



Home School Legal Defense Association

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Ms. Julianna M Montoya
 Home School & Federal Programs Administrator
 Options for Parents & Families | Charter Schools Division
 New Mexico Public Education Department
 300 Don Gaspar Ave.
 Santa Fe, NM 87501

VIA ELECTRONIC MAIL: Julianna.Montoya1@ped.nm.gov

Re: Applying House Bill 130/Section 22-2-8.1 NMSA 1978- Instructional Hours
 to Home School Programs

Dear Ms. Montoya:

By way of introduction, the Home School Legal Defense Association is a national organization which has as its primary purpose the protection of the right of parents to teach their children at home. We presently have over 100,000 member families in all 50 states and the District of Columbia, with approximately 650 member families in New Mexico.

As you know, New Mexico Statutes Annotated 1978, Section 22-1-2 (2019) recognizes the constitutional right of parents or guardians to direct their child’s education by providing for instruction in a homeschool program. As defined by New Mexico law, a homeschool program is “the operation by the parent of a school-age person of a home study program of instruction that provides a basic academic educational program...” New Mexico requires that parents or guardians notify the state superintendent of their intent to homeschool each year.

We have noticed that the New Mexico Public Education Department recently changed the “hard copy” of the home school notice form on the PED website. In the “Responsibilities of parents and families engaged in home schooling” section, the PED has changed/added two items related to House Bill 130. It seems that your office believes that Section 22-2-8.1 NMSA 1978 applies to home school programs. It does not.



First, the provision cited in the home school notice form is found in Article 2. As you know, this article is titled as the Public Education Department and Commission. The very first subdivision lays out the authority and general powers which involve the “control, management and direction of all public schools.”

In addition, when you review Section 22-2-8 NMSA 1978 you will find that it states that the “state board [department] shall prescribe standards for *all public schools* in the state.” Emphasis mine. Section 22-2-8.1 NMSA 1978 is directly under this provision.

Even when looking directly at Section 22-2-8.1 NMSA 1978 it is clear that it is referring to public school instructional hours, not instructional hours for all school-age persons. This section references “school programs, exclusive of lunch” and the description of instructional hour as being that “period at school during which students receiving instruction aligned to academic content and performance standards.”

It is clear that all of Article 2 applies to the governance of public schools.

When you review the actual provision in the Public School Code that deals with school attendance, it does not require home school students, or private school students, to provide instruction for the same number of hours as the public school. Instead, Section 22-12A-4 NMSA 1978 states that “a school-age person...shall attend school for at least the length of time of the school year that is established in that school-age person’s school district, charter school or private school.” The term school year is defined by Section 22-1-2 NMSA 1978 as “the total number of contract days offered by public schools in a school district during a period of twelve consecutive months.” Therefore, a home school program would need to provide instruction for at least the same number of days, not hours, as their local school district.

We find it troubling that your office is attempting to apply House Bill 130 and Section 22-2-8.1 NMSA 1978 to home school programs.

First, we can find nothing in the legislative discussions on House Bill 130 that mentions private school, let alone home school programs. The bill was never intended to include home school programs.

Second, up to sixty instructional hours for elementary students and thirty instructional hours for students in grade 7 or higher may be used for “professional work hours.” Under this provision, public schools can reduce the number of instructional hours to either 1080 or 1110 hours depending on what grade level the student is. Apparently, while your office believes the instructional hours apply to home school programs, the professional work hours do not. However, this provision is further evidence that these instructional hours were never intended to apply to home school programs.

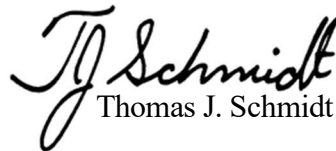
Finally, Section 22-2-8.1 NMSA 1978 has been around for many years. Before the changes made by House Bill 130, public school students were required to receive 990 hours of instruction in the elementary grades, and 1080 hours of instruction in grade 7 or higher. Yet, these hours requirements didn’t apply to home school

programs. The only other change is that House Bill struck “regular” from before “student.” However, the removal of this term has no effect on the applicability of this provision to home school students. The term “regular” was superfluous as it does not appear anywhere else in Chapter 22.

We stand with nearly 650 homeschool families in New Mexico who are members of Home School Legal Defense Association, along with Christian Association of Parent Educators (CAPE-NM), in opposing the attempt to apply public school instructional hours to home school programs. Section 22-2-8.1 NMSA 1978 does not apply to home school programs. Please immediately remove the references to instructional hours or House Bill 130 from any PED home school publication or form. We would appreciate confirmation that this has been done.

We trust that this letter will resolve this situation. However, should you have any questions or require any additional information, please do not hesitate to contact me. If you would prefer to discuss this matter with one of our New Mexico affiliated attorneys, I would be happy to put you in touch with one of them.

Very truly yours,



Thomas J. Schmidt

Cc: HSLDA member families in New Mexico
CAPE-NM