comparatively easier or harder for new educational spaces to open and operate. As one might imagine, some states make it very easy for edupreneurs to create new learning environments, hire staff, find suitable locations, and recruit students. Others

do not. For policymakers that might wish to make their state more hospitable to educational entrepreneurs, proof points in neighboring states or in states with similar political or demographic characteristics could be an encouraging stimulus.

In this report, inspired by the World Bank's Ease of Doing Business Index, we compare the 50 states in an effort to determine how easy it is for edupreneurs to serve children and families. The World Bank's Index was interesting because it equipped policymakers with straightforward, comparative information by collecting and comparing key statistics.³ For example, the report showed that it took one day to register a property in Qatar, but 513 days in Kiribati. Where businesses needed to make three tax payments a year in Bahrain, they had to make 99 in Venezuela. Very quickly, even a non-business-oriented observer could start to see which countries were welcoming to entrepreneurs and which were not.

Enter the Education Entrepreneur Freedom Index.

To compare business climates across countries, The Ease of Doing Business Index imagined a simple small business, one that operates as a limited liability company in the country's largest city, is domestically owned, performs general commercial or industrial activities, and leases a space to operate.

To compare the operating environment for edupreneurs across the states, we imagined a small, non-religious educational setting that allows unrelated school-age students to participate in educational activities in the space for some portion of the week.⁴ It does not have to be full-time, and it does not have to be the students' sole educational provider, but it is not simply an afterschool or supplementary program. We did not specify whether the educational environment is for profit or non-profit, or whether or not it classifies itself as a school.

After establishing this simple case to study, we looked at the barriers

edupreneurs face in each state if they launch this type of learning environment. These barriers result from a patchwork of regulations that govern facilities that house and educate kids. A few examples of some of the barriers we found are related to compulsory education laws, some are homeschooling regulations, others are private schooling regulations, and still others are child care regulations. There are also generally applicable regulations, such as fire and safety codes that may impose heightened barriers for educational settings.

The time is right to look at the ease of doing business for edupreneurs. This report is a first step towards doing that. It is not designed to be an exhaustive examination, and, hopefully, like the Ease of Doing Business Index, it will be a report that is updated and refined from year to year.

For purposes of this report, we imagined a small, non-religious educational setting that allows unrelated school-age students to participate in educational activities in the space for some portion of the week.

Education Entrepreneur Freedom Index Questions

As a first step, and to construe the requirements in as straightforward a way as possible, we established a set of questions with yes or no answers. Given the variety of unconventional learning environments, we decided to address laws and regulations affecting business entities generally, and specifically nonpublic schools, homeschooling, and child care.

We identified ten questions covering these four elements and asked how they would affect our imagined educational setting. States received one point for each “yes” answer and zero points for each “no” answer. Therefore, a higher score represents a less burdensome environment. While not perfect, we hope the report leads to some clear, and useful, comparisons.



Can the educational environment operate without getting a state business license under state law?

While educational entities may not have to register as a nonpublic school, they may have to register in some other way, increasing administrative burdens and compliance requirements for edupreneurs. This could be getting a business license or otherwise registering as an entity that serves children and families. This question looked specifically at state regulations; there may be additional requirements such as a business tax registration or certificate of use at the local level that are not addressed here.



Does the state allow for unlicensed, unregistered, unaccredited, or unapproved non-religious, nonpublic schools?

In some states, nonpublic schools are “accredited” by the state. In others, they are “registered” with the state, and in others, they are “licensed” or “approved.” In some cases, states do not require any sort of license or approval, but they do require the school to report its existence and/or enrollment. We interpreted such obligations as a backdoor registration requirement. There are, however, states, where nonpublic schools do not need to do any of these things to operate.

3

Does the state allow nonpublic schools to operate without imposing educational requirements on teachers?

Irrespective of registration requirements, many states do not otherwise regulate the operation of nonpublic schools. However, a significant number impose requirements on nonpublic schools, including teacher qualification requirements. Teachers are central to the operation of any learning environment, so we should be especially sensitive to any regulations placed on who can and cannot teach in a nonpublic school.

4

Does the state's homeschool law support or facilitate the operation of the educational environment?

This question identifies states where students can attend an educational environment without losing their homeschooling status with the state. Many innovative educational environments fit poorly in our standard conception of “schools,” so allowing students to formally classify as homeschoolers creates space for edupreneurs to operate without triggering additional regulatory burden.

