

Colorado's Homeschool Law Turns Twenty:



The Battle Should Never Be Forgotten



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Executive Summary

Beginning in the late 1970s, as parents became dissatisfied with the public education system, the modern homeschooling movement grew rapidly. The 1983 report, *A Nation at Risk*, confirmed some parents' belief that their children were receiving a mediocre education in public schools. Research by John Holt and Dr. Raymond Moore encouraged many parents' confidence in their ability to homeschool. Conflict between some Colorado public school districts and parents led to the adoption of a 1988 legislative bill that established guidelines for home education. A timeline of important events follows:

1973: Compulsory school attendance law is amended to require students educated at home to be "...under an established system of home study approved by the state board [of education]."

1980: The State Board of Education creates rules for home education programs:

- Parents may purchase state-approved curricula
- Parents without teaching certificates may choose their own curricula if their school district of residence gives its approval
- Parents holding valid teaching certificates may homeschool their children with curricula of their choice

1981: The number of children registered as using state-approved curricula: 51

1981: Two Western Slope families face truancy charges in court for home-educating with unapproved curricula (more than 20 other families follow suit in the next 7 years).

1983: Legislature amends statutory language from "attends" to "enrolled" to exempt students "enrolled" in a private school from compulsory school attendance law.

1985: The Colorado Home Schoolers Advisory Committee begins to meet.

1986: CDE considers stricter regulations of homeschooling. Representative Mike Bird drafts a bill to limit state control over

homeschooling. CDE agrees not to increase regulations, and Representative Bird agrees not to introduce the bill.

1987: Senator Joe Winkler and Representative Bill Owens sponsor homeschool legislation, Senate Bill 138. The bill dies in the House Education Committee.

1987: The State Board of Education passes Emergency Rules, which give homeschoolers freedom to notify the local school district of their intent to homeschool and to choose their own curricula.

1987: *Widefield School District v. Bohl* clarifies that students who are "enrolled" in a private school but educated at home are exempt from compulsory school attendance law, and are under private school law, not homeschool law.

1988: The number of children registered as using state-approved curricula: 630

1988: Senator Al Meiklejohn, Senator Winkler, and Representative Dick Bond sponsor homeschool legislation, Senate Bill 56. Governor Roy Romer allows the bill to become law without his signature. Highlights of the bill include (see Appendix 1 for the current law):

- Parents are exempt from teaching certificate requirements
- Parents must notify local school district of intent to homeschool 14 days prior to establishing the program
- Students must be tested in grades three, five, seven, nine, and eleven
- Parents must maintain records of attendance, test results, and immunization
- Children scoring at or below the 13th percentile on a standardized test must be placed in a private or public school

In the fall of 2008 there were 7,023 registered homeschool students. After 20 years, some organizations still desire to limit homeschool freedoms. The law needs consistent defense against those who would restrict parental rights.

Introduction

The modern homeschooling movement grew rapidly beginning in the late 1970s as parents became increasingly dissatisfied with the public education system. In 1981, U.S. Secretary of Education T.H. Bell created a commission to study and report on the quality of public education. In 1983, *A Nation at Risk: The Imperative for Educational Reform* was published. In a public declaration of a failed system the report stated: "If an unfriendly foreign power had attempted to impose on

America the mediocre educational performance that exists today, we might well have viewed it as an act of war."¹

Homeschooling was common in America before state-sponsored schooling became the dominant means of educating children in the mid-19th to early 20th century.² A relatively small number of people continued to homeschool throughout the 20th century, but the modern homeschooling movement did not blossom until the late 1970s when parents dissatisfied with the public education system were given hope and courage by the ideas of two men in particular.

Much of the initial momentum of modern homeschooling came from the secular, counter-cultural, leftist ideas of John Holt, who coined the term, "unschooling." John Holt taught in private schools for many years before writing his first book in 1964, *How Children Fail*. Holt wrote nine other books, including *Instead of Education: Ways to Help People Do Things Better*, which called for an "underground railroad" to help children escape from compulsory schooling. After *Instead of Education* was published, several people wrote Holt to tell him they educated their

children at home. This led to Holt's work in support of homeschooling. He started the first homeschooling magazine, *Growing Without Schooling*, in August 1977.³

In a 1980 interview, Holt stated, "Learning is *not* the result of teaching, but of the curiosity and activity of the learner. A teacher's intervention in this process should be mostly to provide the learner with access to the various kinds of places, people, experiences, tools, and books that will correspond with that student's interest." Holt did not push a particular method of learning on his readers. "I'm in favor of having people teach their children at home and don't insist that they have my reasons for doing it *or* even follow my methods. As a result, the readers of *Growing Without Schooling*...include a variety of people . . . ranging from leftist counterculturalists to right-wing fundamentalists."⁴

Dr. Raymond Moore is sometimes credited as the "Grandfather of the homeschooling movement" due to his research in the late 1960s and early 1970s that argued against formal schooling for young children. His first book, *Better Late than Early*, published in 1975, presented a body of research that showed "the normal child's brain is not ready for sustained learning programs — until he is 8 to 10 years of age."⁵ In the book, Dr. Moore argued that whenever possible, a child should be allowed to mature at his own rate under the warm, loving care of his parents rather than in a day care or preschool environment. He wrote, "...normally, the mother is still the child's central attachment figure, on whom he relies while he builds self-confidence, and from whom he gradually extends his attachments without being thrust into a sink-or-swim situation."⁶ Dr. Moore developed the "Moore Formula," which calls for study, manual work, and home and community service.⁷ Dr. Moore's

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ideas primarily influenced the Christian home education movement, which grew rapidly during the 1980s.

During the early 1980s, parents began to organize and argue against activities and curricula they believed were inappropriate for their children. However, parents found little success trying to change the system from the inside. Holt and Moore encouraged parents to believe in their ability to educate their children at home, which hundreds of parents in Colorado and across the nation did, often enduring criticism from community and family members.

Parents then, as now, educated their children at home for a wide variety of reasons, including lack of quality academic programs, school safety, increasingly negative behavior in their children, conflict between ideologically-driven curriculum and the religious or moral values of the families, and some parents' dislike of regimentation and authoritarianism of many schools.⁸

The education establishment believed that home-educated students could not possibly receive a quality education (homeschool advocates believed the loss of per pupil funding was also a factor in the opposition of some school district officials). In Colorado, some school districts sent parents truancy notices, which were sometimes followed by the intrusion of government social services enforcers. More than 20 families (the total number is unknown) went to court to fight for their right to homeschool, with varying success.

In 1981, education officials reported that 51 children were using approved home study courses in Colorado.⁹ In 1988, before the homeschool law was passed, 630 students were registered as homeschoolers.¹⁰ The Colorado Department of Education reports

7,023 registered homeschoolers in Colorado as of the fall of 2008.¹¹ All of these figures underreport the true number of homeschoolers in Colorado, as every year an unknown number of families choose not to notify their school district that they are homeschooling.

Estimates also vary regarding the number of homeschoolers nationwide. The nonprofit National Home Education Research Institute estimates there were between 2 and 2.5 million home educated students in the U.S in the 2007-2008 school year.¹² A comprehensive study by the U. S. Department of Education's research branch, the National Center for Education Statistics, estimates the number of homeschoolers during the spring of 2007 at 1.5 million.¹³

Today, there are many ways to educate a child at home, not all of which are "homeschooling." Some children learn at home via public online schools, but the pupils are public school students subject to public school law. Other families enroll in private schools that allow parents to teach their children at home. Some private schools offer full curricula, while others – sometimes known as "umbrella schools" – keep records and offer a high school diploma, but parents choose curricula from a variety of other sources. Students enrolled in any type of private school are under private school law. Correspondence courses have been used by those who were not able to study in a traditional school (e.g., child actors or children whose parents must travel for a living) since before homeschooling was popular. Depending on the organization that provides the correspondence courses, families may or may not be under private school law.

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The families identified here as “Independent Homeschoolers” are those who educate their children at home independent of public or private school authority. These homeschoolers use curricula of their own choosing and are under the authority of Colorado homeschool law.

To recognize the 20th anniversary of the homeschool law, this Issue Paper highlights important events in the history of the law. For the sake of brevity, the mention of many influential individuals and families has been kept short.

