

# Homeschooling Laws (or lack thereof) in New Jersey—Are Children Slipping through the Cracks?

## I. INTRODUCTION

There is no doubt that homeschooling has many benefits, including providing one-on-one instruction, individualized pacing, and the chance for the student to earn college credits before college begins. However, not every homeschooled child has the luxury of learning in an environment that fosters academics. In fact, some homeschooled students may not be getting an education at all.

The homeschooling requirements in New Jersey, specifically, are among the most relaxed in the United States. New Jersey has no statute that specifically addresses homeschooling and there is only one statute that even hints at a requirement—stating that a child have an “equivalent” education.<sup>1</sup> But homeschooled students in New Jersey are not required to take standardized tests. As a result, the statutory language has no practical application to ensure that children are in fact receiving an adequate education. With the lack of any explicit statutory language addressing homeschooling, the absence of standardized testing of homeschoolers in New Jersey, and the non-uniform nature of learning environments that this creates, the conclusion is unmistakable—there has been a home-schooling free-fall in New Jersey.

## II. THE LAW

New Jersey Statutes Annotated §18A: 38-25, states as follows:

Every parent, guardian or other person having custody and control of a child between the ages of 6 and 16 years shall cause such child regularly to attend the public schools of the district or a day school in which there is given instruction equivalent to that provided in the

---

1. N.J. Stat. Ann. §18A: 38-25 (West 2012).

public schools for children of similar grades and attainments *or to receive equivalent instruction elsewhere than at school.*<sup>2</sup>

This relaxed language, without any quantifiable criteria, does not give any real guidance to parents, students, or regulators. Since not all formal schools are created equal, which New Jersey school should a homeschooled student look to as a model for this equivalent instruction? Does equivalent instruction mean simply to go over the same or similar material that the student would cover in a public school? How is the state ensuring the “equivalent” requirement is being met if there are no requirements in terms of subject matter? Whereas public school students have strict educational requirements to meet in order to graduate, under this statute, children who are homeschooled are lost. There is no definition of “equivalent,” nor is there a method to check a child’s status as to this instruction. As a result, it is impossible to ensure homeschooled children are truly receiving the education they deserve.

### III. REQUIREMENTS IN NEW JERSEY: HOMESCHOOL V. PUBLIC SCHOOL

The discrepancy in academic requirements of a homeschooled student as compared to one who attends public school is astounding. To graduate high school, public school students are required to receive and pass the following: 20 credits of language arts, 15 credits of math, 15 credits of science, 15 credits of social studies, and 2.5 credits in economics.<sup>3</sup> Public school students are tested and graded to ensure that they understand the subject matter. For homeschooled students, however, there are no required subjects and the statute simply “speaks in terms of instruction.”<sup>4</sup>

Coupled with this lack of quantifiable requirements for homeschooled students in New Jersey, the absence of any formal standards for those providing this “equivalent instruction” only exacerbates the problem. A public school teacher must complete high school, earn a bachelor’s degree from an accredited four-year college, complete a student teach-

---

2. N.J. Stat. Ann. §18A: 38-25 (West 2012)(emphasis added).

3. N.J. Admin. Code 6A:8-5.1 (2012).

4. Homeschool Legal Defense Association (HSLDA), Homeschooling in the United States: A legal Analysis, <http://www.hsllda.org/laws/default.asp?State=NJ> (accessed August 9, 2012).

ing placement, meet New Jersey licensing requirements, and pass the New Jersey licensing exam.<sup>5</sup> However, a parent who wants to home-school a child is not required to obtain a license or any degree at all.<sup>6</sup>

In the leading case, *State v. Massa*,<sup>7</sup> the court reasoned, “perhaps the New Jersey legislature intended the word equivalent to mean taught by a certified teacher elsewhere than at school. However . . . there are teachers today teaching in various schools in New Jersey who are not certified.”<sup>8</sup> This reasoning no longer holds true—clearly, New Jersey requires teachers to be not only educated, but also certified. Yet, this requirement falls short when it comes to homeschooling.