5

Can the educational environment operate in accordance with the state's homeschool law without registering?

All states have recognized the right of parents to educate their children at home. However, what homeschooling looks like in any particular state varies. Often the laws relating to homeschooling recognize that it can occur outside the home and include more than one family grouping. This question seeks to determine whether a homeschoolers' participation in a collective education environment would spark the need for that learning environment to independently register with a state or local authority.

6

Does the state allow homeschool instruction without imposing educational requirements on instructors?

While all states recognize the general right of parents to homeschool their children, some states impose minimum requirements on homeschool teachers that may also result in a parent not being able to homeschool because they could not fulfill the education requirements to be a homeschool instructor. This question looks at whether there are educational requirements for parents or other permitted instructors who are teaching homeschool children.

7

Does the state allow child care facilities to operate without imposing educational or qualification requirements on administrators/supervisors/teachers?

Our imagined educational setting houses a set of unrelated children cared for by someone who is not their parent, the typical trigger for meeting the definition of “child care.” Child care regulations impose numerous requirements that include facility requirements, hours of operation, staff-to-child ratios and recordkeeping. Often these requirements include the need for the center administrator, supervisor or teachers to meet education or qualification standards. For consistency across our questions and as a proxy of regulatory oversight, we asked whether an edupreneur would have to meet education requirements if the learning environment was subject to child care licensing.

8

Do the state’s child care laws and regulations provide a clear exemption for “Drop In/Open Door” programs?

9

Do the state’s child care laws and regulations provide a clear exemption for educational programs for school-age children?

Question 8 and Question 9 address the same basic issue. States create exemptions from child care laws and regulations for certain kinds of entities like public schools or summer camps, so we looked for two common exemptions that would potentially exclude our imagined environment. First, we looked for the so-called “drop in” exemption that exempts entities in which children are free to come and go as they please. Second, we looked for a broad exemption for educational programs for school-age children. If either exemption was limited by a certain number of hours per week, as many exemptions are, we considered that a negative answer, and the state lost the point.

10

Does the state adapt the application of occupancy code requirements in recognition of the existence and needs of small learning environments?

Many small educational entities use space in commercial buildings, homes, or other non-traditional spaces. Subjecting them to the same level of regulations as much larger public or private schools places costs and burdens that can be prohibitive for small providers. This question highlights the states that provide exemptions or legal protections for smaller educational entities to exist without having to meet burdensome occupancy and/or building codes that are geared towards larger educational institutions.