Vague Law Leads to Truancy Charges against Homeschoolers

Homeschooling has never been illegal in Colorado. The Colorado Constitution seemed to allow homeschooling because of its provision that the General Assembly require public school attendance “...unless

educated by other means.”¹⁴ The compulsory attendance law created by the Colorado General Assembly stated that compulsory attendance was not required of a child “who is being instructed at home...under an established system of home study approved by the state board [of education].”¹⁵ Until 1980, the State Board of Education had no list of approved programs and no formal rules regulating homeschooling. Some believed the State Board of Education’s authority over home

education programs was unconstitutional because the Colorado Constitution did not give the State Board of Education explicit authority over non-public education programs.¹⁶

In the fall of 1980, a rural school district on Colorado’s Western Slope discontinued bus service to families who lived 30 miles away

from the nearest public school. Not able to afford the time and expense of transportation to school, the Cox and Funk families decided to school their children at home using Christian Liberty Academy’s correspondence courses. The families were taken to court by the same school district that had stopped bus service. In April 1981, District Judge Robert Brown ruled that the Cox children had to go back to public school unless they began to use a home study program approved by the State Board of Education.¹⁷ In December 1981 Judge Brown gave similar orders to the Funk family.¹⁸

The Cox and Funk court cases emboldened school districts across Colorado to pursue truancy charges against families who educated their children at home. The Western Slope was a particularly difficult area in which to homeschool. For example, a truancy officer once arrived at a family’s house at 9:00 P.M. and said the children were truants. The officer implied the children would be taken away by social services. Other Western Slope families held practice drills where the children would go to hiding places in case social services came to their doors. One family fled the state in the middle of the night because they had been threatened by social services.¹⁹

Many Christian parents believed they had a right to homeschool guaranteed by the First Amendment’s freedom of religion clause, as upheld in *Wisconsin v. Yoder* (1972). An Amish community in Wisconsin claimed that compulsory education past the eighth grade violated their religious beliefs. The U.S. Supreme Court ruled: “The State’s requirement of compulsory formal education after the eighth grade would gravely endanger, if not destroy, the free exercise of respondents’ religious beliefs.”²⁰

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However, pro-homeschooling lawyer Clint Bolick argued that all homeschooling parents, regardless of religious preference, could claim a right to homeschool under the Fourteenth Amendment's liberty clause, which declares "...nor shall any State deprive any person of life, liberty, or property, without due process of law..."²¹ U.S. Supreme Court rulings such as *Meyer v. State of Nebraska* (1923)²² and *Pierce v. Society of Sisters* (1925) used the Fourteenth Amendment to establish precedent for parental rights in directing control of their children's education. The *Pierce* decision states:

The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.²³

But state and local officials could also point to cases that recognized the state's interest in education as well. For instance, the U.S. Supreme Court ruling in *Board of Education v. Allen* (1968), established that states had the power "to insist that attendance at private schools, if it is to satisfy state compulsory attendance laws, be at institutions which provide minimum hours of instruction, employ teachers of specified training, and cover prescribed subjects of instruction."²⁴

The lack of clarity in statute and case law created tension between homeschoolers and Colorado school districts. Parents believed their right to homeschool was protected by the Colorado and United States Constitutions. Many local school districts viewed

homeschooled children as truants who needed to be placed in a traditional school setting to protect them from potential physical abuse or an inadequate education at home.

Rules and Regulations Created

In 1980 the Colorado State Board of Education adopted rules and regulations for the "administration of an established system of home study programs," with the intent that "all students seeking the alternative of home study are assured a well-considered educational program."²⁵ The State Board for the first time created a list of "approved" home study correspondence courses. Though several home study programs were on the approved list, homeschool mother Judy Gelner recalls that parents had little choice in curricula because there were only two programs available for any one grade level.²⁶

Families who wanted to homeschool were given three options by the State Board of Education, all of which required permission from local or state education officials:

- Parents could purchase state-approved curricula
- Parents without teaching certificates could choose their own curricula if their school district of residence gave its approval
- Parents who held valid teaching certificates could homeschool their children with curricula of their choice²⁷

Some families educated their children in relative freedom and could choose their own curriculum because local school district officials were friendly toward homeschooling (though a change in administration could always bring tighter restrictions or revocations of approvals to homeschool). However,

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several school districts refused any requests to homeschool no matter how dedicated the parents were or that they were willing to use a state-approved curriculum and to follow the State Board of Education's rules.

Aurora Public Schools adopted a policy in September 1983 that it would not approve home study applications except "under the most compelling of circumstances."

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The Aurora Board of Education stated that even though state law allowed the State Board of Education to approve home study programs, those programs "are inadequate substitutions for the quality of education instruction, curriculum, and environment available through Aurora Public Schools."²⁸

Some families who desired to homeschool in Aurora or other unfriendly school districts simply did not notify the district they were homeschooling. Families denied approval by school districts could appeal to the State Board of Education but would be required to use a state-approved curriculum.

The State Board of Education approved many of the appeals from parents in adversarial districts such as Aurora, but not all. One family submitted plans to the St. Vrain Valley School District to use an approved home study program three weeks after they had received a court order to return their 13-year-old to school. The district turned down the request, and the State Board of Education denied the appeal because the family had failed to follow court orders.²⁹

One-Family School House

In the uncharted homeschooling waters of the early 1980s, many families chose to incorporate their homes as private schools, as they

were largely unregulated. Until 1983, private schools were only required to provide "a basic academic education comparable to that provided in the public schools..."³⁰ Some families enrolled in existing private schools that offered courses students could complete at home, or in correspondence programs. Other families created their own curriculum for their "private schools."

The ambiguity of what constituted a "comparable" education for private schools led then-Colorado Commissioner of Education Calvin Frazier to appoint a committee to set academic standards for private schools. The committee hearing in September 1981 drew out hundreds of religious school leaders in opposition to the state standards, which were not adopted.³¹

In 1983, the legislature attempted to set standards for private schools in House Bill 1346. The amended bill that ultimately passed only required that certain subjects to be taught but did not specify levels of proficiency.

House Bill 1346 contained an important change to homeschool families. Prior to the bill's passage, compulsory attendance law stated that a student who "attends" an independent or parochial school was exempt from compulsory attendance laws. The 1983 legislation struck the word "attends," and instead exempted from compulsory attendance a student "who is *enrolled*... in an independent or parochial school which provides a basic academic education."³²

Parents whose children were "enrolled" in established private schools but "attended" school at home believed the change from "attends" to "enrolled" would allow them to home-educate without public school district interference. However, these families continued to face persecution.

In the fall of 1983, Pete and Roxy Olson, along with Alan and Bobbi Sloan, enrolled their children in Christian Liberty Academy's correspondence courses and incorporated their homes as satellite locations of the private school. The Olsons and Sloans even established a board of education to oversee their schools (though the children were taught by their parents in their own homes). The families removed their children from Windsor Public Schools because of atheist and humanist philosophies that ran counter to their Christian faith. The last straw for the Olson family came when the principal would not allow them to opt their elementary school children out of sex education classes. The principal told the family they lost jurisdiction over what their children were taught when they enrolled them in the public school.³³

Though the families were "enrolled" in Christian Liberty Academy and should have been exempt from compulsory school attendance law, the school district served the Olsons and Sloans with truancy notices in October. The families hired a lawyer and proceeded to go through with the court case, despite plenty of reasons to be fearful. The year before, in a nationally publicized case, 12 fathers had spent a year in a Nebraska jail for opposing state jurisdiction over their private Christian school. Other states had taken homeschooled children from their families. The Olsons and Sloans believed such repercussions were possible for them as well. As it was, they did not have much support from family or friends.

Windsor Public Schools ultimately dropped the case, citing financial costs as the main reason, with the official dismissal coming on February 9, 1984. After the court case was over, the families learned the school district had planned to remove their children from their home. The plan did not succeed, at least

in part because the district's lawyer mistakenly filed the case as a civil, not a juvenile case, which prevented the court from ordering the removal of the children. The lawyer was later fired, likely because of his mistake.³⁴

The case gave hope to other homeschoolers that they too could fight their school district.³⁵ Some did, though not all with the same success.

Confusion continued over the "enrolled" language in compulsory school attendance law. In 1985, the Colorado Department of Education (CDE) informed school districts that simple "enrollment" in a private school should not necessarily exempt a student from the compulsory school attendance law. A CDE analysis concluded: "Merely enrolling in a private or parochial school does not automatically meet the compulsory school attendance requirements of the law....the parent would have to utilize the statutory provisions for home study to fulfill the compulsory attendance law."³⁶ Thus, students could enroll in a private school (which might provide record-keeping or testing services), but they would need to use curriculum approved by the State Board of Education.

