

ANNOTATED MASSACHUSETTS HOME EDUCATION ADVISORY NOVEMBER 2001

The Massachusetts Department of Education has been preparing an Advisory on Home Education over a period of years, but has yet to issue a final version. The Draft Advisory is not sent out in a general mailing, but is forwarded to Superintendents who call the DOE with problems. The latest Draft Advisory, written in August 2000, was the subject of much discussion among homeschool groups. The DOE lawyer asked that we consolidate our comments and forward them to her. This document, written in November 2001, is the result of a joint effort. Groups canvassed for input to this document were MHLA members, MassHOPE Board, HSLDA lawyer for Massachusetts, Scott Woodruff, leaders of Catholic Homeschoolers, Muslim Homeschoolers, and Jewish Homeschoolers of Massachusetts. The cover letter explained the two greatest concerns:

1) The Advisory needs to be changed so that superintendents have an accurate understanding of prior approval issues. We propose that the Department separate Commonly Asked Question #2 into two separate sections, to reflect two very different situations that must be distinguished in superintendents' minds. It's particularly important that the Ivan case not be seen as a case that turns on prior approval issues. The Department will serve superintendents by helping them to understand that judicial intervention, though theoretically possible, is not an effective step when, despite lack of prior approval, both the superintendent and the family are trying to bring the family into compliance. There is really only one way to "enforce" the compulsory attendance statutes in that case: expedited review and approval. To indicate otherwise is a disservice to superintendents.

2) The Advisory needs to be changed so that superintendents do not think they have an enlarged duty towards special needs students who are homeschooled. We urge the Department to change its advice on special education, Commonly Asked Question #10. The Advisory now indicates to superintendents that they have an obligation to exercise a different standard of approval for cases of special needs. We cannot see the legal basis for this advice, but we can see that this section of the Advisory has great potential for damage to families wishing to homeschool a special needs child. We would be happy to provide you with specific information on the kinds of difficulties parents of special needs students have had with superintendents who seem to be following the DOE Advice here. Often, the parents choose to homeschool because the child is not progressing in the special needs program at the school, yet these same children make dramatic improvements home. Some experts even counsel that home education is the best solution for special needs children. Given the evidence we see, it would be appropriate to presume that the special needs child will progress at home. In any case, the regular approval process, outlined in Charles, covers all children in the Commonwealth. Special needs children should not be singled out for a different approval process.

The latest word from the DOE lawyer (April 2002) is that she expects to rewrite the Advisory in the summer of 2002. [April 2003, still no rewrite. The DOE explains that their legal department's time is going to litigation matters.] A copy of the DOE Draft may be obtained on the MHLA website or by sending an email to advisory@mhla.org.

CODE



Times New Roman = Original wording of DOE Draft

Yellow highlighted = Our suggested additions to the DOE text

Footnotes = Our commentary and also sections we are suggesting be omitted.

The Massachusetts Department of Education does not set home education policy. This Advisory aims to assist school district officials in understanding the Commonwealth's home education law so that they may align their policies with that law.

¹Approval and oversight of home education is a local, rather than state, function in Massachusetts. Therefore, the Department of Education is not involved in setting policy, overseeing school district practices, or otherwise enforcing the Commonwealth's home education law. The Department does not collect data from school districts concerning the incidence of home education, and does not maintain a repository of school district home education policies.

When asked, the Department attempts to provide school officials and parents with information and answers to questions about the legal requirements for home education. **The Advisory is necessarily focused on problems that districts may have with home education policies. Most parents and districts have cordial relationships and home education proceeds without any need to consult the Legal Department of the DOE.**

Over the past several years, the Department of Education has received numerous inquiries about home education policies and procedures from school districts, parents, and others. The Department issued an advisory on home education in 1987, after the Massachusetts Supreme Judicial Court decided the case of *Care and Protection of Charles*, 399 Mass. 324 (1987). *Charles* established the legal guidelines in Massachusetts for the approval of home education programs for children of compulsory school age. This updated and expanded Home Education Advisory explains the legal standards and procedures that apply to home education in Massachusetts and contains answers to many of the questions about home education which the Department has been asked since the *Charles* opinion. It also incorporates two recent Massachusetts court decisions on home education, *Brunelle vs. Lynn Public Schools*, 428 Mass. 512 (1998), concerning home visits by public school officials, and *Care and Protection of Ivan*, 48 Mass. App. C- 87 (1999), **concerning the recourse available to school districts when parents refuse to provide essential information regarding their home education plans and provide verification of their children's progress under those plans, should such be requested by the school district.** ²

¹ This section is moved up from FAQ #20. We are particularly concerned that the information in this DOE Advisory could set policy. As we told you, we do hear from superintendents that they must take a certain action in regard to home education because "DOE requires it." Disclaiming the DOE ability to set policy right at the beginning, and again at the end, will help to ensure that superintendents understand that home education policy is set at the local level, following the guidelines of the court cases and statutes. Any gray areas are not for DOE to adjudicate.

² Omit: "concerning the right of school districts to require that parents provide essential information regarding their home education plans and provide verification of their children's progress under those plans." Neither the Ivan decision nor Charles really talks about "rights" of the school district so much as what they may legitimately review. Ivan also talked about parents' rights, and you are not mentioning those here. It's more accurate to use the Court's wording.

I. BASIC PRINCIPLES

Massachusetts has a compulsory school attendance law, General Laws Chapter 76, § 1, which applies to all children between the ages of 6 and 16. While the law requires that all children receive an education, it also recognizes **that "the liberty interests protected by the Fourteenth Amendment extend to the activities involving child rearing and education." Charles at 334**¹ **Therefore, parents have** the right to choose from among several educational options. All children of school age have a right to be enrolled in the public schools of the city or town in which they reside. Alternatively, parents may elect to enroll their child in the public schools of another school district which participates in the state's school choice program or a charter school, or may choose to send their child to an approved private school or to educate their child at home. When a child of compulsory school age is educated outside the public school system, either in a private school or at home under the guidance of his or her parent(s), the school district where the private school is located, or in the case of home education, where the child **legally**² resides, has a legal duty to review and approve the program.

