

# The Conundrum of Homeschooling

Home instruction, commonly known as homeschooling, occurs when children are instructed at home by their parent or other private instructor arranged by the parent. Home instruction is not a new concept; it has existed since the 1700s and is legal in every state. It is a topic in the news today due in part to reported cases of abuse of homeschooled students by their parents.

These reports raise debate about homeschooling in general, and the lack of standardized homeschooling laws. However, the debate is more nuanced; it involves a balancing of a parent's right to homeschool children free from government interference with a state's right (and obligation) to track abused and neglected children and ensure that all children receive a proper education.

According to the U.S. Department of Education, in 2012, approximately 3.3% of the school age population was homeschooled. It is believed that in recent years, this number has remained steady. Of parents surveyed, 91% indicated that the school environment (drugs, safety, negative peer pressure) was an important factor in the decision to homeschool, while another 77% of parents expressed a "desire to provide moral instruction," and 64% wished to provide religious instruction.<sup>1</sup>

## Home Instruction in New York State

Parents who homeschool their children do not have a right to educate them free from all government regulation. Indeed, New York State regulations in this area are among the more rigorous in the nation. New York State has a legitimate and compelling interest in assuring that its resident children receive an education to prepare them to be productive members of society, and "to see that they are not left in ignorance."<sup>2</sup>

The compulsory education law and the Commissioner's Regulations were enacted to promote that interest.<sup>3</sup> The State's compulsory education law derives from legislation dating back to 1894.<sup>4</sup>

The New York State Education Law provides that if instruction is given to a minor other than at the public school, it must be "substantially equivalent to the instruction given to minors of like age and attainments at the public school," and it must be provided by a "competent teacher."<sup>5</sup> An individualized home instruction plan (IHIP) that complies with the Regulations of the Commissioner of Education (Commissioner's Regulations) is deemed to be substantially equivalent.<sup>6</sup>

In New York, parents do not have to register their child in public school if they plan to provide homeschooling, and local school districts cannot establish their own policies and procedures which add to the parent's obligations, differ or contradict the Commissioner's Regulations.<sup>7</sup> There are no specific qualifications required for the individual providing the home instruction.<sup>8</sup> Parents are not required to meet with school officials prior to or during the period of home instruction.<sup>9</sup> Further, the Regulations make no mention of child safety or welfare.

## School District Review of IHIPs/ Assessments

When parents opt to homeschool a child of compulsory school

age (between ages 6 and 16 years of age), they must provide written annual notice of the intent to educate their child at home to the Superintendent of the school district of residence by July 1 of each school year.<sup>10</sup> Within 10 business days of receipt of the notice of intention to instruct at home, the school district must send certain documents to the parents, including a copy of §100.10 of the Commissioner's Regulations and a form on which parents may submit an IHIP.<sup>11</sup> In turn, the parents must submit a completed IHIP for each child of compulsory school age who is to be taught at home.<sup>12</sup> The IHIP contains certain required information related to the child's instruction and attendance requirements.

Parents must submit quarterly reports, which contain certain required information related to the material covered in the IHIP, the child's progress and grade in each subject or a written narrative evaluating the child's progress.<sup>13</sup> Further, at the time of filing the fourth quarterly report each year, parents must file an annual assessment which includes either: (1) the results of a commercially published norm referenced achievement test that meets the requirements of §100.10(h)(1); or (2) an alternative form of evaluation that meets the requirements of §100.10(h)(2).

For children in grades one thru eight, parents may submit a "written narrative" evaluation in lieu of submitting a commercially published norm-referenced achievement test. However, for children in grades four thru eight, parents may only choose this alternate option every other school year. The written narrative is prepared by either: a New York State-certified teacher; a home instruction peer group review panel; or "other person, who has interviewed the child and reviewed a portfolio of the child's work."

Of note, the "certified teacher, peer review panel or other person shall be chosen by the parent with the consent of the Superintendent."<sup>14</sup> Therefore, the school district has discretion to determine whether the person or panel chosen by the parent is appropriate. The mutually selected person or panel must certify either that the child has made adequate academic progress or that the child has failed to make adequate progress.

In the event that a child has failed to make adequate progress (if a child does not receive an adequate score on an annual assessment),<sup>15</sup> or where the child's annual assessment fails to meet the requirements of §100.10(h), the homeschooling program must be placed on probation for a period of two school years.<sup>16</sup> The parent then must submit a plan of remediation to be reviewed by the school district. If the objectives of the remediation plan are not met, the Superintendent will issue a notice of noncompliance, subject to board of education review, and require that the parents enroll the child in a public or other school that meets the requirements of the Education Law.<sup>17</sup>

If a dispute arises between the parents and Superintendent, including



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disputes over the administration of a commercially published norm-referenced achievement test or the use of alternative evaluation methods, the parents may appeal the Superintendent's decision to the board of education. If the parents disagree with the determination of the board of education, they may appeal to the Commissioner of Education.<sup>18</sup>