The interpretation of "enrolled" was settled in 1987. Widefield School District pressed truancy charges against the Bohl family, who educated their children at home under the auspices of a private school. The court ruled in the family's favor, arguing that the legislature had not defined where a private or parochial school student must study, so if the school allowed the student to study at home he could be considered enrolled and exempt from compulsory attendance law.³⁷ The deci-

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sion did not directly affect independent homeschoolers (those who educated their children at home without the support of a private school), but it was a victory for families who educated their children at home under the supervision of a private school. It also clarified that these families were not “homeschooling,” but were under private school law.

Homeschoolers Begin Working with CDE

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County School District. Another small group of Jefferson County parents who were interested in homeschooling their children met with State Commissioner of Education Cal Frazier to ask that the State Board of Education add curricula that was already being used by parents to the list of approved home-study programs. One of the parents, Terry Kipp, says Cal Frazier set the tone for very positive interaction with the State Board of Education. Commissioner Frazier asked the parents if they would be part of a committee to meet monthly with

the Colorado Department of Education (CDE). The Commissioner also arranged for the 12 court cases to be suspended for one year while the committee worked together.³⁸

In 1985, CDE formed the Colorado Home Schoolers Advisory Committee (CHSAC), which had grown to include 10 homeschooling parents and two CDE staff members. A letter from CDE to Colorado superintendents and school board members stated that the purpose of the group was to establish and maintain communication between CDE and homeschoolers and to lessen the conflict between homeschoolers and school districts.³⁹

Around the same time, state Representative Mike Bird’s daughter Amy had entered public school. She was bored by her school work and was learning non-academic subject matter from her peers not appropriate for a 6-year-old. Representative Bird and his wife decided to homeschool their daughter, though neither parent held a teaching certificate nor used state-approved curriculum.⁴⁰

The CHSAC had made some progress with the State Board of Education’s approval of several more home study programs.⁴¹ However, Representative Bird also became aware that some people within CDE were considering tighter restrictions on homeschoolers to bring Colorado in line with the strictest states in the country. These restrictions included a requirement that any family who incorporated their home as a private school register with the state, regardless of whether the local school district approved or not.⁴² Representative Bird drafted legislation for the upcoming 1986 legislative session that would have limited local and state oversight of homeschooling and only required testing every other year.⁴³

Commissioner Frazier brought together the differing groups and negotiated a solution without legislation. CDE agreed not increase regulations, and Representative Bird agreed not to introduce the bill he had drafted.⁴⁴

Desire for Homeschool Legislation Grows
Living in Colorado Springs School District 11, CHSAC members and homeschool parents Treon and Dean Goossen were able to freely homeschool their children with the district’s permission. During her time on CHSAC, Goossen did not see evidence that CDE seriously attempted to alleviate conflict between homeschoolers and school districts.

Goossen attended several State Board of Education meetings and was disturbed by the dismissive attitude of the Board's members as they laughed about the number of homeschooling requests that were rejected by school districts. Goossen resigned from CHSAC and joined forces with others around the state who sought to clarify the law.⁴⁵ As parents in Colorado faced truancy officers, court orders, police questioning, and social service visits, it became apparent to Goossen and others that the law needed to change.

Around the state various support groups — small groups of homeschool parents who shared ideas and encouraged one another — held meetings in the summer and fall of 1986 to discuss the possibility of another legislative bill.

In 1986, a new statewide homeschool organization, the Colorado Home Educators' Association (CHEA), was formed to represent local grassroots homeschool groups located across Colorado. In a survey designed to form the mission and purpose for the group, respondents rated the importance of 18 different potential roles for the new organization. Out of about 40 returned questionnaires, the number one response was "Changing Colorado Home Schooling Law."⁴⁶

CHEA created its own draft legislation, but that particular draft did not reach the legislature because of disagreement about what the bill should look like or whether there should be a bill at all.⁴⁷ Among parents opposed to legislation, some did not want any state interference whatsoever, while others believed the rules and regulations worked and were concerned that homeschoolers would not have control over future legislative changes.⁴⁸

Among those committed to a legislative solution was homeschool mother Rory Schneeberger. She researched homeschool laws in 18 other states and found statutes in three states (Alaska, Georgia, and Wyoming) to serve as model legislation, because she said the laws were "least obtrusive and most freeing" for homeschoolers.⁴⁹ Lawyer and homeschool father William Moritz also was heavily involved in drafting the bill introduced into the legislature.⁵⁰

Schneeberger was instrumental in finding a legislator to sponsor a bill. She approached Representative MaryAnne Tebedo (R-Colorado Springs) with the offer to help run her office at the Capitol two days a week so that Schneeberger could build relationships with other legislators and educate them about homeschooling. Representative Tebedo hired (for no pay) Schneeberger and her children, who would dress up in suits and ties to go to "work." The children studied when not running errands for the legislator.

In spring 1987, Senator Joe Winkler (R-Castle Rock) and Representative Bill Owens (R-Aurora) sponsored Senate Bill 138, which was the first introduced legislative bill that would have established definitions and guidelines for home-based education in Colorado. The proposed legislation mandated the teaching of particular academic subjects but gave parents the freedom to choose their own curricula.⁵¹

Because homeschooling was a relatively new idea, several homeschooling parents coordinated to send informative articles to legislators every week during the 1987 hearings, educating them about various aspects of homeschooling and answering objections brought up in committee hearings.⁵²

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The letters and testimony from homeschooling parents were supplemented by expert testimony about the benefits of homeschooling from education researcher Dr. Raymond Moore and professor and lawyer Dr. John Eidsmoe (who also wrote an Issue Paper for the Independence Institute advocating for clarification of the law⁵³).

Commissioner Frazier opposed the bill. “For the parent who is committed to a home-school program, this will be good. For the parent who wants to abuse the law, this opens more doors.”⁵⁴

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Amended to require standardized testing, the bill passed in the Senate.⁵⁵ The bill next went to the Republican-controlled House Education Committee. However, homeschooling faced bipartisan opposition. Committee members believed the bill gave parents too much freedom and would not protect children who might not receive an adequate education at home. The bill was defeated in an 8-3 vote in the House Education Committee on April 1, 1987.⁵⁶

Favorable Rules Are Not Good Enough

In August 1987, the Colorado Home Schoolers Advisory Committee brought about some additional positive changes for homeschoolers. The State Board of Education adopted “Emergency Rules” for home study programs. The rules allowed parents to notify school districts of their intent to homeschool (rather than request approval) and to choose their own curriculum. At the request of some homeschool parents, the rules regarding academic progress were also changed from students being “available for evaluation” which sometimes meant meeting with the local public school principal, to more straightforward annual standardized testing.⁵⁷

The emergency rules gave homeschoolers much more freedom than they had under the old rules. Some parents were content with the new rules.⁵⁸ However, other homeschoolers disapproved because the rules were still more restrictive than public and private school requirements.⁵⁹ Parents were also concerned that, as quickly as the rules had changed for the better, shifting political sentiments of the elected seven-member State Board of Education could lead to onerous new restrictions.⁶⁰

Other problems arose after the rules were adopted. Despite a rule that specifically stated that school districts were to “enroll or reenroll any home study child(ren) in a public school without discrimination or prejudice,” homeschoolers still faced challenges in their local school districts.⁶¹ For example, any parent who notified Jefferson County School District of the intent to homeschool also had to sign a form agreeing with the district’s re-entry policy. The policy stated that homeschoolers who entered high school at any grade level could only receive a maximum of two credit hours, regardless of what students had studied at home.⁶²

There were two schools of thought among parents who were unhappy with the new rules: One was to challenge the rules in court, the other was to seek a statutory change to give stronger legal protection to homeschool families. The legal challenge never materialized but momentum built for a legislative solution.

