

State of New Hampshire

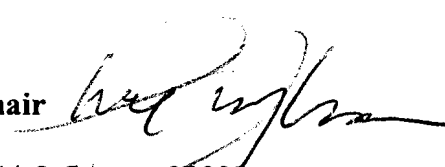
GENERAL COURT

CONCORD

MEMORANDUM

DATE: November 1, 2008

TO: Honorable John H. Lynch, Governor
Honorable Terie Norelli, Speaker of the House
Honorable Sylvia B. Larsen, President of the Senate
Honorable Karen O. Wadsworth, House Clerk
Tammy L. Wright, Senate Clerk
Michael York, State Librarian

FROM: Representative Paul Ingbreton, Chair 

SUBJECT: Final Report on SB 337, Chapter 344:3, Laws of 2008

Pursuant to SB 337, Chapter 344:3, Laws of 2008, enclosed please find the Final Report of the commission to examine New Hampshire's home education statutes.

If you have any questions or comments regarding this report, please do not hesitate to contact me.

I would like to thank those members of the commission who were instrumental in this study. I would also like to acknowledge all those who testified before the commission and assisted the commission in our study.

Enclosures

FINAL REPORT

Establishing a commission to examine New Hampshire's home education statutes. (SB 337, Chapter 344:3, Laws of 2008)

November 1, 2008

Purpose of the Study

The Commission was established by Senate Bill 337 during the 2008 legislative session. Its charge was simply "to examine New Hampshire's home education statutes."

Process and Procedures

The Commission held five meetings: September 12 and 30, October 9, 24, and 30. The group first conducted a review of the provisions of RSA 193-A, referring also to the related rules (Ed 315). Each of the ten sections of the statute was considered, and members of the Commission were invited to make observations regarding the provisions of the law. Discussion centered on the interaction of home educators with the state and on the question of whether changes to the law are necessary. Most provisions of the law brought no significant controversy or discussion. A few areas were separated for further discussion. Those which generated the most attention were the notification and evaluation components of the law. The Commission decided to summarize its discussions for presentation here.

Executive Summary

In school year 2007-2008, there were 4639 children being educated at home under New Hampshire's home education statute, RSA 193-A. Members of the Commission generally agreed that home education in New Hampshire has been successful. RSA 193-A has been in place since 1990 and seeks to balance the constitutional rights of home educators and the state's compelling interest in education. Deliberations to that end between home educators and public policy makers will no doubt continue. This report will highlight areas of discussion and attempt to give a modest review of the points of agreement and disagreement.

Findings and Recommendations

The group considered a proposed recommendation that the law, as it is, remain in place, and no changes be made at this time in the interest of stability and continuity. Of those present, four members of the Commission favored the proposal while two were in opposition and one expressed no opinion. Other motions were made with generally split voting. The Commission elected to simply submit the pros and cons of the arguments for the benefit of this report as follows:

193-A:1 Definitions

The Commission discussed and agreed that the term "participating agency" could be defined in the law as it is in Ed 315, and could replace the phrase "commissioner of education, resident district superintendent, or non-public school principal" where that phrase occurs.

193-A:5 Notification

Discussion addressed the notification requirements that were removed from this section by 2006 House Bill 406. The original law called for lists of subjects to be taught, lists of books, and copies of tables of contents to be submitted with notification. A suggestion was made that the requirements be reinstated for the first year of a program, as had been called for in the original text of 2008 Senate Bill 337, based on the concern that some parents providing notification might do so without thoughtful consideration of what the outcomes expected would be. It was noted that home educators had expressed in testimony on HB 406 (2006) and SB337 (2008) that the deleted requirements had not served any real

interest of the state. There continued to be sentiment that something else might be appropriate if the deleted requirement did not serve any real interest of the state.

The Commission agreed that to help address this concern participating agencies might provide home educating parents notifying for the first time with a copy of the law or the link to the statute online in order to insure that the parents are aware of their legal obligations.

Another suggestion called for a requirement that an evaluator be selected within some specified time after notification. It was observed that while many homeschoolers might choose an evaluator early in their program year, the choice of evaluator and evaluation method is subject to change during the course of the year, and requiring reporting of such a choice would not serve to address any particular need of the state.

An additional proposal called for parents to provide a statement of their goals and objectives in their notification materials, in the hope that this would give the state assurance that a home education program could succeed and that evaluators would have strong and measurable goals on which to measure a child's progress. This was based on a belief that a small percentage of home school programs may be inadequate and a potential difficulty of certifying progress if the person certifying does not know what the goals or objectives are.