Home education in Massachusetts is governed by General Laws Chapter 76, § 1. It states that a child of compulsory school age must **"attend a public day school [or some other approved school] ... but such attendance shall not be required of a child... who is being otherwise instructed in a manner approved in advance by the superintendent or the school committee."** G.L. c. 76, § I (emphasis added). School districts review and approve home school proposals under the guidelines set forth in the *Charles* opinion discussed below. Although *Charles* establishes a framework for the review of home education plans, each school district develops its own review process. **The Department encourages school districts to review carefully the relevant statutes and court decisions when developing home education policies, so that their policies and the language do not go outside the boundaries of statutory language and court decisions.**

II. APPLYING FOR A HOME EDUCATION PROGRAM

A. Notification

Parents planning to educate their child at home must notify their superintendent or school committee *before* removing the child from public school. This notice may be given at any time before or during the school year. To avoid miscommunication and ensure compliance with the home education approval law, parents are encouraged to give this notice in writing. Some school districts have a home education approval application form to be completed for this purpose.³ **Such an application form should reflect a clear understanding of home education law.**

¹ Again, we think it's important for superintendents to understand that the courts recognize that parents possess a basic right, though not absolute, in directing the education of their children.

² This clarification might help in some cases.

³³ **Omit this sentence:** "A student may not begin a home education program unless and until it has been approved by the superintendent or school committee of the school district in which the student resides." **The point is already made in the previous paragraph--and by omitting this sentence you avoid the misleading statement that no one can do a "home education program" without approval --there are all kinds of "home education programs" that go on, even when kids are enrolled in school.**

When a school district has received notice of a parent's proposal to educate his or her child at home, the school district must evaluate the home education proposal and either approve, seek modification of, or disapprove the proposal.¹ The school district should communicate its decision on the parent's home education proposal to the parent² within a reasonable time after home education approval is sought. **In case of disapproval, the school committee must convene a hearing for consideration of the home school program, upon the request of the parents.**

B. Approval

Under Massachusetts law, parents who wish to educate their child at home as an alternative to public school enrollment must have their home education plan reviewed and approved by the school district in which their child **legally** resides. G.L. c. 76, § 1. In the recent case of *Care and Protection of Ivan*, the Massachusetts Appeals Court explicitly stated that "prior approval of the superintendent or [school] committee is a prerequisite to removal of children from school and to the commencement of a home schooling program." 48 Mass. App. Ct. ~7, 89 (1999).

The standard for approval of a home education plan is set out in the *Charles* decision. It states that the school district has a duty to ensure that a home educated student receives instruction that is equal to public schooling in its thoroughness and efficiency, and in the progress made therein. *Charles* at 337. In applying this standard, school districts may only subject home education plans to requirements that are reasonable and essential to the State's interest in ensuring that all children receive an education. *Charles* at 336-337.³

The extent to which a school district may consider certain factors in evaluating a home education plan is set forth below:

1. Information about the parents: academic credentials or other qualifications.

The superintendent or school committee may consider the parent's competence to teach the child. Thus, a superintendent or school committee may properly inquire as to the academic credentials or other

¹ We changed this a bit, removing the word "plan." Charles says, "Procedurally, the superintendent or school committee must provide the parents with an opportunity to explain their proposed plan and present witnesses on their behalf." But the school has the discretion to approve a family's homeschooling without asking to see a plan at all.

² Omit "in writing" since Charles does not require written approval. We don't want superintendents or homeschoolers thinking that written approval is required in order to comply with the law.

³ Omit this sentence-- "A parent's refusal to provide a school district with essential information in order to evaluate a home education plan precludes the school district from reviewing or approving that plan. Ivan at 87-88." Again, setting up one extreme case. Might lead superintendents to think this is more than a very rare instance. Deal with it later on.

qualifications of the parent or parents who will be instructing the child. However, parents who wish to home educate their child are not required to have attained a certain education level or to obtain teaching certification. *Charles* at 339.

2. Evaluation of the academic plan.

When evaluating the adequacy of a proposed home education plan, the superintendent or school committee may examine the subjects that the child will study and the length of the proposed home school year and the hours of instruction in each subject. *Charles* at 339. In order to ensure instruction equal in thoroughness and efficiency to that offered in the public school, school officials may compare these factors in the home school proposal with the state requirements regarding curriculum and the number of hours of study. *Charles* at 338-339.

In Massachusetts, all public schools must operate for at least 180 days each school year and offer instruction in the core subjects of mathematics, science and technology, history and social science, English, foreign languages and the arts. G.L. c. 69, § 1D; 603 C.M.R. 27.03. Public elementary school students must receive a minimum of 900 hours, and secondary students must receive at least 990 hours of structured learning time each school year. Structured learning time is defined as the time during which students are engaged in regularly scheduled instruction, learning activities, or learning assessments within the curriculum for study of the core subjects. 603 C.M.R. 27.02. **There is no regulation requiring a certain number of hours per subject.**¹

Private school students and home education students are not subject to the requirements of the Education Reform Act. ²School districts may inquire into the content **and** duration³ of study planned for the core subjects as a means of determining whether the proposed home education⁴ **covers** the areas which **are required by statute of all students.**⁵

The educational plan for a home educated student need not replicate the public school's grade equivalent

¹ From DOE website: Q: Do the regulations mandate a certain number of hours per subject? A: No. Prior to 1996, the only requirement was sixty(60) hours per year for physical education. Subsequent to the Board of Education's repeal of that regulation, there is no regulation requiring a certain number of hours for any subject.

