

Information for Superintendents: Home Education in Massachusetts

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Information for Superintendents was developed jointly by Massachusetts Home Learning Association (MHLA) and Massachusetts Homeschool Organization of Parent Educators (Mass HOPE). Our publication represents a common sense explanation of Massachusetts regulations, based on our understanding of the court decisions and our organizations' experience (more than 25 years combined) with the ways these regulations actually work in real life across the Commonwealth. This booklet contains the main pages of our joint website <http://mhla.org/supt.htm>. Copies of this booklet in .pdf format may be downloaded from that site.

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Information for Superintendents

Court Rulings on Home Education in Massachusetts

School District Policies Must Be in Keeping with Court Decisions

This document aims to assist school district officials in understanding the Commonwealth's home education law so that they may align their policies with that law. By reviewing the relevant statutes and court decisions when developing home education policies, school districts will be able to ensure that their policies and language do not go outside the boundaries of statutory language and court decisions.

Legitimate considerations for school officials who are reviewing home education proposals are delineated in two Massachusetts Supreme Judicial Court decisions:

Care and Protection of Charles (1987)

The Supreme Judicial Court ruled that school committees may enforce certain reasonable educational requirements in the case of home education. The Court also cautioned superintendents and school committees that homeschool approvals must not be conditioned on requirements that are not essential to the State interest in ensuring that "all children shall be educated." The Court then issued some guidelines for approval of home education proposals.

[Full text available at <http://mhla.org/supt/Charlesdecision.htm>]

Brunelle v. Lynn Public Schools (1998)

In this unanimous Supreme Judicial Court Opinion, the Court ruled that home visits could not be mandated as a condition of approval of a home education plan. The decision also observed that "in certain important ways [home education] can never be the equivalent of in-school education." The Court ruled that any requirement made in evaluating home education proposals must be not only reasonable, but also essential.

[Full text at <http://mhla.org/supt/Brunelleddecision.htm>]

Each school district maintains its own home education policies, which must be in keeping with the guidelines of these two court cases.

→→ Grey boxes throughout this booklet indicate observations and comments by MHLA and Mass HOPE.

Ten Points from the Supreme Judicial Court's Decisions

1. "[H]ome education proposals can be made subject only to essential and reasonable requirements" (Brunelle at 519)

The Court in *Brunelle* further noted that parents have a protected right to raise their children and further that "the government may not intrude unnecessarily on familial privacy," [Curtis v. School Comm. Of Falmouth as cited in *Brunelle* at 519]

In denying the Lynn School Committee the right to require home visits of all families seeking approval for a home education plan, the Court observed that Lynn had failed to make the case that such visits were essential to protection of the State's interest in seeing that children receive an education.

Extending the reasoning of the Court, it is appropriate to consider every requirement by a school committee in terms of whether or not it is essential in order to carry out the review and approval of the education plan. The burden is on school officials to demonstrate that a particular requirement is essential.
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2. Superintendents shall approve instruction that "equals in thoroughness and efficiency, and in the progress made therein, that in the public school in the same town."

Charles determined that home education came under this "equal in thoroughness and efficiency" provision of the General Laws, Chapter 76. The school committee may enforce "certain reasonable educational requirements similar to those required for public and private schools." (*Charles* at 336)

Neither *Charles* nor *Brunelle* discusses specifically what "equal in thoroughness and efficiency" means. Still, statements of the Court can provide some guidance:

- a. *Charles* states that the superintendent may require some form of assessment to "ensure educational progress and the attainment of minimum standards." (*Charles* at 340) Here the Court indicates that homeschoolers should not be held to any higher standard than the minimum required of public school students.
- b. *Brunelle* states that the superintendent can "insist that the child's education be moved along in a way which can be objectively measured," but "cannot apply institutional standards to this non-institutional setting." (*Brunelle* at 517) [see ruling #10 for the full citation from *Brunelle*]
- c. *Charles* states that the superintendent may not "dictate the manner in which the subjects will be taught." Such a policy would "involve the school authorities in an activity beyond the legitimate scope of the State interest involved." (*Charles* at 339)
- d. *Charles*, quoting an earlier case, observes that "the great object of these provisions of the [compulsory attendance] statutes has been that all children shall be educated, not that they shall be educated in any particular way." (*Charles* at 337)

Extending the reasoning of the Court, it is appropriate that:

The superintendent not look for replication of the public schools' grade equivalent educational offerings. 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 superintendent not require the progress of home educated students to be exemplary in any way.

The superintendent expect a very broad range of progress from home educated students, just as is expected from students in schools.

The superintendent not expect homeschooled students to follow the curriculum of the public school 'just in case' the student may subsequently be enrolled in that school. There is no legitimate justification for such an expectation.

