

Homeschool Law in Texas

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A. History

Public school attendance was not mandatory in Texas until 1916. Prior to the passage of a compulsory education law, no more than 10% of school-age children attended public schools. Because there were few private and parochial schools, many children were taught at home.

In the 1916-1917 school year, the first compulsory attendance law required children between age 8 and 14 years of age to attend public school for 60 days. The next year, the required number of days increased to 80. The next year, the requirement increased to 100 days. Parents were responsible for assuring that children complied and failure to do so was a misdemeanor punishable by a fine. A child who refused to attend school could be disciplined by the juvenile court as a habitual truant. The law authorized the appointment of attendance officers to enforce its provisions.

Over the years, this basic system has not changed. Now children must attend school from age 6 through 18, the number of days has tripled from the requirement of the 1916 school year, parents are still responsible for requiring their children to attend school, and a child's refusal to attend will land them in juvenile court.

The first compulsory attendance law exempted "any child in attendance upon a private or parochial school or who is being properly instructed by a private tutor." In 1923, the reference to private tutors was deleted, and instead the statute exempted "any child in attendance upon a private or parochial school which shall include in its course a study of good citizenship, and shall make the English language the basis of instruction in all subjects". In 1971, the English language restriction was dropped.

Until 1981, the State of Texas never attempted to prohibit or even restrict home schooling, or to allege a violation of the compulsory attendance law based solely on a child's being taught at home. In that year, a staff attorney for the Texas Education Agency advised a superintendent for one school district that "home instruction is not one of the enumerated exemptions" to the compulsory attendance law. In 1982, the TEA's assistant general counsel expressed an even stronger position when he said that "the compulsory student attendance laws of the State of Texas do not permit students to be taught at home." In 1985, the TEA took the position that "private school attendance is an acceptable substitute for public school attendance; however, educating a child at home is not the same as private school instruction and, therefore, not an acceptable substitute." The TEA urged school districts to file charges against home schooling parents, and they did.

In all, approximately 150 prosecutions were initiated, and about 80 of them were actually tried. The State's position in those prosecutions was that a home school was never a private school, so therefore there was no exemption from the compulsory attendance law.

To halt these prosecutions based upon TEA's interpretation of the compulsory attendance law, a class action lawsuit was filed in Fort Worth (17th District Court, Tarrant County) by homeschooling parents and providers of home school curricula. Nine married couples with school-age children were named as representatives of the class. Gary and Cheryl Leeper of Arlington happened to be the first named plaintiffs. The defendants were the Texas Education Agency, Arlington I.S.D., El Paso I.S.D., and Katy I.S.D.

At the trial court, the judge granted a permanent injunction against school officials who might seek to prosecute, under the compulsory attendance law, the parents of school-age children who are being taught in a bona fide manner in or through their home. He held that children attending schools conducted in their own home are attending a private or parochial school and are exempt from the requirements of compulsory attendance at a public school. The details of his judgment follow:

A school-age child residing in the State of Texas who is pursuing under the direction of a parent or parents or one standing in parental authority in or through the child's home in a bona fide (good faith, not a sham or subterfuge) manner a curriculum consisting of books, workbooks, other written materials, including that which appears on an electronic screen of

either a computer or video tape monitor, or any combination of the preceding from either

(1) of a private or parochial school which exists apart from the child's home or

(2) which has been developed or obtained from any source, said curriculum designed to meet basic education goals of reading, spelling, grammar, mathematics and a study of good citizenship,

is an attendance upon a private or parochial school within the meaning of (the compulsory attendance law exemption) of the Texas Education Code and exempt from the requirements of compulsory attendance at a public school.

Predictably, the Defendants (TEA and the school districts) appealed to the Court of Appeals, but the appellate court affirmed the trial court's decision in Texas Education Agency v. Leeper, 843 S.W. 2d 41 (Tex. App-Ft.Worth 1991, affd in part, revd in part).

The Defendants then sought review of the appellate court decision. The Supreme Court of Texas, in Texas Education Agency v. Leeper, 893 S.W. 2d 432 (Tex. 1994), agreed that Texas law does not require children who are taught in legitimate home schools to attend public schools, but reversed and removed the permanent injunction against the TEA and school districts.

B. Leeper and the law today

The parents of school-age children in Texas need only home school "in a bona fide manner" (not a sham or subterfuge), have a curriculum "consisting of books, workbooks, other written materials, including that which appears on a computer screen or video tape monitor, . . . developed or obtained from any source", and the curriculum must be "designed to meet basic education goals of reading, spelling, grammar, mathematics and a study of good citizenship."

That's it.

If Texans follow the recipe above, they are exempt from mandatory attendance in the public schools, and are in effect, operating a private school for their own children.

But who determines whether a parent is operating a home school in a bona fide manner? This is where the Supreme Court of Texas left homeschoolers dangling. The Leeper decision did not preclude the Texas Education Agency from suggesting to local school district attendance officers "lawful methods to ascertain if there is compliance" with the mandate that a home education be pursued in a "bona fide manner."

Therefore, school district attendance officers can make inquiry about curricula and the results of standardized tests. The Leeper decision indicates that the use of standardized tests is one indication that the home school is proceeding in a "bona fide manner", but Leeper prohibits the TEA or the local school district from requiring home schooled children to take standardized tests to determine whether or not the home education is being pursued in a "bona fide manner".