² Omit this phrase: "although these requirements do not apply to home schoolers" -- unclear, as stated, which requirements.

³ Omit "and methods." The word "method" is synonymous with "manner," and *Charles* specifically states that the school may not "dictate the manner in which the subjects will be taught" (339). We want to be certain that superintendents know what is, in the words of *Charles*, "beyond the legitimate scope of the State interest involved."

⁴ Omit this phrase -- "plan enables the child to progress academically." That is not a permissible standard of review of the upcoming year. Rather than speculate on progress to come, schools look for evidence of progress in the evaluation.

⁵ Omit this phrase--: "the Commonwealth has identified as essential in preparing students for future education, employment and effective citizenship." Seems to indicate that there are other requirements beyond what is required in the General Laws.

educational offerings. Indeed, many parents elect to home educate their children to utilize an alternative approach to student learning. Home educating parents¹ often employ educational methods that are quite different from those used in public schools. A home educated student may study certain subjects and acquire certain skills at different stages in the learning sequence than those planned for in the public school curriculum plan. The Commonwealth's interest is that "all children shall be educated, not that they shall be educated in any particular way." *Charles* at 336² education program approval.

The Supreme Judicial Court recognized in *Brunelle* that the school district "cannot apply institutional standards to this non-institutional setting." *Brunelle* at 517. As the Court stated: "in certain important ways [home education] can never be the equivalent of in-school education...Teaching methods may be less formalized, but in the home setting may be more effective than those used in a classroom because the teacher-to-student ratio is maximized, a factor permitting close communication and monitoring on an individualized basis." *Brunelle* at 517.³

3. Educational materials and methods.

Parents may select the kind of instructional materials to use for their child's home education, but *Charles* allows school officials access to such materials⁴ in order to determine the type of subjects to be taught and the grade level of instruction for comparison purposes with the curriculum of the public schools. *Charles* at 339. School officials may not, however, use this access to dictate the manner in which the subjects will be taught. *Charles* at 339. **As stated above, the home education plan need not replicate the public school's grade equivalent offerings.** Parents may employ educational methods that are different from those used in the public schools. This may include teaching materials that are non-tangible in nature, such as travel, community service, visits to educationally enriching facilities and places, and meetings with various resource people. *Brunelle* at 518.

Districts may keep on file a list of approved instructional materials or curricular programs, although home schooling parents are not required to use the materials on these local lists in order for their plan to be approved. Because approval takes place at the local level, the Department of Education does not maintain a

¹ Omit "may" -- Again, we want to avoid any indication that the schools can investigate the "manner" or method of instruction. Just to avoid any confusion that the word "may" might cause -- implying permission --. Rather the DOE is alerting superintendents that valid differences will exist. The school is evaluating outcome, not method.

² Omit this section: "Home educating parents are encouraged to identify and explain such differences in educational philosophy and methodology when home education approval is sought. School district officials will then have the necessary information to evaluate whether, having these pedagogical differences in mind, the proposed program meets the standard for home" -- The school already has the mechanism to find out more about the parents' plans. This advice is not only unnecessary but also, as worded, indicates that parents need to know the public school's educational methodology and philosophy in order to compare theirs with the schools. As *Charles* indicates, the "manner" in which the teaching occurs is not a matter for legitimate inquiry.

³ This passage from *Brunelle* helps superintendents realize that they should not be looking for homeschools to replicate the classroom.

⁴ The word "only" is clearly in the *Charles* decision and should be here, also.

list of approved materials.

Local school districts have the discretion to establish a policy that provides for automatic approval of educational plans of students who are duly enrolled in correspondence courses and commercial curriculum programs (for example, the Calvert or Abeka curriculum and home study programs).¹ Commercial curriculum organizations such as those mentioned above are not considered private schools for the purpose of school district approval; therefore, parents who wish to educate their child at home using one of these programs must follow the school district's home education approval procedures. **However, a student enrolled in an accredited private school as an off-site student may be treated as having enrolled in a private school.** ²

4. Periodic testing or other evaluation of the student's progress.

In *Charles*, the court stated that school officials may require periodic testing or some other agreed-upon form of evaluation of a home educated student's educational progress.

The superintendent or school committee may properly require periodic standardized testing of the children to ensure educational progress and the attainment of minimum standards In consultation with the parents, the school authorities may decide where the testing is to occur and the type of testing instrument to be used. Where practical, a neutral party should administer the test. Other means of evaluating the progress of the children may be substituted for the formal testing process, such as periodic progress reports or dated work samples, subject to the approval of the parents.

Charles at 339-40.

Care and Protection of Ivan, 48 Mass. App. Ct. 87 (1999), reaffirms the holding of *Charles* in this regard. In *Ivan*, the court upheld the authority of a school committee to condition approval of a home education plan on the requirement that the child's educational attainment be verified through testing or some other type of evaluation. *Ivan* at 89.