3. Charles provided guidance that school committees MAY use.

In 1987, *Charles* offered "guidance on the extent to which approval of a home school proposal may be conditioned on certain requirements without infringing on the liberty interests of the parents under the Fourteenth Amendment." (*Charles* at 337) In 1998, this guidance in *Charles* is reiterated in *Brunelle*.

Note that *Charles* says "may," not must. Some superintendents choose the route of minimal oversight. Such a route can be justified by the fact that there is no evidence or indication that more stringent district oversight results in greater progress for home educated students.

Parental commitment is the most important single factor in student educational progress. See item 4 on Research page. Homeschool parents clearly have such involvement, and their involvement exists independently of any district oversight. See item 3 on Research page.

4. Guidance about subjects taught

Charles lists the subjects that are required in G. L. c. 71 §1. "Specifically, § 1 requires 'instruction and training in orthography, reading, writing, the English language and grammar, geography, arithmetic, drawing, music, the history and constitution of the United States, the duties of citizenship, health education, physical education and good behavior.'" (*Charles* at 338)

The General Laws require training in these subjects over the course of the child's education. No particular subject is required to be taught in any given year.

5. Guidance about competency of parents

Charles explains that the parents need not be certified teachers, nor need they have college or advanced academic degrees.

Research shows that credentials of the parent have little to do with achievement of the child. See points 1, 2 and 3 on Research page.

Our experience shows us that parents who are "so committed to home education that they are willing to forgo the public schools, and devote substantial time and energy to teaching their children" (*Brunelle* 518) are well able to facilitate their children's learning.

Parents are often facilitators, finding resources to help children learn. We have discovered that some of the most effective learning actually happens when parent and child are learning together; children are motivated by the awareness that they themselves can contribute to an adult's learning process.

6. Guidance about hours of instruction

Though the superintendent may consider the length of the school year and the hours of instruction in each subject, it's important to note that there is no state requirement for a certain number of hours in a certain subject. The Department of Education, on its website, confirms that "there is no regulation requiring a certain number of hours for any subject."

Note that the Court does not mention that the school district may require parents to provide a specific schedule. Since homeschooling occurs in a non-institutional setting, most students excel with fewer hours of formal instruction than is required in the public schools. See Court rulings point 10

7. Guidance about instructional materials

Charles provides for the superintendent or school committee to have access to textbooks, workbooks, and other instructional aids, as well as to lesson plans and teaching manuals. The Court observes that this access is necessary "only to determine the type of subjects to be taught and the grade level of the instruction for comparison purposes with the curriculum of the public schools. The superintendent or school committee may not use this access to dictate the manner in which the subjects will be taught. This would involve the school authorities in an activity beyond the legitimate scope of the State interest involved." (*Charles* at 339)

Brunelle observes that "some of the most effective curricular materials that the plaintiffs may use may not be tangible. For example, travel, community service, visits to educationally enriching facilities and places, and meeting with various resource people, can provide important learning experiences apart from the four corners of a text or workbook." (*Brunelle* at 518)

Note that there is no requirement to use textbooks, teaching manuals or any particular instructional aids. See FAQ#4. Homeschoolers have the enviable opportunity to customize learning materials to the students' abilities and specific interests. The parents are free to select whatever materials are effective; superintendents do not "approve" homeschoolers' instructional materials. Since homeschooling is intended to meet the specific needs of individual students, the curriculum used need not match public school curriculum in either content or sequence.

8. Guidance about evaluation

Charles provides for various means of assessment: periodic standardized testing or other means of evaluating the children's progress. Other means may include "periodic progress reports or dated work samples." (*Charles* at 340)

If standardized testing is used, *Charles* provides that "in consultation with 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." (*Charles* at 340)

In the years since *Charles* was decided, professional educators have been turning their attention to alternative assessment practices, and there is now a growing body of literature on the subject. See item 6 on Research page.

In 1987 most school assessment was generally equated with testing, although homeschool families often used portfolios, work products, and reports instead. *Charles* wisely kept the door open for such emerging assessment techniques, which, indeed, have become commonplace in schools, as well as homeschools, during the past decade.

9. Home visits cannot be mandated

The *Brunelle* case decided that issue. The Court ruled that "school officials cannot, in the absence of consent, require home visits, as a condition of approval of the [parents'] home education plans." (*Brunelle* at 519) The ruling rested on the finding that "the home visits sought to be imposed on the education proposals of the plaintiffs are not essential." (*Brunelle* at 519)

10. Institutional standards cannot be applied to this non-institutionalized setting

From the *Brunelle* decision:

"Parents who teach at home stand in a very different relationship to their children than do teachers to a class full of other people's children. Teaching methods may be less formalized, but in the home setting may be more effective than those used in the classroom because the teacher-to-student ratio is maximized, a factor permitting close communication and monitoring on an individualized basis. It is obvious from these differences that, while the State can insist that the child's education be moved along in a way which can be objectively measured, it cannot apply institutional standards to this non-institutionalized setting." (*Brunelle* at 517)

Here the Court implicitly recognizes that individualized instruction of their own children allows parents a flexibility impossible in the classroom. Superintendents may not impede that flexibility by making nonessential requirements of parents.