Lastly, it is impossible to even check the progress of the homeschooled students, as they are not required to take any standardized tests.<sup>9</sup> New Jersey does, however, administer tests to public school students to ensure they are receiving adequate instruction.<sup>10</sup> If homeschooled children are not required to take any standardized tests, New Jersey cannot fulfill its duty to ensure that all children are being educated. How can the state and a parent of a homeschooled child be assured that the child’s education is equivalent to the education provided in formalized schooling?

It is clear the law pertaining to homeschooling in New Jersey is outdated. The lack of requirements for homeschooled students makes it nearly impossible for school districts to ensure homeschooled children are being sufficiently educated.

#### IV. PROVING EQUIVALENCY- WHAT IS AN “EQUIVALENT” EDUCATION?

As long as a child is receiving an “equivalent” education, the compulsory education required by New Jersey law is met. This relaxed require-

---

5. NJ Admin. Code 6A:9-1.2(2012) (*see also* [http://educationportal.com/zzzzhow\\_to\\_be\\_a\\_teacher\\_in\\_nj.html](http://educationportal.com/zzzzhow_to_be_a_teacher_in_nj.html)).

6. Homeschool Legal Defense Association (HSLDA), Homeschooling in the United States: A legal Analysis, <http://www.hslda.org/laws/default.asp?State=NJ> (accessed August 9, 2012).

7. *St. v. Massa*, 95 N.J. Super. 382 (Cty. Ct. 1967).

8. *Id.* at 387 (The court in *Massa* was dealing with a twelve-year-old child, and stated that the parent was suited to teach the basic subjects of grades one through eight. What happens when the child needs to be taught a tenthgrade curriculum?)

9. Homeschool Legal Defense Association (HSLDA), Homeschooling in the United States: A legal Analysis, <http://www.hslda.org/laws/default.asp?State=NJ> (accessed August 9, 2012).

10. Educational Testing Services, Purpose of Standardized Tests, [http://www.ets.org/understanding\\_testing/purposeof/](http://www.ets.org/understanding_testing/purposeof/) (accessed Aug. 9, 2012).

ment poses many problems for superintendents and school districts when concerns arise pertaining to a homeschooled student's education.

First, the superintendent or school district may argue that a child is not receiving an equivalent education only when there is "credible evidence" of that.<sup>11</sup> The mere fact that a child has withdrawn to be homeschooled is not in itself credible evidence of a legal violation.<sup>12</sup>

In order to contest the sufficiency of a homeschooled child's education, the school district must first allege a violation of the statute.<sup>13</sup> This makes it incumbent upon the parent or guardian to introduce evidence they are relying on one of the two statutory exceptions-either private school or equivalent instruction elsewhere than at school.<sup>14</sup> The New Jersey Department of Education does not define what constitutes sufficient evidence of an equivalent education, making it hard for the school district to ensure that a child is being homeschooled.<sup>15</sup>

Dr. Kathleen Taylor, Superintendent of the Ocean City School District, in New Jersey, has experienced frustration with this "sufficient evidence" requirement first hand. Dr. Taylor suggests that credible evidence could be that the individual giving instruction has a college degree or 60 college credits, as required to become a substitute teacher in New Jersey.<sup>16</sup> However, she states,

"The problem with this expectation is how you find out if the parent or legal guardian meets this requirement. A district could ask the parent to complete a form to check their education level, but there are no requirements for them to do so or a way to ensure it is accurate. Actually, I wish I could ask them for a transcript."<sup>17</sup>

Dr. Taylor has also suggested that parents should have to submit a curriculum plan outlining the name of each course they teach, course content and skills, as well as books used and methods and standards for

---

11. New Jersey Department of Education, Frequently Asked Questions about Homeschooling, [http://www.state.nj.us/education/genfo/faq/faq\\_homeschool.htm](http://www.state.nj.us/education/genfo/faq/faq_homeschool.htm) (accessed August 9, 2012).

12. *Id.*

13. *St. v. Vaughn*, 44 N.J. 142, 147 (N.J. 1965).

14. *Id.*

15. Interview with Dr. Kathleen Taylor, Superintendent in Ocean City, N.J. (July 26, 2012).

16. *Id.*

17. *Id.*

assessment of the student's work and progress.<sup>18</sup> While this requirement would be a step in the right direction, it would still leave unanswered questions for superintendents.