Edupreneur Freedom Index Rankings

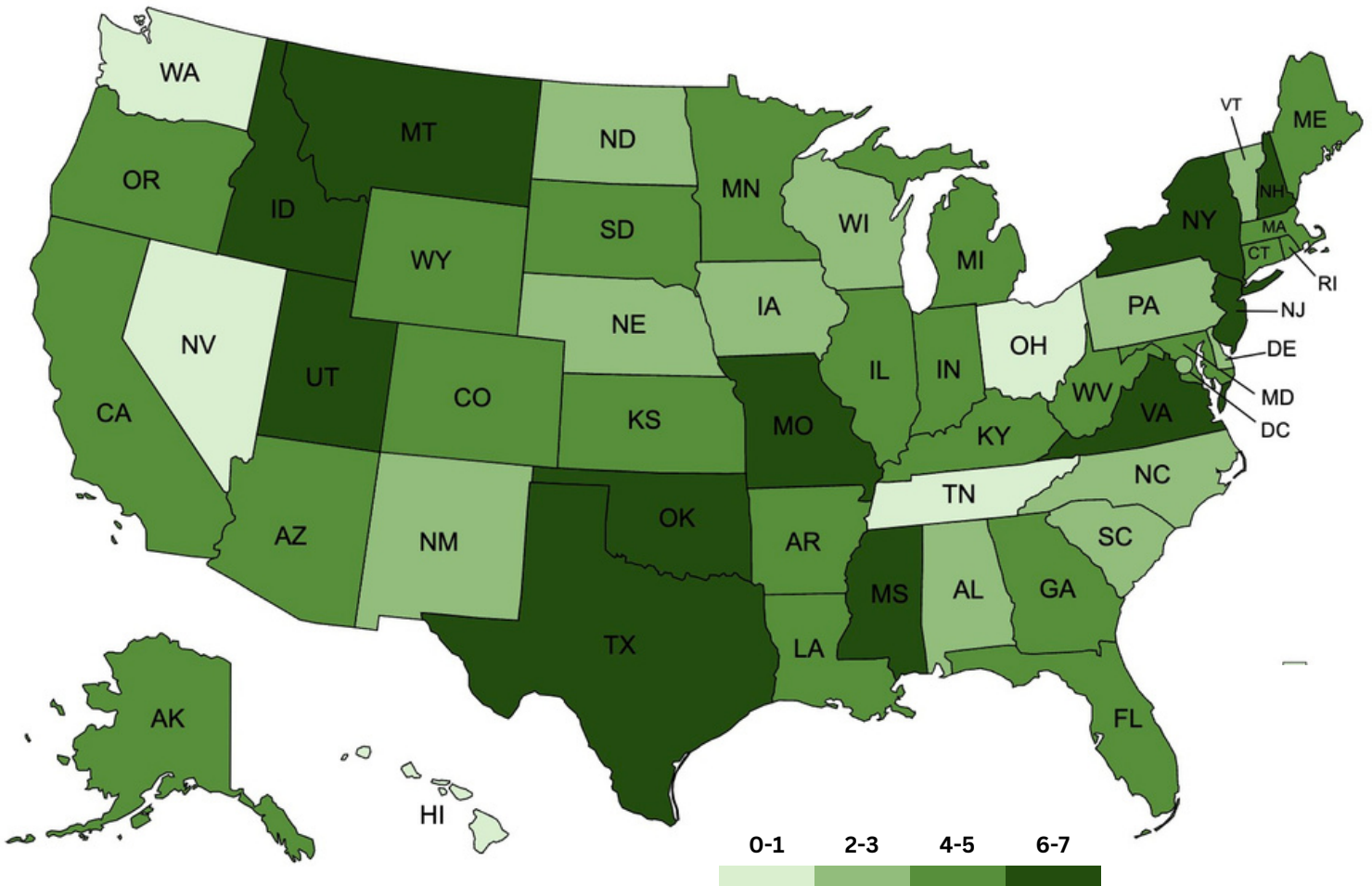


FIGURE 1: MAP OF US COLOR CODED BY STATE SCORE

State Results

States received one point for each “yes” answer to the ten questions enumerated above and zero points for each “no” answer. Therefore, a higher score represents a less burdensome environment. These scores are not weighted, and this report is not meant to be a legislative roadmap. Rather, our goal was to identify whether certain categories of regulations could affect edupreneurs operating unconventional learning environments.

	1	2	3	4	5	6	7	8	9	10	Score
Alabama	✗	✗	✓	✗	✗	✓	✗	✗	✗	✗	2
Alaska	✗	✓	✓	✗	✗	✓	✓	✗	✓	✗	5
Arizona	✓	✓	✓	✗	✗	✓	✗	✓	✗	✗	5
Arkansas	✗	✓	✓	✗	✗	✓	✗	✗	✓	✗	4
California	✓	✗	✓	✓	✗	✓	✗	✗	✗	✗	4
Colorado	✗	✓	✓	✓	✓	✓	✗	✗	✗	✗	5

	1	2	3	4	5	6	7	8	9	10	Score
Connecticut	✓	✗	✓	✓	✓	✓	✗	✗	✗	✗	5
DC	✓	✗	✓	✗	✗	✗	✗	✗	✗	✗	2
Delaware	✗	✗	✓	✗	✗	✓	✗	✗	✗	✗	2
Florida	✓	✗	✓	✓	✗	✓	✗	✗	✗	✗	4
Georgia	✓	✗	✓	✗	✗	✗	✗	✗	✓	✓	4
Hawaii	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗	1
Idaho	✓	✓	✓	✓	✓	✓	✓	✗	✗	✗	7
Illinois	✓	✓	✗	✓	✓	✓	✗	✗	✗	✗	5
Indiana	✓	✓	✗	✓	✓	✓	✗	✗	✗	✗	5
Iowa	✓	✗	✗	✓	✓	✗	✗	✗	✗	✗	3
Kansas	✓	✗	✓	✓	✗	✓	✗	✗	✗	✗	4
Kentucky	✓	✗	✓	✓	✓	✓	✗	✗	✗	✗	5
Louisiana	✓	✗	✓	✓	✓	✓	✗	✗	✗	✗	5
Maine	✗	✗	✓	✓	✓	✓	✗	✗	✗	✗	4
Maryland	✗	✗	✗	✓	✓	✓	✗	✗	✓	✗	4
Massachusetts	✓	✗	✓	✓	✗	✗	✗	✗	✓	✗	4
Michigan	✓	✗	✗	✓	✓	✗	✓	✗	✓	✗	5
Minnesota	✓	✗	✗	✓	✓	✗	✗	✗	✓	✗	4
Mississippi	✓	✓	✓	✓	✓	✓	✗	✗	✗	✗	6