A concern was raised that such a requirement could imply a role for the state in approving home education goals and objectives. It was pointed out that the state's authority to require schooling is based on its "compelling interest" in an educated populace, which is recognized as being constitutional only when it employs what courts call the "least restrictive means" to accomplish that interest. It was stated that parents' right to direct the education of their children has been recognized in several supreme court decisions and by the New Hampshire General Court itself in the purpose statement prefacing the 1990 legislation enacting RSA 193-A. The point was made that home education differs from an institutional education in fundamental ways, and the evaluation component of the law satisfies the state's interest in education.

Discussion developed on the question of whether home educators should continue to have to notify of their intent to home educate each year rather than submitting a one-time notification. Arguments were made that the present requirement provides an opportunity for the participating agency to communicate with parents and to keep a count of home educated students.

It was suggested that annual notification for continuing programs is superfluous. It is common practice for notification to be submitted simultaneously with the annual evaluation by parents continuing their home education programs. Annual evaluations can serve to indicate a continuing home education program, and provide participating agencies and home educators opportunities to communicate. The difficulty of keeping counts without the aid of annual notification remained a concern for some members.

193-A:5,IV Acknowledgment of notification

There have been occasions over the years when a participating agency failed to provide timely acknowledgment of notification. It was suggested that the acknowledgment component of the process be eliminated, and that notification letter and delivery confirmation serve as proof of initiation of a home education program. Objections centered on the desirability of the notification-acknowledgment exchange in providing confirmation of contact between the parent and participating agency.

193-A:6,II(b) National student achievement test

The suggestion was made that the phrase "administered by a person who meets the qualifications established by the provider or publisher of the test" be replaced with "administered by a certified teacher,

or a nonpublic school teacher, subject to the provisions of 193-A:6II(d)” which allows for mutual agreement between parent and participating agency on evaluation issues. The point was made that tests should be administered by school teachers as they are to all other New Hampshire students in the belief that this is necessary so that participating agencies are able to certify the results. A concern was expressed that allowing parents to administer standardized tests permits the possibility of fraudulent misrepresentation of a student’s achievement.

Responses to this concern dealt with questions about the extent to which this sort of problem might occur, what similar difficulties exist in public or private school settings, what measures would treat home educators in an equitable manner, and the inability of the proposed solution to prevent the problem. Also noted was the value and importance of students’ being in a familiar setting when undergoing testing.

193-A:6,II(c) State student assessment test

It was suggested that this section could be amended to accommodate the fact that the current state assessment test results are described in terms of “proficiency,” rather than in terms of percentiles, and proficiency as defined by the department of education for public school students should be deemed reasonable academic proficiency as called for in this section.

193-A:6,III Probation

An objection was raised regarding the protocol for the probationary period and release from probation, particularly that a parent retains freedom to choose an evaluation method and evaluator, and that a successful evaluation by July 1 of the probationary year results in release from probation. The objection centered on the fact that the evaluator is in the employ of the home school parent and may not be objective in this important task of signifying that the child had made progress and no longer needs to be on probation.

Responses called for fairness to home educators: the requirements for achievement and objectivity must not exceed those imposed on schools (public/private). It was asserted that a successful evaluation at the end of the probationary period satisfies the state’s interest.

193-A:7 Hearings

A proposal was made for reinstatement of language similar to the original law, to the effect that any assertion of failure to comply with the provisions of the home education statute should be in the form of “written and substantiated information” addressed to the commissioner of education who would then have authority to adjudicate the matter. Responses were that practice and current provisions of the law and rules provide the protections that might have been afforded by this language.

193-A:10 Home Education Advisory Council

The role of the Home Education Advisory Council in the legislative process was considered. The consensus was that while the Council might be advised of proposed legislation and individual members might express opinions as individuals, the Council takes no position on legislation. It was noted that the intent of the original formulation of the Council was to balance home educators and representatives of the state, with six home educator members and six members from institutions of public/private education. A further question was raised regarding the appropriateness of the participation of legislative members in the activities of the executive branch. There was general agreement that the legislative members of the Council could be non-voting members, but this gave rise to the concern that not having a vote would reduce legislators’ interest in participation. Another suggestion for the restoration of the original balance was that additional home educator members could be added.

SB 337, Chapter 344:3 of 2008
COMMISSION MEMBERS

- Two members of the House of Representatives.....Kimberley Casey
Paul Ingbretson
- One member of the Senate Education Committee.....Molly Kelly (did not participate)
- Department of Education designee.....Roberta Tenney
- One member - New Hampshire School Administrators Association.....Keith Pfeifer
- One member - Home Education Advisory Council.....Michael Compitello
- One member - New Hampshire School Boards Association.....Barrett Christina
- One member - New Hampshire Homeschooling Coalition.....Mary Faiella
- One member - Christian Home Educators of New Hampshire.....James Parison
- One member – Catholics United for Home Education.....James Doyle

SB 337, Chapter 344:3, Laws of 2008
APPENDICES LISTING

Appendix A: Home Education Statutes

Appendix B: Home Education Administrative Rules