Moms Take Charge

The very nature of homeschooling — hundreds of independent-minded families educating their children at home — did not lend itself well to a cohesive lobbying effort. The failure of the 1987 legislation led Goossen and Schneeberger to the conclusion

that a leader was needed. In the summer of 1987, Schneeberger sent a letter to each homeschool support group in the state asking for input, and suggested that she and Goossen would take the lead to promote necessary homeschool legislation.⁶³

After the 1987 legislative session ended, Senate Education Committee Chairman Al Meiklejohn (R-Arvida) called Schneeberger to say he had been troubled after hearing the testimony of Drs. Eidsmoe and Moore. Senator Meiklejohn said he would not personally homeschool, but that he thought parents should be allowed to homeschool if they so chose. He planned to carry a homeschool bill in the 1988 session.⁶⁴

On November 11, 1987, Schneeberger and Goossen met with Senator Meiklejohn and Representative Dick Bond (D-Greeley). Bond was skeptical about homeschooling, but was willing to sponsor the bill in the House of Representatives. Senator Meiklejohn said he would sponsor a bill similar to the one proposed in 1987, on the condition that Schneeberger and Goossen be present at every committee meeting. He wanted them to be the “citizen sponsors” to give their consent or dissent to legislative amendments. He was willing to kill the bill if amendments were unacceptable to Goossen and Schneeberger. Senator Meiklejohn said the 1987 bill had died for lack of a leader. Schneeberger and Goossen made the commitment, despite the long distance to the Capitol in Denver from their homes in Woodland Park (95 miles) and Colorado Springs (70 miles) respectively. Goossen was also pregnant with her fifth child.

At the meeting, Representative Bond warned that it could take two to five years to educate legislators about homeschooling before legislation would be adopted.⁶⁵

The Bill is Re-Born

Early in the 1988 legislative session, Senators Meiklejohn and Winkler and Representative Bond introduced Senate Bill 56—a bill nearly identical to the one presented in 1987. The bill declared, “...it is the primary right and obligation of the parent to choose the proper education and training for children under his care and supervision.” The proposed legislation required the educational program to include reading, writing, speaking, math, history, civics, literature, science, and regular instruction on the U.S. Constitution. Parents were required to notify (rather than ask for approval from) the school district of residence of their intent to homeschool; to provide for standardized testing in grades two, five, eight, and ten, or the equivalent age; and to maintain education and health records. Parents were not required to hold a teaching certificate.⁶⁶

The bill was heard in the Senate Education Committee on January 14, 1988. Some opponents perceived the bill as anti-public education. However, this view was dispelled in part simply because of who sponsored it. In his opening statement, Senator Meiklejohn stated, “My own view is that it [Senate Bill 56] is amply justified....I don’t have to defend my respect and support of the public schools. This is not an attack on public schools. Probably 80 percent of the population are served well to one degree or another by public schools. Twenty percent are not. It seems to me there must be a variety of educational options for youngsters and young people of the state of Colorado.”⁶⁷

Representative Bond also came before the committee to defend the bill. “There could be nothing more surprising than to find two

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persons who are so wholeheartedly supporting of public schools to be carrying a bill such as this, because many people perceive this as being an attack upon the public schools, which of course it isn't."⁶⁸

The senate sponsor of the 1987 bill, Senator Winkler, testified of his purpose in co-sponsoring Senate Bill 56, "It's been my desire for a long time to give them the flexibility under our statute to carry on with what I feel is a very valuable program for those people who choose it."⁶⁹

Homeschool advocates continued to educate legislators about the necessity of the bill, including alignment of Colorado law with U.S. Constitutional principles.

Opponents claimed that Senate Bill 56 lacked accountability for academic progress, and that it would open the door for parents to hide child abuse. Senator Janna Mendez (D-Longmont) claimed "the law would let parents 'treat children as property' and to grow up without an education if they chose to."⁷⁰ Meiklejohn responded to Mendez' criticisms saying, "There's an inference that everything would be just okay if they were in public school." Meiklejohn asked, rhetorically, "What do we do with kids in public schools that are failing?" He de-

fended homeschooling saying, "I can't accept the fact that a youngster who isn't performing well in homeschooling might perform better in a public school."⁷¹

The bill passed the Senate Education Committee after more than two hours of testimony and debate. The bill passed the full Senate on January 25, 1988, but still had to pass in the House, where the previous year's legislation had died.

More than a month passed before the bill made its way to a hearing in the House of Representatives. During that time, both sides

of the debate fiercely defended their positions. The *Denver Post* published a house editorial titled, "'Home school' bill dangerous." The *Post* asserted that "home schooling zealots are demanding, through SB 56, that they be freed of any accountability whatever... Even without deliberate abuse, most students in home study programs are at least victims of educational malpractice."⁷²

While Representative Bond initially had feared homeschooled children would fall behind their public school peers academically, he came to appreciate that the parents were as concerned about academic quality as he was.⁷³ The *Rocky Mountain News* quoted Bond saying, "I may disagree with them a lot, but I'm convinced they're sincere and they have the best interests of their children at heart."⁷⁴

Lobbying for the bill was not easy, and the opposition was intent on its defeat. Goossen and Schneeberger became aware that phrases they had used in phone conversations were coming up in committee meetings "almost verbatim." They concluded that someone must have been using a listening device, possibly outside of Schneeberger's secluded Woodland Park home. Schneeberger began to go to a phone booth to call Goossen, and they also developed a code for phone conversations.⁷⁵

Homeschool advocates continued to educate legislators about the necessity of the bill, including alignment of Colorado law with U.S. Constitutional principles. Representative Bond received a letter in February from the national Home School Legal Defense Association Executive Director Chris Klicka which cited several court cases upholding the right of parents to direct their children's education. Klicka argued the bill "would provide the necessary protection of parental rights guaranteed by the First and Fourteenth

Amendments of the U.S. Constitution.... Senate Bill 56 would cure the vagueness of the present law, providing clear standards to be met by home schoolers.”⁷⁶

Speaker of the House Carl Bledsoe (R-Hugo) referred Senate Bill 56 to the State Affairs Committee, chaired by Representative Owens. Thus, the bill bypassed the House Education Committee, which was dominated by established school lobbying groups.

Representative Bond’s opening comments in the State Affairs Committee established several reasons why he believed the bill was necessary. “The fundamental issue – and we ought to remember that in all of our discussions – is the education of children fundamentally a responsibility of the state or the parents? Philosophically, I came down on the side that it is, basically, the responsibility of the parent. And legally, I think that conclusion has been upheld in three separate court cases by the United States Supreme Court.”⁷⁷

Several people who testified before the committee disagreed with Representative Bond’s conclusion. Jane Urschel, representing the Colorado Parent Teacher Association, stated that, “Constitutionally, the responsibility for education lies with the state. And the state chooses to allow parents to teach their children at home if they wish.” She argued that a law should not be created because it was not possible to know yet whether the new rules would work or not.⁷⁸

Several homeschoolers testified that they were not registered with the state under the State Board’s rules. Homeschool mother Leona Hemmerich stated that homeschooling was an inalienable right guaranteed by the U.S. Constitution and that she was not violating the law because the State Board of Education rules were not law.⁷⁹

Representative Bond also argued that the State Board of Education lacked legal authority to impose rules on any non-public educational program and that those rules could be successfully challenged in court: “The Colorado Constitution...is quite clear that the function of the State Board of Education is to oversee the public schools.”⁸⁰ The passage of the bill would make questions surrounding the State Board of Education rules moot.

Rory Schneeberger brought another benefit of the bill to light: “I think this is a refreshing change for this committee....We are not asking for money.”⁸¹ However, that did not mean money played no part in the conflict between school districts and homeschoolers.

Representative Bond gave voice to the opinion held by many homeschoolers that much of the opposition to homeschooling came from the desire for public schools to retain the per pupil funding that each student represented. He argued for an amendment that allowed parents to report test results to a private school, rather than the local public school, in order to protect families from school district harassment. He said harassment came in two forms: one was ideological disagreement, and the other was that each child represented about \$3,400 which, he said, “is a heck of a way to make educational decisions.”⁸² The amendment, along with several others, was adopted, and the bill passed out of the House State Affairs committee on a 7-3 vote on March 8, 1988.⁸³

Four days before the debate on the House floor, Representative Bond sent a letter to his House colleagues outlining reasons to support the bill, including some constitutional

*“...is the education of children fundamentally a responsibility of the state or the parents? Philosophically, I came down on the side that it is, basically, the responsibility of the parent.”
- State Representative Dick Bond*

arguments found in Klicka's letter. Representative Bond believed the vague compulsory education law could be challenged successfully in court and wanted to avoid the "costs and confrontations of such a case." His letter further stated the bill was necessary "both to protect home schoolers from local harassment and the shifting make-up of the [State] Board of Education and to protect the state." His letter ended with a plea to fellow House members: "I urge your careful thinking through of this issue, for your initial reaction may be similar to my initial opposition."⁸⁴

The Governor chose neither to sign nor veto the bill, and it became law without the Governor's signature on May 10, 1988.