	1	2	3	4	5	6	7	8	9	10	Score
Missouri	✓	✓	✓	✗	✗	✓	✗	✗	✗	✗	4
Montana	✓	✓	✓	✗	✗	✓	✓	✗	✓	✗	6
Nebraska	✓	✗	✗	✓	✓	✗	✗	✗	✗	✗	3
Nevada	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗	1
New Hampshire	✓	✗	✓	✓	✓	✓	✗	✗	✓	✗	6
New Jersey	✓	✗	✓	✓	✓	✓	✗	✓	✗	✗	6
New Mexico	✓	✗	✓	✗	✗	✗	✗	✗	✗	✗	2
New York	✓	✗	✓	✓	✓	✓	✗	✗	✓	✗	6
North Carolina	✓	✗	✓	✗	✗	✗	✓	✗	✗	✗	3
North Dakota	✓	✗	✗	✗	✗	✗	✓	✗	✓	✗	3
Ohio	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	1
Oklahoma	✓	✓	✓	✓	✓	✓	✗	✓	✗	✗	7
Oregon	✓	✗	✓	✓	✓	✓	✗	✗	✗	✗	5
Pennsylvania	✓	✗	✗	✗	✗	✗	✗	✓	✗	✗	2
Rhode Island	✓	✗	✓	✓	✓	✓	✗	✗	✗	✗	5
South Carolina	✓	✗	✓	✗	✗	✗	✗	✗	✓	✗	3
South Dakota	✓	✓	✗	✓	✓	✓	✗	✗	✗	✗	5
Tennessee	✗	✗	✗	✗	✗	✗	✗	✗	✓	✗	1
Texas	✓	✓	✓	✓	✓	✓	✗	✗	✗	✓	7

	1	2	3	4	5	6	7	8	9	10	Score
Utah	✓	✓	✓	✓	✓	✓	✗	✗	✗	✗	6
Vermont	✓	✗	✗	✗	✗	✓	✗	✗	✗	✗	2
Virginia	✓	✓	✓	✓	✓	✗	✗	✓	✗	✗	6
Washington	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	0
West Virginia	✓	✗	✓	✓	✓	✗	✗	✗	✗	✗	4
Wisconsin	✓	✗	✓	✗	✗	✓	✗	✗	✗	✗	3
Wyoming	✓	✗	✗	✓	✓	✓	✗	✗	✗	✗	4

Some states score highly but none were perfect

Due to the complexity of laws and regulations and the many different types of unconventional learning environments that exist or could exist, it is difficult to make 1-to-1 comparisons.⁵ According to our index, Idaho, Oklahoma, and Texas are the most welcoming to our imagined educational setting due to their relatively permissive homeschool and nonpublic school laws. However, even in these states, child care regulations and/or occupancy codes still create issues for edupreneurs.

The broad application of child care laws and regulations

We found that in all states, child care laws cast a wide net capturing

virtually any setting with young children present outside a public or an approved or accredited private school system. The application of child care laws and regulations creates a high burden for virtually all edupreneurs. Some states have exemptions that may apply to specific types of unconventional learning environments. We looked at two that could apply to our imagined educational setting: a drop in/open door exemption and an exemption for the education of school-age children. While the latter would exempt our imagined educational setting as we limited it to school-age children, the former would not necessarily do so. It was also surprising to us that even learning environments operating as homeschool support programs could be subject to child care laws in most states. Notably, Oklahoma

is one of the few states that exempts programs in which school-age children three years of age and older are participating in homeschooling.⁶

The burden of occupancy codes

Even where education settings might not have to register with the state, they generally need to obtain a local business license. This usually requires submitting to fire inspections, health inspections, and ensuring zoning compliance. Only Georgia and Texas provide a clear and reasonable exemption from occupancy codes for learning pods, exempting them from local statutes, rules, or codes that would not apply to the group, building, or facility if it was not associated with or used by a learning pod.⁷ West Virginia is the other state that exempts learning pods and microschools from some regulations, although not as clearly as the other two.⁸ While these exemptions were weighted equally in this index, the exemption from occupancy codes provides a disproportionate benefit to education entrepreneurs. We plan to consider weighting these criteria in future indices.