When a home educating parent does not wish to have his or her child evaluated through periodic testing, we encourage school officials to work with the parent to agree on an alternative means of evaluation. Agreed upon evaluations may include school district review of a portfolio of student work, **progress reports from parents**³ or submission of dated work samples, independent evaluations by a third party

¹ **Omit: may be submitted and approved as part of a home education plan.**

² **There are schools, such as Clonlara in Michigan, that are accredited private schools in their own states, so attending those private schools seems to be identical with the situation in which the student physically attended school in another state. Certainly the superintendent needs to know he has the discretion NOT to review education plans for such students, and the case could be made that it is not even in his authority, any more than he has standing to reviews the plans for a student enrolled at Phillips Academy in Exeter, New Hampshire.**

³ **This item, "progress reports" is in the Charles list and needs to be included here.**

acceptable to parents and school officials, or any other method agreed to by the parents and school officials. **It is not essential that any particular form of evaluation be used. A parent's preferences should be accepted unless it is essential that they not be.** If no agreement is reached between school officials and parents on an alternative method of evaluation, school districts may require standardized testing as a condition of approval of the home education program. **However, in rejecting a parental plan of evaluation, the school would need to be able to demonstrate, beyond a reasonable doubt, that the parent's plan could not provide a satisfactory gauge of progress.**

5. Home visits as a condition of approval

In the *Brunelle* decision, the Supreme Judicial Court addressed the question whether a school district may require home visits as part of its periodic evaluation of a home education program. The court held that home visits by public school officials may not be required as a condition of approval of a home education plan that satisfies other relevant criteria as outlined in *Charles*. The court stated that home education proposals can be made subject only to essential and reasonable requirements, and a home visit is not presumptively essential to protecting the State's interest in ensuring that children receive an education. *Brunelle* at 519. The court did not, however, rule out the possibility of allowing school districts to require home visits under special circumstances, stating:

We express no opinion on whether home visits can be required... if a child is not making satisfactory progress under a home education plan, if a home is used to educate children from other families, or if other circumstances make such a requirement essential, and reasonable standards are formulated to enforce the requirement.

Brunelle at 519.

III. COMMONLY ASKED QUESTIONS ABOUT HOME EDUCATION

1. What happens if the school district disapproves a parent's proposed plan?¹

If the school district does not approve the home education plan, the superintendent or school committee must detail the reasons for the decision, and allow the parents to revise their proposal to remedy its inadequacies.

"Procedurally, the superintendent or school committee must provide the parents with an opportunity to explain their proposed plan and present witnesses on their behalf. A hearing during a school committee meeting would be sufficient to meet this requirement." Charles at 337

²In situations where the school committee has received the parents' home education proposal but has rejected it, the school district has the burden in any subsequent legal proceeding to demonstrate to the court that the instruction outlined in the proposal fails to equal "in thoroughness and efficiency, and in the progress made therein," that in the public school.

¹ The previous #1 is really two separate questions, so we separated them.

² This paragraph is moved up from #2.

1A. What happens if the school district does not respond to a parent's proposed home education program?¹

2A. What steps may a school district take if a parent fails to enroll the child or withdraws the child from school to begin home education without first obtaining the necessary approval but is otherwise moving promptly to be in compliance with home education regulations?²

¹ We recommend that this entire 1A be omitted from the Advisory. Many local districts never send formal approval letters to homeschoolers, yet they do not investigate those students for truancy, either. If the student is not tacitly approved for homeschooling, the school should be investigating the extended absence, as prescribed in DOE regulations. Once the intent to homeschool is received by the school, it seems reasonable that the obligation is then on the school district to respond, and to provide for the parents' right to a hearing if the plan is disapproved. It's hard to see a valid argument that once the parent has fulfilled their legal obligation, they are also responsible for the response or non-response of the school. To advise that those homeschoolers need to contact the superintendents and make them comply with the law seems bizarre. We think the best solution is to omit this section altogether. We can't imagine you get many calls on this exact question?

In addition, the wording "; home educating families must obtain express approval before they commence home schooling.", should in any circumstance, be changed by removing the word "express." As stated before, nothing in Charles indicates that the approval must be "express" and such a comment by the DOE can be seen as making a policy that homeschoolers without "express," or written, approval are non-compliant.

² We have divided your question into two parts. In virtually all situations of which we are aware, parents who remove their child without prior approval are very willing to move promptly to provide their education plan. Lack of prior approval, rather than refusal to comply, is therefore the issue in virtually all cases. We would like the DOE to help superintendents to understand this extremely important point:

There is no effective recourse available for failure to obtain prior approval except "expedited review".

The other options, as you indicate, are judicial interventions, yet litigation in either of these cases will not provide any "punishment" for failure to obtain prior approval, because failure to obtain prior approval is not the pertinent legal issue. The Ivan case, even though it contains a sentence emphasizing that parents must seek prior approval, is not a case about failure to obtain prior approval. It is about the parents' failure demonstrate that they are fulfilling their statutory responsibility to provide an education equal in thoroughness and efficiency to that of the public school. Superintendents need to know that the judge who issued the care and protection order and the Appeals Court decision both emphasized that granting temporary custody

Parents are required by law to ensure that if their children are of compulsory attendance age that they attend either public school, an approved private school, or are "otherwise instructed in a manner approved in advance by the superintendent or the school committee." GL chap 76 sec 1.¹ It is the responsibility of the school committee of each town to "provide for and enforce school attendance" in

that the Waltham School Committee spent almost two years "cajoling the parents." Clearly, the Ivan case is not of use to superintendents facing parents who are moving to comply but who have not sought (or have sought and not received) prior approval.

Nor is truancy prosecution an effective option for failure to obtain prior approval. Such a step would almost certainly take longer than expedited review. Furthermore, the issue in the proceeding turns on whether or not education is taking place, not whether or not the parents received prior approval before beginning home education.

Judicial intervention has never resulted in a child's being ordered to return to school while litigation is pending. The Searles District Court opinion deals with precisely this point. In this 1990 case, (In the Matter of Johnna Searles etc--a CHINS petition) the judge denied the request of school authorities that the child be ordered to enroll in the Amesbury Public Schools, or an approved private school, pending the approval of a home education program. The judge determined that "the interests of all parties are best served if they 'proceed expeditiously in a serious effort to resolve the matter by agreement.'" The judge indicated that the superintendent had represented that the review could be completed in one week.