As Dr. Taylor points out, the problem is that while a superintendent or a school district could request a plan, the parents are not required to submit one under New Jersey law. Furthermore, a plan does not show the child is actually learning.

Suppose a parent submits a curriculum plan to the school district as evidence of homeschooling. This in itself is simply not enough. If a parent can submit any curriculum, but no standardized tests are imposed on the homeschooled student, the school district has no way to verify that the curriculum is being covered effectively.

The New Jersey Department of Education has issued statements encouraging parents and legal guardians of school-aged children to notify the superintendent of their intent to educate the child elsewhere than at school "to avoid questions with respect to compliance with the compulsory education laws."<sup>19</sup> Often, parents simply send in a letter and thus, meet the requirement. While it is a nice process in theory, in reality this letter does not ensure anything other than the fact that the parent can write a letter.

The New Jersey Department of Education has no set requirements when it comes to proving equivalency with credible evidence. While the school district may ask for evidence to ensure a child is being educated, the absence of requirements leaves no mechanism for enforcement. The school district cannot mandate the parent or legal guardian to register the child or make an intent to homeschool known.<sup>20</sup> Because the parents are not required to register with a local school district, if a parent does not come forward, the school district does not know a parent is homeschooling a child and the child could be considered truant. With this relaxed and inefficient requirement, the amount of children unaccounted for or falsely considered truant is unknown, and numerous children who deserve an education could be falling through the cracks.

---

18. *Id.*

19. New Jersey Department of Education, Frequently Asked Questions About Homeschooling, [http://www.state.nj.us/education/genfo/faq/faq\\_homeschool.htm](http://www.state.nj.us/education/genfo/faq/faq_homeschool.htm) (accessed August 9, 2012).

20. *Id.*

## V. A COMPARISON TO OTHER STATES

Pennsylvania takes a more serious approach to the education of students taught at home by providing some of the strictest guidelines in the country. Pennsylvania has its own homeschooling statute, which lays out the rules and requirements parents must adhere to in order to homeschool their children.<sup>21</sup> For example, the statute requires the following:

[A] Parent/supervisor must file a notarized affidavit with the local superintendent prior to the commencement of the home education program and annually by August 1 thereafter. The affidavit must include:

- a. The name of the parent/supervisor, name and age of child, address and telephone number
- b. Assurance the subjects are taught in English
- c. Outline of proposed education objectives by subject area
- d. Evidence of immunizations
- e. Evidence of health and medical services required by law
- f. That home education will comply with Section 13-1327.1; and
- g. A certification that the supervisor, all adults living within the home, and persons having legal custody of the children have not been convicted of certain criminal offenses within the past five years.<sup>22</sup>

It is clear from this section of the statute how well Pennsylvania monitors the education of its residents.

Unlike in New Jersey, parents or supervisors who homeschool in Pennsylvania must have at least a high school diploma or its equivalent.<sup>23</sup> In addition, homeschooled students must be tested with nationally-normed standardized tests which cannot be administered by the parent or

---

21. 24 Pa. Consol. Stat. Ann. § 13-1327.1 (West 2012).

22. *Id.*

23. 24 Pa. Consol. Stat. Ann. § 13-1327.1(a)(West 2012).

guardian.<sup>24</sup> To keep track of the child's progress, the parent or guardian must annually assemble documentation of the student's work.<sup>25</sup> This documentation includes a portfolio with a "log, made contemporaneously with the instruction, which designates by title the reading materials used, samples of any writing, worksheets, workbooks or creative materials used or developed by the student."<sup>26</sup> Furthermore, the parent or supervisor must provide a written evaluation of the student's progress by a licensed psychologist or teacher certified by the state with at least two years of teaching experience.<sup>27</sup>

Another state with similar laws to Pennsylvania's is Maryland. Under Maryland's homeschool statute, parents have three options in homeschooling their children, and homeschooling is well monitored by the state.<sup>28</sup> Like Pennsylvania, Maryland requires parents to notify the school district of home instruction.<sup>29</sup> In addition, each year parents must "verify" whether home instruction will continue.<sup>30</sup> Maryland also ensures a child's education by requiring parents to maintain a portfolio including relevant materials, such as worksheets, tests, and writings, that is reviewed by the superintendent.<sup>31</sup>

Both Maryland and Pennsylvania have laws that ensure children are accounted for and are up-to-date with their peers in terms of education. While the requirements are strict, they do not interfere so much that they pose a threat to the constitutionality of the parent's decisions.