## Home Visits

A school district may require home visits, upon three days' written notice to the parents, *only* if the home instruction program is on probation.<sup>19</sup> Under any other circumstances, a school official may request a home visit, but parents are *not* required to consent to the request.<sup>20</sup>

## Failure to Submit Assessments/ Quarterly Reports

According to the State Education Department's (SED) Q&A on its website for Home Instruction, where parents do not cooperate in submission of evaluations/assessments: If phone calls or letters do not elicit the information, the district should notify parents by registered mail that the evaluation is due and set a reasonable date for its

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submission. If the information is not forthcoming, the district is without evidence that instruction has been taking place. In that case, the district would be *obligated* to report the case to the central registry as a *case of suspected educational neglect*.<sup>21</sup>

The Commissioner of Education has explained, "where district officials are unable to elicit information from parents regarding home instruction and have insufficient evidence to conclude that appropriate instruction has been taking place, the district is obligated to report the case to the central registry as a case of suspected educational neglect pursuant to NY Social Services Law §413."<sup>22</sup>

## More Oversight and Minimum Standards?

The unanswered question is the extent to which these recent tragedies will change the way states monitor the practice of homeschooling. While many school districts engage in a limited amount of oversight, New York State requires that parents have at least written contact with the school district (in person contact is not required). Other states have gone so far as to prevent convicted child abusers and sex offenders from homeschooling children.

However, there is still little direct oversight or contact with a homeschooled student. States do not bar

individuals with a history of instability, substance abuse or mental illness from homeschooling their children. Background checks for homeschooling parents are not required.

Perhaps states should consider establishing minimal requirements for the individual conducting the homeschooling. Some degree of contact between the homeschooled student and the local school district officials, at least on an annual basis, may be a solution, as would a requirement of home visits. While such provisions will not completely eradicate child abuse, they may at least uncover indications of at-risk, abused or neglected homeschooled children.

Finally, the U.S. Department of Education could choose to issue regulations which set a baseline for states to follow establishing minimum standards of quality and oversight for homeschooling programs, taking into account the relative rights of both the homeschooling parents and the homeschooled children, and the state's responsibilities.

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1. See Parent and Family Involvement in Education Survey of the National Household Education Surveys Program of 2012 at <https://www2.ed.gov/about/offices/list/oii/nonpublic/statistics.html>. Note, the U.S. Department of Education is currently collecting data for a new survey to be published in 2019. <https://www.federalregister.gov/documents/2018/05/02/2018-09328/agency-information-collection-activities-comment-request-national-household-education-survey-2019>.

2. See *Blackwelder v. Safnauer*, 689 F. Supp. 106, 123 (N.D.N.Y.), appeal dismissed 866 F.2d 548 (2d Cir. 1989); *In re Falk*, 110 Misc.2d 104, 107 (Fam. Ct., Lewis Co. 1981).

3. Educ. Law § 3205(1); 8 NYCRR 100.10. See also *Appeal of Brown*, 34 Ed. Dept., Rep., Decision No. 13,225 (dismissing petitioner's claim that 8 NYCRR §100.10 violates the Religious Freedom Restoration Act (RFRA) and denying claim that the RFRA guarantees her the right to educate her child at home without any supervision by the local school district).

4. See 1947 N.Y. Laws ch. 820; 1894 N.Y. Laws ch. 671 (imposing substantial equivalent instruction requirement).

5. Educ. Law § 3204(2).

6. See New York State Education Department (SED) Home Instruction Questions and Answers (SED Q&A), <http://www.p12.nysed.gov/sss/homeinstruction/homeschoolingqanda.html>, last updated on April 3, 2018.

7. See *Id.*

8. See SED Q&A.

9. See *Id.*

10. 8 NYCRR § 100.10(b)(a).

11. 8 NYCRR § 100.10(c)(1).

12. 8 NYCRR § 100.10(c)(2).

13. 8 NYCRR §100.10(g).

14. 8 NYCRR § 100.10(h)(2).

15. Adequate progress is defined as a composite score above the 33rd percentile on national norms, or one academic year of growth as compared to a test administered during or subsequent to the prior school year.

16. 8 NYCRR § 100.10(h)(2)(iii).

17. 8 NYCRR § 100.10(i)(2); 8 NYCRR § 100.10(c)(7).

18. 8 NYCRR § 100.10(h)(3).

19. 8 NYCRR § 100.10(i)(3).

20. In *Matter of Kilroy*, 121 Misc.2d 98 (Fam. Ct., Cayuga Co., 1983), a case decided prior to implementation of Part 100.10, the court found that the requirement of prearranged visits by school officials prior to approval of a homeschooling program did not violate the parent's constitutional rights.

21. See SED Q&A (emphasis added).

22. *Appeal of the Board of Education of the Lynbrook Union Free Sch. Dist.*, 41 Ed. Law Rep. 174, Decision No. 14654 (2001); *In re William AA*, 24 A.D.3d 1125 (3d Dept. 2005) (finding of educational neglect where the parent, *inter alia*, failed to maintain appropriate records, file required reports, perform a required annual assessment or comply with other mandatory requirements).