Even in the Ivan case, the children were never ordered back to school. The pivotal issue in these judicial interventions is not whether a family followed the particular local procedures or rules, but whether the program, as a whole, "equals in thoroughness and efficiency" that of the public school. The DOE draft as it stands now is a disservice to superintendents who are attempting to decide what to do, legally, in the face of a parent's failure to obtain prior approval. When providing the superintendents information about their options, you need to also provide them with information about what they could hope to gain from exercising those options, as well as what they would need to prove in order to exercise those options. As a superintendent reading the DOE Advisory as it stands now, I would be unaware of the critical piece of information that judicial intervention is not appropriate in the case of failure to obtain prior approval.

¹ Omit -- until the parents have received school district approval of their home education program--not exactly what the statute says.

accordance with that law. The school district has discretion to use its own reasonable judgment in choosing how to enforce school attendance. If a parent fails to enroll the child in school or withdraws the child from school to begin home education without first obtaining the necessary approval¹, the school district may use its discretion in determining how to fulfill this responsibility.

In the case of parents who are moving promptly to bring themselves into compliance,² the school district may fulfill this responsibility by expediting review and approval of the proposed home education program.

2B. What steps may a school district take if a parent fails to enroll the child or withdraws the child from school to begin home education and is refusing to move promptly to comply with home education regulations?

When parents do not move promptly to comply with home education regulations, school districts may seek judicial intervention by filing a truancy complaint (General Laws) or initiating a care and protection proceeding (General Laws Chapter 119, § 24).

In *Ivan*, the court held that where a parent has removed a child from school to home educate the child but refuses to provide any information to the school committee regarding the proposed home education plan, the school committee "has been effectively prevented from evaluating whether or not educational neglect exists, much less proving its existence." *Ivan* at 88. In such a case, it is appropriate for the school committee to file a care and protection petition on the basis of educational neglect.

The care and protection proceeding provided to the Court the ability to enforce the filing educational plans and provide for evaluation of the children.³ *Ivan* at 88.

The filing of a CHINS petition (General Laws Chapter 119, § 39E) is not an appropriate action to enforce the compulsory school attendance law in the case of a home education dispute, since it is the parent's decision not to send the student to public school rather than the student's disobedience of parental and school authority which is at issue.

3. What steps may a school district take if a family does not comply with its periodic reporting

¹ Omit this part --it is the school district's responsibility to act promptly to enforce the compulsory school attendance law. -- misleading, because it doesn't take into account the seven days before truancy proceedings can begin --also might lead superintendent to think the DOE is saying he MUST proceed to judicial intervention...better to just omit. Superintendents may not be aware of their powers of discretion here. Some superintendents may understand the requirement to "act promptly," in a DOE document, to mean that the DOE is directing them to take a certain action.

² Omit "depending on the circumstances" since we are only dealing here with one circumstance.

³ Once again, superintendents need to know this. If parents are already willing to submit an education plan, there is no value in a Care and Protection proceeding.

requirements?

Under *Charles* and *Ivan*, superintendents and school committees may require periodic testing or some other mutually-agreed upon form of evaluation of home educated students. Therefore, school officials may refuse to grant ¹home school approval if parents do not comply with the school district's periodic reporting requirements, **assuming the school district's requirements are reasonable and essential.**

When a parent has failed to comply with periodic reporting requirements after approval of a home education plan has been granted, school officials should send a letter to parents indicating that home school approval was granted with the expectation that parents would comply with the school district's periodic reporting requirements. Parents should be urged to contact the school and indicate whether they plan to submit the necessary evaluative material. The letter should inform parents that home school approval will be rescinded if such material is not submitted within a reasonable period of time. If the parents indicate that they will not submit the required material or if they fail to respond within the time period provided, the school district may then rescind home school approval.

Once home school approval is rescinded, parents are required by law to enroll their child in a public or approved private school. If a parent fails to fulfill this requirement, it is the school district's responsibility to enforce the compulsory school attendance law, the procedure for which is outlined above in the answer to question 2.²

4. May a school district require home visits as a condition of approving a home education program?

No. A school district may not require home visits as a condition of approving a home education program. The *Brunelle* decision leaves open whether, in certain limited circumstances, home visits may be warranted. For example, the court did not consider whether home visits may be required if a child is not making satisfactory progress under a home education plan, or if a home is used to educate children from other families. We would advise school officials to review the circumstances carefully with local counsel

¹ Omit "rescind" -- From Scott Woodruff of HSLDA: "Take out all references to rescinding approval. There is no provision in any law or case for taking back approval once granted." Rescinding approval would place parents into the situation of not having prior approval, as described in 2A and 2B. If the parents are refusing to comply with the evaluation requirement, it is unlikely they would agree to put the child back in school when approval is "rescinded." Has this situation been an actual problem for superintendents? We don't understand what actual problem this is aimed to solve. This situation does not seem distinguishable from 2B, in which the school initiated the care and protection proceeding in order to enforce compliance.

² Omit this section: *Charles* requires parents to receive home school approval before they remove their child(ren) from a public or approved private school. Therefore, parents whose home school approval is rescinded may reapply for approval only after their child(ren) are enrolled in a public or approved private school. We take exception with this reasoning, but maybe the simplest is to simply remove the paragraph, since we have never heard of such a case, and doubt this is a real issue.

before deciding whether home visits are warranted in individual cases. In any event, home visits with parental consent are permissible.

5. What happens when parents modify the home education program that has been approved for their child?

Parents may modify their planned home education program to meet their child's needs. **As the Brunelle decision observed "[parents] can observe and accommodate variations (from child to child, subject to subject, day to day) in the learning process and teach through a process that paces each student." Brunelle at 519**

If the modification involves a significant change in the content¹ of the child's educational program, such a change in plans is, in our opinion, subject to prior approval by the school district.²

6. Are school districts obligated to provide educational materials to parents who are home educating their child?

Home education is a private alternative to public school education. The school district has no obligation to provide parents who elect this option with books, materials, or access to school resources other than to the extent available to the general public. (Curriculum outlines, for example, are considered public documents and must be provided within ten days of a written request.) As a matter of local policy, however, a school district may, in its discretion, allow home educated students to borrow or use public school books or other educational materials.