Examples from the real world

yes. every kid. foundation. has been working with edupreneurs across the United States to assist them in navigating regulatory landscapes in

their respective states. We have found that these regulatory obstacles can result in serious disruptions to the edupreneurs and the families they serve when government regulators get involved.

In South Florida, one edupreneur rented a historical building that matched the vision and vibe he envisioned for his microschool. He was transparent about the intended use with the landlord who was supportive. After leasing the space and moving in, an inspector came as part of the business licensing process and surprised the edupreneur with the news that the space did not meet the required fire code for his proposed educational use. The edupreneur had to suspend operations and find a new space immediately, disrupting the families and his own vision. In Hawaii, Ariel McGuire,⁹ founded a learning pod for a few families in a rural part of the Big Island. Upon becoming aware of her learning pod, regulators threatened Ariel with \$50,000 in fines for operating an unlicensed day care. Ariel was forced to cease operations and seek advice as to how she could accomplish her goal of educating her kids and supporting other families using other means. In West Virginia, a microschool operator was threatened with being shut down by the health department because her fencing did not meet

the requirements of the child care code.

While in most cases government regulators apply the rules as they understand them, sometimes they can be hostile to the purpose and intent of the founders of unconventional learning environments. Whether because of indifference or opposition, encounters with regulators can be frightening and seriously interfere with the education of the children in innovative learning environments. Understanding how the complex web of regulations applies can help edupreneurs find the solid ground that is available to them. This report is designed to identify some of the ways government regulation interferes with the freedom of families and edupreneurs to work together to provide educational opportunities for children.

Where to go from here

We hope that this report will be the first of many as we continue to identify barriers that inhibit families and edupreneurs from helping each other in a free market of educational opportunity. As mentioned above, this report is not designed to be an exhaustive examination, and, hopefully, like the Ease of Doing Business Index, it will be a report that is updated and refined from year to year. In the future, we plan to explore appropriately weighting the questions and further refining our understanding of how these policy barriers affect edupreneurs and families. Areas that the report may encompass in the future include tutoring service exemptions, the effect of zoning laws, and accreditation requirements.



About the Research Team

Michael Q. McShane is Director of National Research at EdChoice. Michael P. Donnelly is a vice president at yes. every kid. foundation. Lynn Swanson is legal policy counsel at yes. every kid. foundation.

Footnotes

1. See Vela Education Fund Open for Business Report for growth of entrepreneurs: <https://www.openforbusiness.velaedfund.org>; see Todd Rose, Purpose of Education Index, for support that Americans want “something different” from education, <https://static1.squarespace.com/static/59153bc0e6f2e109b2a85cbc/t/650c26577a79de2ce29b61c8/1695295123767/>.
2. “Schooling in America Survey Dashboard,” EdChoice, <https://www.edchoice.org/what-we-do/research/schooling-in-america-polling-dashboard-2/>.
3. “Doing Business 2019,” World Bank, 16th edition, https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf.
4. We selected unrelated students to differentiate from homeschooling. We selected “non-religious” environment because some states recognize religious educational settings separately, and we felt that adding this dimension would unnecessarily complicate the analysis. We did not impose the requirement that the setting be a full replacement for school attendance but rather sought to create a business case that was flexible enough to allow for full-time education that satisfies the compulsory attendance laws or supplementary education that does not.
5. Notably, this report addresses laws and regulations at the state level. Edupreneurs need to deal with layers of regulations much like an onion. After peeling away the thick layers of state regulations, edupreneurs must determine what county and local regulations may apply. Commonly these take the form of fire codes, health regulations and zoning requirements among others. The application of local regulations increases the complexity of challenges faced by edupreneurs and the difficulty in making one-to-one comparisons on the ease of operating an unconventional educational setting in any particular location.
6. 10 OK Stat § 403 (2022)
7. GA Code § 20-2-690(f) (2022) and Tex. Educ. Code §§ 27.001 and 27.002 (2021).
8. WV ST § 18-8-1 (2022).
9. Kerry McDonald, “A Rural, Waldorf Microschool Gets Shut Down By State Regulators,” FEE, June 21, 2023, <https://fee.org/articles/a-rural-waldorf-microschool-gets-shut-down-by-state-regulators/>.

We welcome our readers to contact us with suggestions for other areas we can inquire and research. Send your comments to FreedomIndex@yeseverykid.com