Through the legislative process several amendments were added. Administration of the same standardized test used in the local public schools was required, beginning not in grade two, but in grade three, and also for grades five, seven, nine, and eleven, or the equivalent age. Some parents were upset because the bill required homeschool students to be tested at a younger age and in more grade levels than public school students. Despite parental concerns, the law was less restrictive than the annual testing required by the State Board of Education rules.

Another amendment mandated that students who scored at or below the 13th percentile on the standardized test be placed in a private or public school until the next testing period.

To calm fears about using the law to hide child abuse, the bill also required that parents provide 14 days notice to their local school district before establishing the home education program.⁸⁵

Another provision, added at the suggestion of the Home School Legal Defense Association, helped overcome some opposition. The

new language required parents to maintain immunization, test, and attendance records for the school district to review, but only when the district had "probable cause." The provision put some opponents at ease, knowing that a school district could examine records. But Goossen explains that the clause also gave homeschoolers a great deal of protection from state interference, for "probable cause" does not allow schools to engage in fishing expeditions with no reason to believe that a family has done anything wrong.⁸⁶

The changes quelled many fears. Even the *Denver Post* endorsed the bill, believing it to be more protective of children who might be victims of abuse. The paper gave credit to Representative Bond, saying the bill "now represents a responsible road map through a hazy swamp of state and federal constitutional issues."⁸⁷ On March 21, 1988, the bill passed the House on third reading. A Senate conference committee approved the House changes, and the bill was sent to Governor Roy Romer for his signature. Supporters of the bill feared the Governor would veto the bill. The Governor chose neither to sign nor veto the bill, and it became law without the Governor's signature on May 10, 1988.

After the session had ended, Goossen realized how important the battle against homeschooling was to her opponents. One June morning, Goossen's phone and fax lines were acting odd: phone calls were coming to the fax and faxes were coming to the phone. Her husband, who worked for the phone company, checked the main phone lines and found broken plaster underneath their computer desk on the floor of their bedroom. The phone and fax lines had been switched. It was apparent that someone had come back for a listening device they had put in their home months ago, not bothering to keep the wall intact or to rewire the phone lines cor-

rectly. Someone – unknown to this day – had broken into their home twice to wiretap Goossen’s conversations. “What threat were two moms – one pregnant?” asks Goossen.⁸⁸

Lessons Learned

The passage of the homeschool law offers lessons for all citizens. Homeschool mother Judy Gelner calls the passage of the law “an example of democracy in action.” What opponents of the bill believed was a massive, well-funded homeschool lobby was in reality a group of parents who simply wanted to teach their children at home with curricular materials that made sense for their children.⁸⁹ Ordinary citizens with a common goal were able to work through the legislative process to establish a law they believed would help them provide the best education for their children. But, Gelner says, grassroots action works best when policy decisions are kept at the state and local level.⁹⁰

It was vital for a coalition of parents to educate legislators about homeschooling. Parents wrote letters and packed hearing rooms during important committee meetings, providing verbal and visible evidence of the need for the bill.

Cohesive leadership was also necessary. The passage of the bill was greatly aided by the leadership of Senator Al Meiklejohn, Representative Dick Bond, Treon Goossen, and Rory Schneeberger. The legislators took political risks. Goossen and Schneeberger made financial and personal sacrifices, and were subjected to invasion of their privacy. Interestingly, neither Goossen nor Schneeberger faced the type of persecution that many homeschooling families in Colorado experienced, because they lived in homeschool-friendly school districts. Schneeberger says, “Peter and I are interested in helping the

innocent,” to explain her and her husband’s involvement in changing the law.⁹¹

Though it sometimes seems as though politicians are entrenched in their positions, the homeschool bill shows it is possible for policy makers to genuinely change their minds and work together when presented with solid arguments and real need. Legislators put reasonable guidelines in place with the trust that parents could and would seek to provide a quality education for their children.

While many laws place restrictions on citizens, the homeschool law granted more freedom to families than they had under CDE’s rules and regulations, while also aligning state law with the U.S. Constitutional principle that parents have the right to determine educational programs for their children.

Always Vigilant

Every year, Goossen still tracks legislation that affects homeschoolers, drives thousands of miles to and from the Capitol, and sends e-mail alerts to hundreds of homeschoolers across the state who make phone calls, send letters, and show up at the Capitol when necessary. While there have been many attempted attacks to weaken the homeschool law, not one has succeeded. In fact, the law has become stronger. Some of the more important changes are listed below.

In 1994, Senate Bill 4 contained three important changes. First, students unable to take tests due to learning disabilities or with other legitimate test-taking difficulties were given the opportunity to be evaluated by a qualified person to prove their academic progress rather than on a standardized assessment.

Ordinary citizens with a common goal were able to work through the legislative process to establish a law they believed would help them provide the best education for their children.

If the evaluation shows the student has not made sufficient academic progress, the parents must place the student in a private or public school.⁹²

Senate Bill 4 also eliminated two provisions. First, the requirement to use the same test as the local school district was changed to allow parents to choose any nationally standard-

After 20 years, Colorado school boards still advocate for greater restrictions on homeschoolers.

ized test. Second, the bill removed the equivalent age requirement for testing. Prior to the bill's passage, children had to be tested when they reached the "equivalent age" for grades three, five, seven, nine, or eleven. The change meant a parent could hold a child back for a year and test for third-grade skills even though the child's equivalent age might put him in grade four (however, testing must still be done in grades three, five, seven, nine, and eleven).⁹³

The homeschool law was amended in 2000 to allow parents to notify any school district in the state of their intent to homeschool, rather than the school district in which the student resides.⁹⁴

In 2006, the maximum compulsory school attendance age was raised from 16 to 17, and in 2007 the minimum age was lowered from 7 to 6. However, both bills exempted students under the homeschool law, allowing parents to formally begin their homeschool program at age 7 and continue only until age 16 (though a notice of intent to homeschool must be filed with the school district at age 6).⁹⁵

The homeschool community in Colorado has grown in size and influence, with dozens of local homeschooling groups. A large statewide group, Christian Home Educators of

Colorado (CHEC), draws about 4,000 people to its annual conference.⁹⁶ These grassroots networks are active and vital, especially when there is a threat to homeschool freedoms in Colorado.

The National Education Association (NEA), the nation's largest teachers' union, opposes most forms of homeschooling. (The organization's state affiliate, the Colorado Education Association, is one of the most powerful lobbying forces at the State Capitol.) The 2008 NEA resolutions include the following statement:

The National Education Association believes that home schooling programs based on parental choice cannot provide the student with a comprehensive education experience.... Instruction should be by persons who are licensed by the appropriate state education licensure agency, and a curriculum approved by the state department of education should be used.⁹⁷

Although the NEA asserts that a parent should hold a teaching license in order to homeschool, comprehensive research about homeschoolers' academic achievement finds "no significant difference in the achievement levels of home school students whose parents are certified and those that are not."⁹⁸

After 20 years, Colorado school boards still advocate for greater restrictions on homeschoolers. A resolution approved by the Colorado Association of School Boards Delegate Assembly in October 2008 recommends amending the homeschool law to, among other things, increase the amount of testing and minimum score allowed on achievement tests. The approved resolution states:

The current requirement that homeschooled students only need to meet the 13th percentile on a nationally-standardized test in order to remain in a home-based education program is not sufficient....Annual testing would provide an accountability framework comparable to public schools.⁹⁹

However, if performance at the 13th percentile (or a given level that CASB believes is appropriate for homeschoolers) is proof that the child's educator is a failure, then to be consistent, CASB should support a law to provide other options to children who score at the equivalent of the 13th percentile (or another given level), such as a scholarship to a private school or transportation to a higher-performing public school.

Conclusion

Today, some homeschool parents believe the law to be restrictive because of its requirements. However, according to Treon Goossen, the law gives parents freedom — freedom to choose their own curricula, to test only in grades three, five, seven, nine, and eleven, and most importantly, to operate outside the supervision of the public school district. (Appendix 2 shows the changes in requirements for homeschool families from 1980 to 2008.)