7. May home educated students use public school facilities and participate in public school programs and activities?

Each school district may establish its own policy on the use of its facilities and participation in its programs by students not enrolled in the public schools. Home educated students can use school facilities and participate in school-sponsored activities that are open to the public. As a matter of local policy, a school district may allow home educated students to use certain school facilities or to participate in certain school programs or extracurricular activities that are not open to the general public (for example: use the school library or computer lab; play in the school band or orchestra; participate in drama club; join a sports team). The district must fund any such participation (if it results in any cost to the district) either through local appropriations in addition to the minimum required local contribution for net school spending which the district is required to appropriate under General Laws Chapter 70, or by charging program fees to participants.

The Massachusetts Interscholastic Athletic Association (MIAA) has adopted a policy which enables school districts to allow home educated students to participate in interscholastic sports. The MIAA policy contains guidelines for such participation, including procedures to be followed by school districts that elect to permit homeschoolers to join interscholastic public school sports teams. The MIAA permits a home educated

¹ **Omit-- "or method" cannot examine "manner"**

² **Is this a frequent question? It seems unworkable and unenforceable, so we wonder why it is in here? We would suggest eliminating the question entirely. What constitutes a "significant change" is a subjective judgment.**

student to participate on interscholastic athletic teams if the student's school committee has a policy regarding such participation and the school committee has approved the student's home education plan. Home educated students may join teams operated by the public schools in the district in which they live. If a school district operates an intra-district choice system (such as Boston and Springfield, where students may attend one of several schools in the district), and it allows home educated students to participate on sports teams, the district must assign a home educated student to a particular school for athletic team participation on the same basis used for the school assignment of regularly enrolled students.

8. May a school district include home educated students in the student enrollment count that the district reports to the Department of Education for statistical and state funding purposes?

Home educated students are not considered to be enrolled in a school district. Thus they cannot be counted as part of the school's membership, for state reporting purposes, even if the school district allows them to participate in some extracurricular or other school activities. The only exception to this would be where a student receives home instruction as a supplement to educational services provided by the school district for which the student earns academic credit. A student participating in such a hybrid arrangement is not considered to be home educated for purposes of G.L. c. 76, § 1 if the school district is still supervising, and taking responsibility for, the student's educational program, including that part of the student's program that is delivered at home. In these situations, the student may be considered enrolled in the public school and counted as part of the school's membership for purposes of state funding.

9. Are home educated students entitled to course credit, a high school diploma, or a GED?

Course Credit. If a student who has previously been home educated wishes to enroll in public school, school officials in the school district where the child enrolls will determine grade placement and whether to award course credit for work completed while the student was being home educated. This determination is usually made based on a review of the home study course content, past evaluation results, assessments to measure academic achievement, and other criteria. **School officials must be logical, consistent, fair, and reasonable in determining whether credit will be granted.**

High School Diplomas. Home educated students are, by definition, not enrolled in a public school. Because a diploma certifies completion of and graduation from a public high school, a school district has no obligation to grant a diploma to a student who has been home educated. The school committee has the discretion, however, to determine whether and under what circumstances a student who has been educated at home may receive a high school diploma. The school committee may provide a home educated student with a letter or certificate which indicates that the student participated in an approved home education program and describes the content of the program and the results of any academic tests administered by the school district. **Since home schools generally are subject to the same approval requirement as private schools, when determining whether credit should be granted or a diploma issued, the standards a school committee should use should be similar to those used in cases of a student who previously attended a private school.**

The Education Reform Act of 1993 authorized the Board of Education to establish statewide public high school graduation standards (called competency standards), which will be implemented no earlier than the graduating class of 2003. Although these standards do not, by their terms, apply to home school programs, they may enable school districts to more readily compare the knowledge and skills of home

educated students to that of their public school peers. The discretion to award a diploma to a home educated student will, however, remain with the school district.

General Educational Development test (GED). With regard to the GED, home educated students are subject to the same requirements as all other registrants. In order to take the GED test, a registrant must be at least 16 years old and must not be enrolled in a public or private school. Those students between the ages of 16 and 19 must provide a letter from the last school attended stating that the student has officially withdrawn.¹ Any person, including a home educated student, who is 19 or older may take the GED without providing such a letter.

10. May parents home educate a child with a disability who needs special education?

Yes. Parents of a child with a disability who needs special education may home educate their child. **In evaluating the education plan for a special needs student, school officials should use the same standard as for other students: does the plan** provide the child with a home-based program that equals in thoroughness and efficiency and in the progress made therein the educational program that would be available to the student if he or she were enrolled in public school.²

3

¹ This provision about the letter has raised some questions. Homeschoolers who have taken GED exams have not had to provide letters. The DOE information of removing students from rolls does not indicate any provision for "officially withdrawn" for sixteen year olds who drop out. Could you explain your reasoning here?

² Omit this sentence: In evaluating a proposed home education plan for a student who has been identified to have special education needs, the school district must consider the particular capabilities and needs of that child and evaluate the proposed program content, instructional materials and monitoring procedures and the competency of the parents or proposed instructors, having in mind the individual child's special needs--there is no indication in Charles that parents are required to establish that they are providing for "the particular capabilities and needs of that child." Certainly the Court was aware of the huge range of abilities of even "normal" kids.

