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Christine Hall

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At a Glance: Defining Missouri's Homeschooling Regulations

Christine Hall*

INTRODUCTION

All children in the United States have the right to a free public education, and many scholars argue that the Due Process Clause in the Constitution requires that all kids be given equal educational opportunity no matter what their race, ethnic background, religion, or sex, or whether they are rich or poor, citizen or non-citizen.¹ Furthermore, in *Brown v. Board of Education*, the court established that the right to an equal education opportunity is one of the most valuable rights of a citizen and “perhaps the most important function of state and local government.”² Every state constitution requires to provide a system of free public education, but parents maintain choice and may still choose private or homeschooling.³

Homeschooling has become increasingly popular over the past several decades, and has had a huge boom over the past few years for a myriad of reasons.⁴ Many parents choose to homeschool for religious reasons as they want to incorporate their practice of religion into the everyday elements of their schooling or do not want to expose them to secular teachings.⁵ Some parents are choosing to homeschool for political reasons and have their children free from “far-left political indoctrination” as they do not want their children exposed to teachings such as “critical race theory” or LGBT affirming studies.⁶ Some parents do not like the idea of a classroom, or feel their child would learn best outside of it, and choose to homeschool to provide more flexibility in the environment.⁷ Growing in popularity, some parents choose to homeschool to avoid vaccinating their children for

* J.D. Candidate, May 2024, St. Louis University School of Law

¹ Patricia W. Morrison, *Editorial Note, The Right to Education: A Constitutional Analysis*, 44 U. CIN. L. REV. 796 (1975).

² *Brown v. Bd. of Ed. of Topeka, Shawnee County, Kan.*, 347 U.S. 483, 493 (1954), supplemented sub nom. Brown v. Bd. of Educ. of Topeka, Kan., 349 U.S. 294 (1955).

³ Kimberly A. Yuracko, *Education Off the Grid: Constitutional Constraints on Homeschooling*, 96 CAL. L. REV. 123, 125 (2008).

⁴ Casey Eggleston and Jason Fields, *Homeschooling on the Rise During COVID-19 Pandemic*, UNITED STATES CENSUS BUREAU (March 22, 2021), <https://www.census.gov/library/stories/2021/03/homeschooling-on-the-rise-during-covid-19-pandemic.html> (showing that the percentage of homeschool children went from 5.4% to 11.1% for the 2020-2021 school year).

⁵ David Sikkink, *The Social Realities of Homeschooling*, INST. FOR FAM. STUD. (May 7, 2020), <https://ifstudies.org/blog/the-social-realities-of-homeschooling>.

⁶ Keri D. Ingraham, *Why Homeschooling is Growing*, DISCOVERY INST. (May 2, 2022), <https://www.discovery.org/education/2022/05/02/why-homeschooling-is-growing/>.

⁷ *Id.*

health reasons, or because they do not want their “children to be tracked by state vaccination registries.”⁸ There has also been an increase in a number of parents that are choosing to home school for safety concerns due to the increase in school shootings.⁹

There are currently no federal laws regulating homeschooling, and while the Supreme Court has not specifically ruled on its legitimacy as a right of a parent, they did support the rights of Amish parents to keep their children out of public school for religious reasons.¹⁰ Most of education regulations, and all of homeschooling regulations, are found within a state’s police power and state codes.¹¹ This leads to highly differing results amongst a child’s right to education throughout the United States, and exposes many children to educational neglect.¹² This comment specifically addresses the structure of Missouri’s homeschooling codes, the practical effect it has, and a suggestion for change.

DEFINING MISSOURI’S APPROACH

Most states have some sort of regulation for homeschooling in their state. It varies from highly regulated to no regulation at all.¹³ On the high end, states such as New York require homeschool caregivers to provide curriculum and the students are to take standardized tests at least every other year in grade school and every year in high school.¹⁴ On the less regulated side, we have states such as Texas that do not have any regulations at all.¹⁵

Missouri leans to the less regulated side of the spectrum, but not by much. Missouri has an education statute that defines educational neglect (MO Rev Stat § 167.031) and requires all students that are homeschooled to receive a certain allocated hours of studies

⁸ Donya Khalili & Arthur Caplan, *Off the Grid: Vaccinations Among Homeschooled Children*, 35 J. L. MED. & ETHICS 471, 474 (2007).

⁹ Elizabeth Chuck, *After Uvalde Shooting, Parents Feel There is No ‘Safe Place’ for Children*, NBC NEWS (June 12, 2022), <https://www.nbcnews.com/news/us-news/uvalde-shooting-parents-feel-no-safe-place-children-rcna32534>. (reporting parents of Uvalde school district children are moving to homeschool after school shooting).

¹⁰ Kimberly A. Yuracko, *Education Off the Grid: Constitutional Constraints on Homeschooling*, 96 CAL. L. REV. 123 (2008); *Wisconsin v. Yoder*, 406 U.S. 205, 234 (1972).

¹¹ Elizabeth Bartholet, *Homeschooling: Parent Rights Absolutism vs. Child Rights to Education & Protection*, 62 ARIZ. L. REV. 1, 70 (2020).