The trust legislators placed in parents has been vindicated. Homeschooling is generally well-respected as a viable educational option in Colorado and the nation, producing academically competent students. National studies of homeschooled children show that they outperform their public school peers on standardized tests. An extensive study of more than 20,000 homeschoolers found, "Within each grade level and each skill area, the median scores for home school students fell between the 70th and 80th percentile of students nationwide.... For younger students, this is a one year lead. By the time home school students are in 8th grade, they are four years ahead of their public/private school counterparts."¹⁰⁰

After two decades, it is easy to take for granted the opportunity to homeschool in Colorado in relative openness and freedom. However, the law likely will continue to face challenges that require consistent defense by homeschool families and other citizens who care about the right of parents to control the education of their children.

The trust legislators placed in parents has been vindicated. Homeschooling is generally well-respected as a viable educational option in Colorado and the nation, producing academically competent students.

Appendix 1

Colorado Revised Statutes § 22-33-104.5.
Home-based education - legislative declaration - definitions - guidelines. (This is an unofficial publication of Colorado Revised Statutes, current as of December 2008.)

(1) The general assembly hereby declares that it is the primary right and obligation of the parent to choose the proper education and training for children under his care and supervision. It is recognized that home-based education is a legitimate alternative to classroom attendance for the instruction of children and that any regulation of nonpublic home-based educational programs should be sufficiently flexible to accommodate a variety of circumstances. The general assembly further declares that nonpublic home-based educational programs shall be subject only to minimum state controls which are currently applicable to other forms of nonpublic education.

(2) As used in this section:

(a) "Nonpublic home-based educational program" means the sequential program of instruction for the education of a child which takes place in a home, which is provided by the child's parent or by an adult relative of the child designated by the parent, and which is not under the supervision and control of a school district. This educational program is not intended to be and does not qualify as a private and nonprofit school.

(b) "Parent" includes a parent or guardian.

(c) "Qualified person" means an individual who is selected by the parent of a child who is participating in a nonpublic home-based educational program to evaluate such child's progress and who is a teacher licensed pursuant to article 60.5 of this title, a teacher who is employed by an independent or parochial school, a licensed psychologist, or a person with a graduate degree in education.

(3) The following guidelines shall apply to a nonpublic home-based educational program:

(a) A parent or an adult relative designated by a parent to provide instruction in a nonpublic home-based educational program shall not be subject to the requirements of the "Colorado Educa-

tor Licensing Act of 1991", article 60.5 of this title, nor to the provisions of article 61 of this title relating to teacher employment.

(b) A child who is participating in a nonpublic home-based educational program shall not be subject to compulsory school attendance as provided in this article; except that any child who is habitually truant, as defined in section 22-33-107

(3), at any time during the last six months that the child attended school before proposed enrollment in a nonpublic home-based educational program may not be enrolled in the program unless the child's parents first submit a written description of the curricula to be used in the program along with the written notification of establishment of the program required in paragraph (e) of subsection (2) of this section to the superintendent of a school district within the state.

(c) A nonpublic home-based educational program shall include no less than one hundred seventy-two days of instruction, averaging four instructional contact hours per day.

(d) A nonpublic home-based educational program shall include, but need not be limited to, communication skills of reading, writing, and speaking, mathematics, history, civics, literature, science, and regular courses of instruction in the constitution of the United States as provided in section 22-1-108.

(e) Any parent establishing a nonpublic home-based educational program shall provide written notification of the establishment of said program to a school district within the state fourteen days prior to the establishment of said program and each year thereafter if the program is maintained. The parent in charge and in control of a nonpublic home-based educational program shall certify, in writing, only a statement containing the name, age, place of residence, and number of hours of attendance of each child enrolled in said program. Notwithstanding the provisions of section 22-33-104 (1), a parent who intends to establish a nonpublic home-based education program is not required to: (I) provide written notification of the program to a school district within the state until the parent's child is **six** years of age; (II) establish the program until the parent's child is **seven**

years of age; or (III) continue the program or provide the notification after the child is **sixteen** years of age.

(f) Each child participating in a nonpublic home-based educational program shall be evaluated when such child reaches grades three, five, seven, nine, and eleven. Each child shall be given a nationally standardized achievement test to evaluate the child's academic progress, or a qualified person shall evaluate the child's academic progress. The test or evaluation results, whichever is appropriate, shall be submitted to the school district that received the notification required by paragraph (e) of this subsection (3) or an independent or parochial school within the state of Colorado. If the test or evaluation results are submitted to an independent or parochial school, the name of such school shall be provided to the school district that received the notification required by paragraph (e) of this subsection (3). The purpose of such tests or evaluations shall be to evaluate the educational progress of each child. No scores for a child participating in a nonpublic home-based educational program shall be considered for awarding academic performance grades pursuant to section 22-7-604 or for accreditation pursuant to Article 11 of this title.

(g) The records of each child participating in a nonpublic home-based educational program shall be maintained on a permanent basis by the parent in charge and in control of said program. The records shall include, but need not be limited to, attendance data, test and evaluation results, and immunization records, as required by sections 25-4-901, 25-4-902, and 25-4-903, C.R.S. Such records shall be produced to the school district that received the notification required by paragraph (e) of this subsection (3) upon fourteen days' written notice if the superintendent of said school district has probable cause to believe that said program is not in compliance with the guidelines established in this subsection (3).

(4) Any child who has participated in a nonpublic home-based educational program and who subsequently enrolls in the public school system may be tested by the school district for the purpose of placing the child in the proper grade and shall then be placed at the grade level deemed most ap-

propriate by the school district with the consent of the child's parent or legal guardian. The school district shall accept the transcripts from the nonpublic home-based educational program for any such child.

(5) (a) (I) If test results submitted to the appropriate school district pursuant to the provisions of paragraph (f) of subsection (3) of this section show that a child participating in a nonpublic home-based educational program received a composite score on said test which was above the thirteenth percentile, such child shall continue to be exempt from the compulsory school attendance requirement of this article. If the child's composite score on said test is at or below the thirteenth percentile, the school district shall require the parents to place said child in a public or independent or parochial school until the next testing period; except that no action shall be taken until the child is given the opportunity to be retested using an alternate version of the same test or a different nationally standardized achievement test selected by the parent from a list of approved tests supplied by the state board.

(II) If evaluation results submitted to the appropriate school district pursuant to the provisions of paragraph (f) of subsection (3) of this section show that the child is making sufficient academic progress according to the child's ability, the child will continue to be exempt from the compulsory school attendance requirement of this article. If the evaluation results show that the child is not making sufficient academic progress, the school district shall require the child's parents to place the child in a public or independent or parochial school until the next testing period.

(b) If the child's test or evaluation results are submitted to an independent or parochial school, said school shall notify the school district that received the notification pursuant to paragraph (e) of subsection (3) of this section if the composite score on said test was at or below the thirteenth percentile or if the evaluation results show that the child is not making sufficient academic progress. The school district shall then require the parents to proceed in the manner specified in paragraph (a) of this subsection(5).

(6) (a) *If a child is participating in a nonpublic home-based educational program but also attending a public school for a portion of the school day, the school district of the public school shall be entitled to count such child in accordance with the provisions of section 22-54-103 (10) for purposes of determining pupil enrollment under the "Public School Finance Act of 1994", article 54 of this title.*

(b)(I) *For purposes of this subsection (6), a child who is participating in a nonpublic home-based educational program shall have the same rights as a student enrolled in a public or private school to participate on an equal basis in any extracurricular or interscholastic activity offered by a public school or offered by a private school, at the private school's discretion, as provided in section 22-32-116.5 and is subject to the same rules of any interscholastic organization or association of which the student's school of participation is a member.*

(II) (A) *Except as provided for in subparagraph (B) of this subparagraph (II), for purposes of section 22-32-116.5, the school district of attendance for a child who is participating in a nonpublic home-based educational program shall be deemed to be the school district that received the notification pursuant to paragraph (e) of subsection (3) of this section.*

For purposes of section 22-32-116.5, the school district of attendance for a child who withdraws from a public or private school more than fifteen days after the start of the school year and enters a nonpublic home-based educational program shall be the school district or private school from which the child withdrew for the remainder of that school year. If, during the remainder of that academic year, the child chooses to participate in extracurricular or interscholastic activities at the same school and was eligible for participation prior to withdrawing from the school, the child remains eligible to participate at such school.

(c) *No child participating in an extracurricular or interscholastic activity pursuant to paragraph (b) of this subsection (6) shall be considered attending the public school district where the child participates in such activity for purposes of determining pupil enrollment under paragraph (a) of this subsection (6).*

(d) *As used in this subsection (6), "extracurricular or interscholastic activities" shall have the same meaning as "activity" as set forth in section 22-32-116.5 (10).*

(e) *If any fee is collected pursuant to this subsection (6) for participation in an activity the fee shall be used to fund the particular activity for which it is charged and shall not be expended for any other purpose.*

Appendix 2

The chart below shows the progression of regulations, rights, and responsibilities from 1980 when the State Board of Education first passed rules and regulations, to 1987 when the State Board relaxed some regulations, to the homeschool law that is in effect as of December 2008.