³ Likewise, omit this paragraph. If a school district finds that a parent's proposed home education plan will not meet the special educational needs of the child, the district should allow the parents to revise the plan before denying approval. If the parent of a special education student withdraws the student from school and commences home education without an approved plan, the district may initiate truancy proceedings against the parent or file a care and protection petition on behalf of the child. Additionally, if the parent has rejected special education services which the public school has offered to provide to the child and school officials think that, as a result of the parent's

Since it is impossible for the superintendent to predict whether the education a special needs child actually would have received at a public school "equals" what he will receive in the fully individualized education at home, school districts need to be flexible in evaluating .

Pursuant to a recent amendment to Mass. General Laws c. 71B, the Massachusetts Special Education Law, school age children with disabilities who reside in Massachusetts and who meet the applicable eligibility requirements are entitled to publicly funded special education services regardless of whether they are educated in a public or non-public school setting. Thus, school districts in which eligible home schooled students reside must provide such students with the opportunity for evaluations, determinations of eligibility, and receipt of special education services in accordance with the state and federal laws that apply to eligible public school students.

Detailed information about the special education evaluation, program planning, and appeal process is available from the administrator of special education of any school district or from the Massachusetts Department of Education.

11. If a student is unable to attend school for a period of weeks or months due to a temporary disability and the school district arranges for tutoring while the student is in the hospital or at home, is home education approval required?

No. Students who are enrolled in the public schools but are unable to attend the school to which they are assigned due to a temporary medical disability, are eligible for home or hospital-based educational services under the Massachusetts Special Education Regulations. The home or hospital-based services required under those regulations are public school services, funded and directed by the public school district in which the student is enrolled. A physician initiated, publicly provided home or hospital-based education program under the special education regulations is legally distinct from a parent initiated, privately provided home education program and is, therefore, not subject to the approval process described in this Advisory.

decision, the child is being denied an appropriate education, the school district may file an appeal with the Bureau of Special Education Appeals. Note: As far as we can tell, no refusal of consent issues apply to homeschooling. According to the DOE's Parent's Rights Brochure: "if a school district believes your refusal to consent would deny your child a free appropriate public education (FAPE), the school district must take steps to ensure that FAPE is provided." (p. 3). School officials may have some ability to compare how a special needs child whose parents refuse treatment might be hampered in a regular school classroom. But they have no ability to evaluate, from their institutional experience, how a special needs student will fare in the ultimate, fully individualized, IEP. School officials may not be aware, as we are, of the remarkable successes of special needs students in home settings. We would be happy to provide the DOE with strong empirical evidence as well as expert opinion on this point. So we make a suggestion to omit the above paragraph and instead insert a simple sentence.

12. Who approves home education for secondary students who are tuitioned-out (attending public schools in another school district at their home district's expense)?

A town that does not operate its own schools must make arrangements regarding home education plan approval with the town to which it tuitions students. A town that tuitions out students in some grade levels, but not others, may make separate provisions for the approval of home education plans for students in the different grades. For example, if a town operates its own K - 8 schools, but tuitions out students in grades 9 - 12 to the high school in a neighboring district, the town may oversee approval of home education plans for students in grades K - 8, while contracting with the district to which it tuitions high school students to oversee home education plan approval for those students.

13. Who approves home education for students who have been enrolled in the public schools under the school choice program?

General Laws Chapter 76, § I provides that the superintendent or school committee of the town in which the student resides is responsible for approving the student's proposed home education program. The law does not provide any exception to this rule for students who are enrolled in a school choice district at the time that their application for home education approval is made.

14. May a student participate in a school choice program part-time while also receiving a home education?

No, since students who have been approved for home education are not enrolled in any public school system but, rather, are privately educated by their parents as an alternative to public school enrollment. However, there may be circumstances in which a student participates in and receives academic credit for classes attended in a school choice district and also receives some instruction at home. In such a situation, the student is not considered home educated for the purposes of G.L. c. 76, § 1; and remains enrolled in the school choice district, if the district retains responsibility for supervising and evaluating the student's progress in the educational program, including those services delivered at home.

15. Will the new state learning standards affect the home education approval process?

No. Pursuant to its authority under the Massachusetts Education Reform Act, the Board of Education has adopted curriculum frameworks and learning standards for core academic subjects **for students in the public schools. Home school programs are required to teach certain subjects, but are not required to teach them in any particular manner, as "this would involve the school authorities in an activity beyond the legitimate scope of the State interest involved."** Charles at 339.¹

¹ **Omit: While the Act does not directly affect local decisions about the process and criteria for approval of home education programs, school districts evaluating a proposed home education program may consider the extent to which the program addresses the knowledge and skills set forth in the state standards. This will be confusing and might lead superintendents to expect homeschool proposals to follow the MA frameworks.**

16. What role will the new statewide student assessments play in home education evaluation?

The statewide assessments (Massachusetts Comprehensive Assessment System, or MCAS) required by the Education Reform Act measure student progress toward meeting the learning standards set forth in the Massachusetts curriculum frameworks. The assessments are administered to public school students in grades 4, 8 and 10. Since children in approved home education programs are not enrolled in public school, they are not required to take the MCAS tests. Moreover, the assessment guidelines required by the Education Reform Act do not directly affect the assessment guidelines established by *Charles*, which states that a school district may require home educated children either to take standardized achievement tests or to participate in another evaluation as agreed by the school district and the home educating parents.

Some school districts and parents have asked whether children in home education programs may participate in MCAS testing, with the agreement of the school district and the parents. At this early stage of the MCAS program, the answer is no, because of administrative costs and other complicating factors. In the future, after the MCAS is fully implemented, the Department of Education will consider whether and under what circumstances it is feasible to permit children in home education programs who wish to take the MCAS tests to do so.

17. Is school district approval required if a parent wishes to home educate a child who is under age 6 or is age 16 or older (i.e., not of compulsory school age)?