## VI. CONSTITUTIONAL ARGUMENTS

The court in *Massa* established that parents have a Constitutional right to choose the type and character of education they feel is best suited for their children.<sup>32</sup> Some parents who homeschool their children may argue that enacting stricter requirements will impede on this constitutional right; however, this is not the case.

---

24. 24 Pa. Consol. Stat. Ann. § 13-1327.1(e)(1)(West 2012).

25. *Id.*

26. *Id.*

27. 24 Pa. Consol. Stat. Ann. § 13-1327.1(e)(2)(West 2012).

28. Md. Ed. Code Ann. § 7-301(a)(West 2012).

29. Code Md. Reg. 13A.10.01.01 (2012).

30. *Id.*

31. *Id.*

32. *West Morris Bd. of Educ. v. Sills*, 110 N.J. Super. 234, 244 (N.J. Super. Ct. Ch. Div. 1970).

Enacting stricter requirements will not take away from the type of education that a child is being provided; it will only ensure that the child is indeed receiving this education. Simply put, the parent's right to choose what type of education a child receives must not overlook the child's right to an appropriate education. Relaxed requirements and loopholes in the law can deny access to this right if children are not receiving that to which they are entitled. In other states, such as Pennsylvania and Maryland, enacting stricter laws has not impeded on any constitutional rights of the parents or legal guardians homeschooling their children.

## VII. IMPLICATIONS OF A RELAXED LAW

An education is undoubtedly one of the most important tools that can be provided to a child. However, with relaxed requirements, it is impossible to tell if children who are not monitored are actually receiving the knowledge they need to succeed. The problem with New Jersey's homeschooling laws is not how a child is educated (whether through public school, private school, homeschool, etc.) but the quality of the education provided. Enacting stricter requirements is the best way to ensure children are not being denied this fundamental right.

Not only does an adequate education provide an opening to better income, job options, or chances of a college degree, but society respects and desires people who are well educated and knowledgeable. While a homeschooled student can get a "diploma" from his or her parents or legal guardian, the value is not in that piece of paper. The value is in what that paper stands for—education. The child will not benefit without engaging in actual learning. It is becoming increasingly harder to find jobs requiring manual labor, making a true and thorough education that much more important. Enacting stricter requirements would help ensure that homeschooled children are educated so they can succeed in whatever path they choose to take.

Income, employment, and college are not the only areas that can be impacted by an inadequate education. Both the child and society benefit from the subjects that are taught in school. One of the most important subjects for teenagers in today's culture is health education, where the significance of hygiene, drug and alcohol abuse, and safe sex are taught. Through health education, teenagers learn the implications of dangerous activities and behaviors. This can lead to awareness and an overall



decrease in teenage pregnancies, sexually transmitted diseases, underage drinking, and drug abuse. Ensuring that these children are being taught about these topics could help eliminate such problems. If parents want to present the type of sex education they feel is best for their child, they have the freedom to do that. However, implementing requirements to show the child is actually being taught these invaluable lessons can greatly benefit society and the child.

Another implication of relaxed homeschooling requirements is the threat they pose to the reasons the child is being homeschooled and whether or not those reasons are valid. Imagine a situation where a parent is not present in the child's life, dropped out of high school, and does not think education is important. Instead, such a parent may feel it is best to have the child help around the house or get a job, and "homeschool" a child for those reasons. Without any regulatory requirements, this parent could say the child is being homeschooled when in fact the child is not receiving an education at all.

## VIII. CONCLUSION

The reason society has laws is to hold people accountable. Without strict requirements it is nearly impossible for a state to enforce compulsory education laws for those who homeschool their children. Stricter homeschooling requirements in New Jersey would guarantee that those who are homeschooling their children are truly educating their children. Furthermore, it would safeguard the children's right to an appropriate education and prevent some children from falling through the cracks.

Elizabeth Richardson

Copyright of Journal of Law & Education is the property of Journal of Law & Education and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.