	State Board of Education Rules: 1980 to August 1987	State Board of Education Emergency Rules: September 1987 to June 1988	Current Homeschool Law (as of December 2008)
Oversight	<i>Parents homeschool with State Board of Education and local school district oversight (4.01, 4.02)</i>	<i>Parents homeschool with State Board of Education and local school district oversight (10.00, 11.00)</i>	<i>Homeschool parents oversee educational program (with role for local school district superintendent to request student records upon "probable cause") (3(g))</i>
Instruction Time	<i>An average of four or more hours of classroom work per day, 172 days per year (3.07)</i>	<i>Parents must teach each child at least 688 hours each year (4.00(2))</i>	<i>172 days of instruction, averaging four instructional contact hours per day (3(c))</i>
Curriculum	<i>Home study systems approved by State Board of Education (2.01, 2.02); certified teachers could design their own curriculum within parameters set by State Board of Education (3.02)</i>	<i>Curriculum of parents' choosing (containing specified subjects) with an outline of educational objectives and list of instructional materials to be used filed with local school district (4.00(4), 5.00)</i>	<i>Curriculum of parents' choosing, consisting of communication skills of reading, writing, and speaking, mathematics, history, civics, literature, science, and the U.S. Constitution (3(d))</i>
Approval/ Notice of Intent to Homeschool	<i>Approval from school district of residence and/or State Board of Education (2.02, 4.03(5))</i>	<i>Annual notification to school district of residence (3.00)</i>	<i>Annual written notice of intent (exemption from compulsory attendance law) filed with any Colorado school district 14 days prior to establishment of homeschool program; notification must include child's name, age, place of residence, and number of hours of attendance (3(e))</i>

	State Board of Education Rules: 1980 to August 1987	State Board of Education Emergency Rules: September 1987 to June 1988	Current Homeschool Law (as of December 2008)
Academic Evaluation	<i>Home study systems to send quarterly progress reports to parents and local school district (3.06(2)), students must be "available for evaluation," including standardized achievement tests (3.07(3))</i>	<i>Annual testing by a certified teacher or at a testing site of the school district's choosing (6.00(1)); students scoring at or below 13th percentile must be placed in public or private school unless a corrective plan is mutually agreed upon or the local board of education determines the child is qualified due to documented extenuating circumstances (6.03, 6.04)</i>	<i>Students in grade levels three, five, seven, nine, and eleven must take a nationally standardized achievement test or be evaluated by a qualified person; test or evaluation results must be filed with the school district that received the notification or with a private school in Colorado (3(f)); students scoring at or below the 13th percentile or whose evaluation shows insufficient academic progress must be placed in a public or private school (5(a))</i>
Record Keeping	<i>Pupil progress reports kept by curriculum provider and filed with local school district (3.06(2), 3.07(3))</i>	<i>Records of attendance, test results, and immunization kept at home and filed with local school district (4.00(1))</i>	<i>Records of attendance, test or evaluation results, and immunization retained by parent to be provided to notified school district upon "probable cause" (3(g))</i>
Re-entry into Public School System	<i>School district must place student in appropriate grade, or grant secondary course credits for work completed in the home study program at the school district's discretion (4.02(9))</i>	<i>School district must enroll or re-enroll homeschool students according to policies and procedures established by the school district of residence without discrimination or prejudice (10.00(8))</i>	<i>Student may be tested by the school district to determine placement in the appropriate grade level, with parental consent; school district must accept homeschool student transcripts unless testing does not verify transcript accuracy (4)</i>

Sources:

Colorado Code of Regulations 301-27, "Administration of an Established System of Home Study Programs," Colorado State Board of Education, adopted August 14, 1980, readopted September 18, 1980.

Colorado Code of Regulations 301-27, "Emergency Rules: Administration of an Established System of Home Study," Colorado State Board of Education, adopted August 13, 1987, readopted September 10, 1987.

Colorado Revised Statutes § 22-33-104.5.

Notes

¹ *A Nation at Risk: The Imperative for Educational Reform, A Report to the Nation and the Secretary of Education*, National Commission on Excellence in Education, April 1983,

<http://www.ed.gov/pubs/NatAtRisk/title.html>

² Prior to the mid-19th century, children were primarily taught at home or in private tuition-based religious schools (for those who could afford them). Thomas Jefferson and John Adams, among others, advocated for state-sponsored schools in order to produce better educated and informed citizens. The first compulsory education law was enacted in Massachusetts in 1852.

Other states followed suit beginning in 1867, and by 1918 compulsory education was law in every state in the union, which resulted in the majority of American children receiving formal education in state-sponsored schools. See "A Homeschooler's History of Homeschooling, Part II," Cheryl Lindsey Seelhoff, *Gentle Spirit Magazine* (Vol. 6, No. 10),

<http://www.gentlespirit.com/gs6n10/HS2.pdf>. See also: "Compulsory Education Laws: The Dialogue Reopens," *The Home School Court Report*, (Volume XVI, Number 5), September/October 2000, <http://www.hslda.org/courtreport/V16N5/V16N501.asp>

³ "John Holt Biography," <http://www.holtgws.com/johnholtpage.html>. More information about Holt and some *Growing Without Schooling* archives can be found at: <http://www.holtgws.com/>

⁴ John Holt in "Plowboy Interview," *Mother Earth News*, July/August 1980, pp. 11-16, reprinted on the Life Education And Resource Network (LEARN) Web site, <http://www.bloomington.in.us/~learn/>

⁵ Raymond S. Moore and Dorothy N. Moore, *Better Late than Early* (Reader's Digest Press, Distributed by The Moore Foundation, Camas, WA: 1975), p. xv.

⁶ *Ibid.*, p. 51.

⁷ *Ibid.* See also: The Moore Foundation Web Site, "The Moore Formula,"

<http://www.moorefoundation.com/article.php?id=3>

⁸ See Milton Gaither, "Home Schooling Goes Mainstream," *Education Next* (vol. 9, no. 1), <http://www.hoover.org/publications/ednext/34685614.html>. The article cites a National Household Education Survey from 2001 in which 70 percent of respondents gave nonreligious reasons as the primary motivation to homeschool.

⁹ Associated Press, "Choice is offered to family keeping kids out of school," *Rocky Mountain News*, April 21, 1981.

¹⁰ Roy Brubacher, Assistant Commissioner, Colorado Department of Education, testimony before Senate Education Committee, Colorado General Assembly, January 14, 1988. Colorado State Archives, legislative audio tapes.

¹¹ Colorado Department of Education, "Home based education fall 2004-2008,"

<http://www.cde.state.co.us/cdereval/download/PDF/2008PM/sohomeschool.pdf>

¹² Dr. Brian D. Ray, "Research Facts on Homeschooling," National Home Education Research Institute, July 2, 2008, <http://www.nheri.org/Research-Facts-on-Homeschooling.html>

¹³ "1.5 Million Homeschooled Students in the United States in 2007," U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, Issue Brief 2009-030, December 2008, <http://nces.ed.gov/pubs2009/2009030.pdf>

¹⁴ Colorado Constitution, Article IX, § 11.

¹⁵ Colo. Rev. Stats. § 22-33-104(2)(i)(II) (1973).

¹⁶ Colorado Constitution, Article IX, § 1 states "The general supervision of the public schools of the state shall be vested in a board of education..."

¹⁷ AP, "Choice is offered," *Rocky Mtn News*, April 21, 1981. Christian Liberty Academy correspondence courses were not on the approved list in 1981, but were given provisional approval in 1985.

¹⁸ Civil Action, Colorado District Court, Gunnison County, No. 81-JV-3 (1981).

¹⁹ Treon Goossen, Home Education Legislative Analyst/Liaison for Colorado, personal conversation with author, June 4, 2008.

²⁰ *Wisconsin v. Yoder*, 406 U.S. 205 (1972), http://www.law.cornell.edu/supct/html/historics/USSC_CR_0406_0205_ZO.html

²¹ Clint Bolick, "Request to develop case defending due process rights of parents educating their children at home," Memorandum to Mountain States Legal Foundation Board of Litigation, May 9, 1983. U.S. Const. amend. XIV, clause 1.