¹² *Id.* at 46; Timothy Brandon Waddell, *Bringing It All Back Home: Establishing A Coherent Constitutional Framework for the Re-Regulation of Homeschooling*, 63 VAND. L. REV. 541, 560 (2010).

¹³ HSLDA, *Homeschool Laws by State*, HSLDA.ORG (November 13, 2022, 2:32 PM), <https://hsllda.org/legal> (To compare different state regulations).

¹⁴ N.Y. Comp. Codes R. & Regs. tit. 8, § 100.10 (h).

¹⁵ Tex. Educ. Code Ann. § 25.086. (homeschooling is defined as private schooling and is only subject to including a course in “good citizenship”).

per subject,¹⁶ but there is no mandated testing to ensure that a child is on track. The statute also requires homeschooling guardians to keep records of the schooling for inspection, but clarifies that it can only be used in defense of prosecution.¹⁷ According to the Department of Social Services manual, Child Welfare Services are not allowed to compel a guardian or parent to produce the records if there is an allegation of educational neglect.¹⁸ Child Welfare Services are left powerless, and the only way to enforce possible neglect through home schooling is for them to report to the school district themselves. The school district could then report to the prosecuting attorney, who is the only one in Missouri who has the discretion to enforce and compel records. There is a clear issue here though—without probable cause of educational neglect, how can a state bring charges to compel the homeschooling records? The prosecution cannot retroactively compel records without evidence of the neglect, and how can we see the neglect without records? There is a statutory requirement to keep records and teach certain subjects, but there is a highly improbably means of enforcement. Homeschool caregivers are essentially given complete discrepancy in how their child receives an education—if they receive one at all.

¹⁶ MO Rev. Stat. § 167.031 (2)

2. (1) As used in sections 167.031 to 167.071, a "**home school**" is a school, whether incorporated or unincorporated, that:

(a) Has as its primary purpose the provision of private or religious-based instruction;

(2) As evidence that a child is receiving regular instruction, the parent shall, except as otherwise provided in this subsection:

(a) Maintain the following records:

a. A plan book, diary, or other written record indicating subjects taught and activities engaged in; and

b. A portfolio of samples of the child's academic work; and

c. A record of evaluations of the child's academic progress; or

d. Other written, or credible evidence equivalent to subparagraphs a., b. and c.; and

(b) Offer at least one thousand hours of instruction, at least six hundred hours of which will be in reading, language arts, mathematics, social studies and science or academic courses that are related to the aforementioned subject areas and consonant with the pupil's age and ability. At least four hundred of the six hundred hours shall occur at the regular home school location.

¹⁷ MO Rev Stat § 167.031 (5) "The production by a parent of a daily log showing that a home school has a course of instruction which satisfies the requirements of this section or, in the case of a pupil over the age of sixteen years who attended a metropolitan school district the previous year, a written statement that the pupil is attending home school in compliance with this section shall be a defense to any prosecution under this section and to any charge or action for educational neglect brought pursuant to chapter 210."

¹⁸ Missouri Department of Social Services, Child Welfare Manual, Sec. 2, Chapter 5, 5.4.4.4 *Home Schooling*, (November 13, 2022, 3:45PM),

<https://dssmanuals.mo.gov/child-welfare-manual/section-2-chapter-5-child-abuse-and-neglect-reports-subsection-4-family-assessments/> ("The Children's Division does not have the legal authority to compel a family to produce home schooling records").

A CALL TO ACTION

Unregulated education can open the door to more than just educational neglect. Often, when a child is not receiving an education, there are other child abuse or neglect circumstances surrounding the situation.¹⁹ If there is no one to check up on the child, it is possible that this abuse or neglect goes unseen. It is a hard balance—parents have a right to raise their children—but children have a right to live a neglect free childhood and have a right to an equal opportunity in education. This is why Missouri must change their regulations.

A way to change the regulation while still protecting parent autonomy would be to give child welfare services (Children’s Division) the legal authority to compel homeschool educators to provide evidence of homeschooling. A homeschool educator’s right to privacy and autonomy in parenthood should not outweigh a child’s right to an education. This way, child services could verify schooling in situations of suspicion, and make referral themselves to the prosecuting attorney if it could not be resolved at this level.

CONCLUSION

Without regulation, the state may have no means to protect the public interest in a well-educated and civically cohesive population, and children that do not have the opportunity to receive an education may ultimately “become burdens on society, lacking the capacity to support themselves or to participate amicably or fruitfully in their communities.”²⁰ Missouri’s statute appears to take a stance and advocate for the right of a child to receive an education, but without a meaningful method of holding homeschool educators to the standard it creates, it is merely words that hold no accountability.

Edited by Allison Frisella

¹⁹ Melissa Van Wert et al, *Educational Neglect: Understanding 20 Years of Child Welfare Trends*, 75 CHILD ABUSE & NEGLECT, 50, 55 (2018).

²⁰ Waddel, *supra* note 12 at 560.