No. In *Charles*, the court stated that school committees may enforce, through the approval process under G.L. c. 76, § 1, certain reasonable educational requirements similar to those required for public and private schools. *Charles* at 336. Under Massachusetts General Laws Chapter 76, § 1 and Massachusetts Board of Education regulations, school attendance is required for children ages 6 to 16. **Parents should file a notice of intent to homeschool for the academic year in which their child would have been required to enroll in school, according to the local district's regulations dealing with cut-off dates for birthdays of children turning six.**¹ The authority of a school committee to require prior approval of a home education plan extends only to children of compulsory school age. A school district may, in its discretion, review and approve a home education plan for a student age 16 or older **upon request.**² **Some families** seek such approval as a means of providing the documentation that may be required if their child applies to college or technical school **or collects social security benefits, etc. Such approval shall not be unreasonably withheld.**

18. Are school districts required to have a written policy on home education?

No. Neither the compulsory attendance law nor the *Charles* decision requires school districts to have a written policy on home education. Some districts elect to deal with home education-related questions on a

¹ Undoubtedly the DOE can word this better than we have. As we understand it, each district sets its own cut-off date for children who turn six between September and December 31. We would like something to clarify this point, because we have heard of at least one superintendent who told a parent that she needed to submit a plan as soon as the child turned six, even though the child would not be enrolled at school until the following fall, if the child were to attend school.

² Omit: at the request of the student's parent. Some parents... We understand that students who are sixteen may make requests for themselves.

case-by-case basis as they arise. Others, particularly those districts with a significant number of home educating families, have found that having a written policy and set of procedures saves time and reduces confusion for both school staff and home educating parents. Whether to adopt a formal home education policy, as well as the contents of that policy, is a decision to be made by local school officials based on the needs of their school district. **Before drafting a policy, school officials need to be fully acquainted with the relevant general laws and court decisions, so that their policy will be fully in keeping with state laws. It is advisable to have the wording of the policy track the statutory language.**

#19A. May school districts mandate a face-to-face meeting as a condition of approval of a home education program?

No. Substance must prevail over form. Although a school may request a meeting, it may not insist on it, since it is not essential to evaluating the education. All information a school may lawfully require can be supplied by written correspondence.

#19B. What is the best first step for parents who are considering homeschooling?

The Department has been asked by Massachusetts homeschool organizations to encourage parents to contact their organizations even before contacting their local school districts. These groups have extensive websites, aimed at providing prospective homeschoolers with the information they need to know to get started successfully. They are ready to help parents learn more about Massachusetts regulations in general and about specific school districts.

The Department is aware of Massachusetts organizations that provide parents with information and assistance regarding home education.¹ These groups, which are private, and are not affiliated with or endorsed by the Massachusetts Department of Education [are](#):

MassHOPE
(Massachusetts Homeschool Organization of Parent Educators)
78 South Main St.
New Salem, MA 01355
978-544-7948
www.masshope.org

Massachusetts Home Learning Association (MHLA)
PO Box 1558
Marstons Mills MA 02648
See website for local contact numbers.
www.mhla.org

Holt Associates, Inc., Growing Without Schooling
2380 Mass Ave Suite 104 Cambridge MA 02140
617-864-3100

Catholic Homeschoolers in Massachusetts East (C.H.I.M.E.)
<http://people.ne.mediaone.net/envsol/>

¹ **Omit this sentence--each from a distinct religious, philosophical, or pedagogical perspective--not sure that it doesn't raise more questions than it answers.**

Muslim Home School Network and Resource (MHSNR)

Cynthia Sulaiman
P.O. Box 803
Attleboro, MA 02703
(508) 226-1638
www.muslimhomeschool.com
MHSNR@aol.com

Jewish Home Educators of New England

<http://groups.yahoo.com/group/NEJHS/join>

In addition, the Department is aware of the following national organizations and businesses serving homeschoolers in Massachusetts. These are not affiliated with or endorsed by the Massachusetts Department of Education:

¹National Home Education Network NHEN

www.nhen.org

A nonprofit volunteer network providing support and information for homeschoolers across the country.

Northeast office of the Homeschool Support Network

Information on home education resources, services, and events.

P.O. Box 1056, Gray, ME 04039,

(207) 657-2800

Publishes a bi-monthly magazine called *Home Educator: Family Times*

contact: Shirley Minster

Home School Legal Defense Association

Legal information and advocacy on home education, from a Christian religious perspective, for parents who join.

P.O. Box 3000, Purcellville, VA 20134-9000,

(540) 338-5600

<http://www.hslda.org/>

20. What role does the Massachusetts Department of Education play with respect to home education?

Approval and oversight of home education is a local, rather than state, function in Massachusetts. Therefore, the Department of Education is not involved in setting policy, overseeing school district practices, or otherwise enforcing the Commonwealth's home education law. The Department does not collect data from

¹ Note from Nicky Hardenbergh and MHLA: NHEN is new in the last two years but is already making its mark through a growing membership and media exposure. If you are going to mention other national groups, it is important to mention this one, as it is nonprofit and non-religious, unlike the other two national organizations mentioned. We can explain more about these different groups if you are interested. Nicky is currently on the NHEN Board. Also, please forgive the formatting irregularities here and throughout the document.

school districts concerning the incidence of home education, and does not maintain a repository of school district home education policies.

When asked, the Department attempts to provide school officials and parents with information and answers to questions about the legal requirements for home education. This Advisory has been prepared to assist us in fulfilling that limited role. We hope it will be of assistance both to parents considering or participating in home education, and to school district officials whose job it is to protect the public interest in the education of all children by reviewing plans for the home education of students whose parents elect this option.

The information which appears in this Advisory, as well as other education related information, is also available from the Department of Education's Internet site: <http://www.doe.mass.edu>.