²² *Meyer v. Nebraska*, 262 U.S. 390 (1923), http://www.law.cornell.edu/supct/html/historics/USSC_CR_0262_0390_ZO.html

²³ *Pierce v. Society of the Sisters*, 268 U.S. 510 (1925), http://www.law.cornell.edu/supct/html/historics/USSC_CR_0268_0510_ZO.html

²⁴ *Board of Education v. Allen*, 392 U.S. 236 (1968), http://www.law.cornell.edu/supct/html/historics/USSC_CR_0392_0236_ZO.html

²⁵ Colorado Code of Regulations 301-27, "Administration of an Established System of Home Study Programs," Colorado State Board of Education, adopted August 14, 1980, readopted September 18, 1980.

²⁶ Judy Gelner, e-mail message to author, December 7, 2008. Judy Gelner is the author's mother.

²⁷ CCR 301-27 (1980).

²⁸ Aurora Public Schools, Position Statement, "Home Study Programs," Adopted September 1983.

²⁹ Dorothy Hores, Director, Planning, Evaluation and Communication, letter to Roy Brubacher, Consultant of

Home Study Programs, Colorado Department of Education, March 19, 1987. Colorado State Board of Education, Agenda Summary Sheet, Agenda Item B-3-C, April 16, 1987.

³⁰ Colo. Rev. Stats. § 22-33-104(2)(b) (1973).

³¹ Virginia Culver, "Education Law Doesn't Require License or Set Teacher Standards," *Denver Post*, November 14, 1982.

³² House Bill 83-1346 (1983), emphasis added.

³³ Pete and Roxy Olson, personal conversation with author, July 8, 2008.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ Calvin M. Frazier, Colorado Commissioner of Education, "Memorandum Concerning an Interpretation Regarding the Word ENROLLED As it Appears in the Colorado School Attendance Law of 1963," to Local School Officials and Other Interested Persons, March 20, 1985.

³⁷ V. William Moritz, Attorney at Law, "Establishing an Independent School." *Widefield School District v. Bohl*, Colorado District Court, El Paso County, No. 86 JV 1389 (1987).

³⁸ Terry Kipp, telephone conversation with author, February 6, 2009.

³⁹ Proposed letter to be sent by CDE to District Superintendents and Local School Boards, Re: Information on Colorado Home Schoolers Advisory Committee.

⁴⁰ Michelle P. Fulcher, "Legislator works to ease rules on home study," *Denver Post*, January 2, 1985.

⁴¹ Colorado Department of Education, "Approved List of Correspondence Programs for Colorado Home Study Programs," Revised August 16, 1985. Three additional programs were approved, bringing the total to nine. Christian Liberty Academy was given "qualified approval" subject to reevaluation at the end of the school year, when it was not re-approved because the Academy did not desire to be "under the jurisdiction or accreditation of the state of Colorado." See Dr. Paul D. Lindstrom, Superintendent of Schools, Christian Liberty Academy Satellite Schools, letter to Roy Brubacher, April 16, 1986.

⁴² Dr. Mike Bird, telephone conversation with the author, February 4, 2009.

⁴³ Proposed House Bill, LDO No. 86 0392/1.

⁴⁴ "Home study – or truancy?," *Denver Post*, January 5, 1986. Bird, telephone conversation, February 4, 2009.

⁴⁵ Goossen, personal conversation, June 4, 2008.

⁴⁶ "Results of C.H.E.A. Questionnaire," Colorado Home Educators' Association.

⁴⁷ Goossen, e-mail message to author, October 21, 2008.

⁴⁸ Goossen, personal conversation, June 4, 2008. Kipp, telephone conversation, February 6, 2009.

⁴⁹ Rory Schneeberger, telephone conversation with author, December 2, 2008.

⁵⁰ Goossen, e-mail message, October 21, 2008.

⁵¹ Senate Bill 87-138 (1987).

⁵² Gelner, personal conversation with author, April 19, 2008.

⁵³ Dr. John Eidsmoe, *Home Education in Colorado: Clarifying Parents' and Children's Rights*, Independence Institute, Issue Paper no 4-87, (March 11, 1987).

⁵⁴ James G. Wright, "Home-school bill advanced by Senate unit," *Rocky Mountain News*, March 12, 1987.

⁵⁵ Senate Journal, fifty-sixth General Assembly, first regular session, 65th legislative day, March 12, 1987, p. 369.

⁵⁶ Jeffrey A. Roberts, "Home-study flexibility bill bites the dust," *Denver Post*, April 2, 1987.

⁵⁷ Colorado Code of Regulations 301-27, "Emergency Rules: Administration of an Established System of Home Study," Colorado State Board of Education, adopted August 13, 1987, readopted September 10, 1987. Kipp, telephone conversation, February 6, 2009.

⁵⁸ Kipp, telephone conversation, February 6, 2009.

⁵⁹ Janet Bingham, "Parents consider challenging home-schooling rules," August 14, 1987.

⁶⁰ Goossen, personal conversation, June 4, 2008.

⁶¹ CCR 301-27 (1987), §10.00(8).

⁶² Judy Gelner, letter to state representative Dick Bond, March 14, 1988.

⁶³ Goossen, personal conversation, June 4, 2008.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Senate Bill 88-56, as introduced.

⁶⁷ Colorado State Archives, legislative audio tapes.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ John Diaz, "Home teaching wins round," *Denver Post*, January 23, 1988.

⁷¹ Colorado State Archives, legislative audio tapes.

⁷² *Denver Post*, "'Home school' bill dangerous," February 10, 1988 (emphasis in the original article).

⁷³ Representative Richard Bond, telephone conversation with author, November 19, 2008.

⁷⁴ Berny Morson, "Home-school backers win in committee," *Rocky Mountain News*, March 9, 1988.

⁷⁵ Goossen, personal conversation, June 4, 2008.

⁷⁶ Christopher J. Klicka, Executive Director, Home School Legal Defense Association, letter to Representative Dick Bond, February 23, 1988.

⁷⁷ Testimony before House State Affairs Committee, Colorado General Assembly, March 8, 1988. Colorado State Archives, legislative audio tapes.

⁷⁸ *Ibid.* Others who implicitly argued before the House State Affairs Committee that education was the responsibility of the state were: Lauren Kingsbury, Legal Counsel, Colorado Association of School Boards; and Dr. Mike Hogan, representing Douglas County School District and the Colorado Association of School Executives.

⁷⁹ Testimony before House State Affairs Committee, March 8, 1988. Colorado State Archives, legislative audio tapes.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Morson, "Home-school backers win," *Rocky Mtn News*, March 9, 1988.

⁸⁴ Representative Dick Bond, "S.B. 56 - Home Schooling," Memo to House Colleagues, March 14, 1988.

⁸⁵ Colorado Homeschooling Network Newsletter, Vol. V, No. 11, March 1988.

⁸⁶ Goossen, personal conversation, June 4, 2008.

⁸⁷ *Denver Post*, "A better home schooling bill," March 17, 1988.

⁸⁸ Goossen, personal conversation, June 4, 2008.

⁸⁹ Gelner, personal conversation, April 19, 2008.

⁹⁰ Gelner, e-mail to author, September 29, 2008.

⁹¹ Schneeberger, telephone conversation with author, December 2, 2008.

⁹² Colo. Rev. Stats. § 22-33-104.5(3)(f).

⁹³ Ibid.

⁹⁴ Senate Bill 00-186.

⁹⁵ Senate Bill 06-073 and Senate Bill 07-016.

⁹⁶ Christian Home Educators of Colorado, Year-Round Advertising, http://www.chec.org/chec/venderad_center/year_round_ad.php

⁹⁷ "2008-09 NEA Resolutions," B-80, http://www.nea.org/annualmeeting/raaction/images/resolutions_document_2008-2009.pdf

⁹⁸ Dr. Lawrence Rudner, "Scholastic Achievement and Demographic Characteristics of Home School Students in 1998," Educational Policy Analysis Archives, Vol. 7, No. 8, <http://epaa.asu.edu/epaa/v7n8/>

⁹⁹ Colorado Association of School Boards, Final Resolutions, Adopted October 25, 2008, http://www.casb.org/Files/Legal/MLR/08_Final_Resolutions.pdf

¹⁰⁰ Rudner, "Scholastic Achievement and Demographic Characteristics," Educational Policy Analysis Archives.

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