Homeschoolers should reasonably cooperate with any reasonable inquiry from an attendance officer; however, once an attendance officer determines that you have a curriculum "consisting of books, workbooks, other written materials, including that which appears on a computer screen or video tape monitor, . . . developed or obtained from any source", and the curriculum is "designed to meet basic education goals of reading, spelling, grammar, mathematics and a study of good citizenship", that should be the end of the inquiry.

Section 25.093 of the Texas Education Code requires that a school attendance officer warn the parent in writing that attendance is immediately required. This written warning should give homeschoolers ample opportunity to seek assistance should a school district attempt a prosecution.

There is no current effort at the state level to thwart homeschoolers. If one requests homeschooling information from the Texas Education Agency, you will receive a letter that acknowledges *Leeper* and its holding that a homeschooled child pursuing a curriculum designed to meet basic education goals is attending a private school.

Homeschoolers are not governed by the educational requirements of the Texas Education Code. The Code applies only to public schools, so you do not have to fly the Texas and United States flags on each school day, take attendance, hold school for a certain number of days per year, or administer standardized tests. The only obligations are to have a curriculum and educate in a bona fide manner.

C. Curriculum

The most obvious way to meet the curriculum requirement is to purchase materials from one of many sources, including commercial, educational and non-profit organizations. Those are good ways to obtain materials that will benefit home school children, but another way to meet the requirement may be as close as your computer and as free as the internet.

The public schools are under tremendous pressure to meet standardized testing goals, specifically the TAAS test. Now, there is a curriculum for public schools and that curriculum is on the internet, supplemented by links to educational websites. In this author's opinion, the Essential Knowledge and Skills (TEKS) promulgated by the State Board of Education can be the Texas homeschooler's curriculum. It is the state's curriculum, and if it is good enough for the public schools in Texas, it should be good enough for Texas homeschools. TEKS will be updated by the state, so homeschoolers do not have to. And because it is on your computer, and Leeper approved of written materials which appear on a computer, the TEKS curriculum

should meet with the approval of any attendance officer.

Of course, practically speaking, homeschoolers will want to do more and do better than the TEKS curriculum, but for meeting the requirements of Leeper for a written curriculum, TEKS seems to pass the test.

Texas homeschoolers are under no recordkeeping requirement; however, keeping a journal of activities performed and books read can not only be an educational opportunity but also a helpful way of showing what material was actually covered in your curriculum.

D. Curfews

Public schools routinely take their students on field trips. You cannot go to the zoo or to any local museum on a weekday from September through May without encountering bus loads of school kids. However, the City of Houston and several outlying cities have Daylight Juvenile Curfew ordinances that have homeschoolers concerned about their ability to take field trips or go out during the day with their homeschooled kids. There is no reason for concern.

The City of Houston ordinance prohibits any minor from knowingly remaining "in or upon any public place in the city between 9AM and 2:30PM" on any weekday while public school is in session and it makes the parent responsible if they knowingly allow the minor to violate the daytime curfew; however, there are many exceptions. It is a defense to prosecution that the minor:

- was accompanied by his or her parent or guardian;
- was attending (including traveling to and from) a school activity;
- was engaged in activity (including going directly to or coming directly from) a lawful employment activity;
- was on the sidewalk of the place where he or she resides;
- was on an errand directed by his or parent or guardian;
- was on an errand made necessary by an emergency; and
- was engaged in any event or activity protected by the Texas or U.S. constitution.

This is a partial list of the defenses, but these are the most likely ones that will apply to homeschoolers. As you can tell, that means that your child can be in front of their home, can go to work, can go on errands at the direction of a parent, can go to a homeschooling meeting or a dance class, and of course can go anywhere with his or her parents at anytime.

Not to alarm anyone, but these are "Defenses" to prosecution, not "Exemptions". So, an overzealous prosecutor *may* press charges, but you can use one of the defenses to avoid conviction. In reality, the odds are very small that a homeschooling family would ever

encounter a problem with the Daylight Juvenile Curfew Laws. A polite, respectful attitude with law enforcement officials is suggested. For a listing of Cities with Daytime Curfews check out out this source: <http://www.municode.com>

E. Can the Homeschool Laws be Changed?

There are three basic sources of law: Constitutional, Statutory and Case Law.

“Constitutional” refers to the Constitution (both Texas and the U.S.). “Statutory” refers to laws passed by a legislature. “Case Law” refers to a court’s opinion of what the law means, be it the constitution, a statute or even the unlegislated law called “common law” (an amalgamation of laws, customs and practices we inherited from our predecessors, including English law).

The source of authority to homeschool in Texas is case law. The Supreme Court of Texas, in the context of a dispute between homeschoolers and the TEA, decided to affirm the judgment of a trial court finding that homeschoolers with a curriculum and educating in a “bona fide manner” are operating a private school and are thus exempt from the compulsory attendance statute.

Case law can be changed at any time, by another case that makes its way to the Supreme Court of Texas. The nine justices on that court can decide to follow the previous case law, a principle known as *stare decisis*, or they can change their minds. Additionally, a legislature can pass a law and it is enforceable until a court orders that it is not. Interestingly, of the nine justices who decided Leeper in 1994, only three remain on the Court. (Justice Hecht who authored the opinion, Chief Justice Phillips and Justice Enoch.) Charles Murray, the trial court judge who authored the original judgment, is deceased.

So enjoy the laws that are in place now but continue to watch what the Legislature does in case they try to change your homeschool freedoms.

F. About the author

Albert Hollan is a Houston attorney who is Board Certified in Personal Injury Trial Law and Civil Trial Law by the Texas Board of Legal Specialization. His website is located at <http://www.carwrecks.com>