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Homeward Bound: The Current Rise of Homeschooling and the Need for Regulation

Mary Fletcher*

Historically, courts have upheld the rights of parents to choose the educational paths of their children, whether that choice be to enroll a child in public school, private school, or to simply educate at home.¹ With the rise of the COVID-19 pandemic, the number of American homeschoolers has drastically increased, with 5.4% of U.S. households reporting homeschooling in April of 2020 and 11.1% in September of 2020.² While all fifty states have passed legislation allowing for homeschooling, regulations of homeschooling look different in every state.³ For example, in Colorado, students must either take a standardized test or be evaluated by a licensed teacher or psychologist to ensure that the homeschooled student is receiving an education comparable to students enrolled in public school.⁴ In contrast, Idaho has no assessment or regulation measures in place to confirm that the homeschooled student is actually receiving an education.⁵ With discrepancies of regulation throughout the states and a current increase of home-educators, a questions of fairness arises: will homeschooled students in states with little-to-no regulation fall through the cracks? Now, more than ever, consistent federal regulation is needed in order to ensure that homeschooled students are receiving a proper education.

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¹ Alicia Kreh, *Where Do We Belong? A Call for Consistency in Homeschooling Regulation*, 36 U. LA VERNE L. REV. 237, 249 (2015).

² Laurel Wamsely, *Homeschooling Doubled During the Pandemic, U.S. Census Survey Finds*, NPR (updated Mar. 23, 2021), <https://www.npr.org/2021/03/22/980149971/homeschooling-doubled-during-the-pandemic-u-s-census-survey-finds>.

³ Kreh, *supra* note 1, at 250.

⁴ Colo. Rev. Stat. Ann. § 22-33-104.5.

⁵ Tayler G. Hansford, *The Traveler's Guide to Homeschool Regulation in the United States*, 43 AM. J. TRIAL ADVOC. 513, 516 (2020).

Studies have shown that homeschooled students often perform very well academically, with median test scores on standardized tests well above the national average.⁶ Homeschooled students are more likely to perform better in college, with an average of a 3.47 collegiate grade point average for homeschooled students and 2.91 for public school students.⁷ However, these studies do not take into account those homeschooled students who are not required by law to take standardized tests and who do not attend college.⁸ Rather than critiquing the system of homeschooling itself, which often elicits high achievers and scholars, perhaps the focus should be on those students not in the studies: those not taking the standardized tests, those not attaining higher levels of education, and those inevitably falling behind through no fault of their own.

In addressing the issue of what regulations to implement, the federal government could look to already established regulations, such as those in New York. New York is known for having strict homeschooling regulations as compared to other states and ensuring that homeschooled students are receiving an adequate education.⁹ There, parents are required by statute to provide annual notice of intent to homeschool to the superintendent of their district.¹⁰ Parents must then submit an “individualized home instruction plan” for each child to the school district for approval.¹¹ The statute specifies the subjects to be taught at various grade levels and requires 180 days of instruction, made up of 900 hours for first through sixth grade and 990 hours for seventh through twelfth grade.¹² Parents are also required to file an annual assessment which includes the results of a commercially published achievement test.¹³ Students are expected to achieve a score “above the 33rd percentile on national norms” on these tests or display adequate growth in comparison

⁶ Kreh, *supra* note 1, at 252.

⁷ *Id.* at 253.

⁸ *Id.*

⁹ *Id.* at 258.

¹⁰ N.Y. Comp. Codes. R. & Regs. Tit. 8, § 100.10(b)(1).

¹¹ Kreh, *supra* note 1, at 258–259.

¹² *Id.* at 259.

¹³ *Id.*

to previous years' results.¹⁴ If at the end of the probationary period the student has not made progress and achieved all improvement goals, the board of education will again review the homeschooling program.¹⁵ After this review, the superintendent may conduct home visits if the homeschool program is in "substantial noncompliance."¹⁶ While this process might seem rigid, by mandating clear and consistent rules requirements throughout the states, it is more likely for parents to receive appropriate guidance, for the system to quickly recognize and address problems, and for the student to learn and grow in a comparable way to her public and private school peers.

Although in theory, implementing such regulations could bring about a fairer system where homeschooled students are better assured of a well-rounded education, such implementation would likely spark controversy. Homeschool communities in many states have largely gone unchecked by the government, and the notion of regulation would probably spark dissent from homeschooling proponents like the Home School Legal Defense Association (HSLDA).¹⁷ While such proponents might argue that the regulation of homeschooling is unconstitutional, it is worth noting that no case yet has found a generalized right of privacy under the constitution which would allow parents the right to homeschool free from reasonable government regulation.¹⁸ While parents may have the right to choose home based education over public school education or other private school education, such education, in the absence of a claim based on religious beliefs, may be subject to reasonable government regulation.¹⁹

That being said, the implementation of a strict system, like that of New York, could face challenges under the interpretation of "reasonable government intervention," especially given the states with little-to-no

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 271.

¹⁸ *Clonlara, Inc. v. Runkel*, 722 F. Supp. 1442, 1458 (E.D. Mich. 1989).

¹⁹ *Id.*

regulation where implementation might seem particularly drastic. Perhaps New York's system should be looked at as more of an end goal rather than a starting place due to the probable backlash from organizations like HSLDA.²⁰ A starting solution for providing a consistent, national homeschooling regime could involve three major components: (1) parents would be required to notify the school district of their intent to homeschool; (2) the school district would need to approve the application to homeschool and the proposed curriculum; and (3) the students would complete yearly assessment tests to ensure their education levels are in compliance with any proficiency standards established by the state.²¹

By building a foundation with these three laws, it is possible to provide a feasible solution which accommodates the rights of the parents to educate their children at home and safeguards the interests of the state in ensuring its citizens receive a quality education.²² While even these three relatively basic requirements might spark opposition, is it not worth fighting for the rights of those children who inevitably suffer at the hands of negligent parents who have neither the resources to provide proper instruction nor oversight? While many things are replaceable, a child's education is not. Of course, homeschooling can provide a real and viable option for certain households; however, with the current rise of homeschooling, there is a pressing need to provide families with the guidance and tools to ensure homeschooled students are not losing opportunities afforded to those in public and private school.

Edited by Alex Beezley

²⁰ Kreh, *supra* note 1, at 272.

²¹ *Id.*

²² *Id.*