Frequently Asked Questions (FAQ) and Frequently Given Answers

Both MHLA and Mass HOPE have been in operation for over ten years, helping homeschoolers in Massachusetts to homeschool legally and to avoid any extra-legal requirements. Below are questions we are most commonly asked. Our answers do not represent legal advice. Rather, they reflect our collective wisdom, gathered over years of careful attention to all facets of home education regulation in the Commonwealth.

FAQ #1: Notification questions

FAQ #2: Do homeschoolers receive a diploma?

FAQ #3: May homeschoolers participate in extra curricular activities? In high school athletics? In regular academic classes?

FAQ #4: Do homeschoolers take the MCAS?

FAQ #5: Special Needs/Special Education

FAQ #6: Can school officials require parents to come to school for a meeting?

FAQ #7: Reporting and Assessment questions

FAQ #8: May school officials require a day-by-day hour-by-hour schedule to be filled out as a condition of approval?

FAQ #1: Notification questions

a. What happens if parents remove the student to begin homeschooling without the prior approval of the education plan, but the parents are otherwise moving promptly to be in compliance with home education regulations?

The simple answer is that, in practice, children usually continue attending their homeschool program while awaiting the approval of the education plan.

Charles observes that the General Laws require that the home education plan be approved in advance. (*Charles* at 337) The actual General Law wording simply says that a child "otherwise educated in a manner approved in advance" by the superintendent meets the requirements of the compulsory attendance statute. We propose that a superintendent who provisionally approves home education as an acceptable "manner" while awaiting the parents' submission of the education plan is actually fulfilling statutory obligations.

Certainly, in the case of parents who are moving promptly to bring themselves into compliance, the school district may use its discretion to fulfill its responsibility by expediting review and approval of the proposed home education program.

The alternative to expedited review is a judicial intervention, yet litigation in such a case will not provide any "punishment" for failure to obtain prior approval, because failure to obtain prior approval is not the pertinent legal issue. 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.

In all the cases we know, the issue is resolved after the parents submit the education plan and the superintendent approves it. Even those cases that have gone to court provide for the children to continue attending their homeschool program while the school committee is seeking or reviewing the education plan. In the *Charles* case itself, the Court allowed the family to continue homeschooling pending the Court's decision.

In the *Searles* case (*In the Matter of Johnna M. Searles*, Amesbury 1990 --a CHINS petition), the district court declined to order the child to attend the public school pending approval of a home education program.

Rather, Judge Sprague concluded that "an order that the child enroll in the Amesbury public schools (or an approved private school) is premature at the present time....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. (The *Searles* case may be found at <http://mhla.org/supt/documents.htm>)

We concur with Judge Sprague's assessment that the best course, in these unusual situations, is for parents and administrators to work together to get an education plan approved. Generally, that can happen in a matter of days. We see no educationally sound reason for keeping the child in school while processing the home education plan, nor for declaring truant a child who is being educated at home.

In the *Foley* case (Orleans District Court 1992), homeschooling continued pending court action. (As yet, the *Foley* case is not online.)

b. 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?

Care and Protection of Ivan (1999) deals with the narrow issue of what recourse is available to a school district when the school committee "has been effectively prevented from evaluating whether or not educational neglect exists, much less proving its existence, by the parents' failure to provide any information regarding the children's educational level, their mastery of basic skills or the methods being used to educate them." (Ivan at 88) The *Ivan* case is *not* a case about failure to obtain prior approval. The judges approved temporary custody only after 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. (The *Ivan* case may be found at <http://mhla.org/supt/documents.htm>)

c. What happens if school officials find the education plan lacking in some way?

Charles provides a procedure for such a rejection of the education plan. The superintendent in that case 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." Here the parents would bear the responsibility of demonstrating that the home school proposal meets the necessary requirements (see previous section on legitimate criteria for review). "If the home school proposal is rejected, the

superintendent or the school committee must detail the reasons for the decision. The parents must then be given an opportunity to revise their proposal to remedy its inadequacies."

d. What happens if a family begins homeschooling after the school committee has refused to approve their proposal?

Charles again provides a procedure. In this case, if the school committee chooses to prosecute the parents, "the burden of proof...shifts to the school committee to show that the instruction outlined in the home school proposal fails to equal 'in thoroughness and efficiency, and in the progress made therein, that in the public schools in the same town.'" (*Charles* at 338)

FAQ #2: Do homeschoolers receive a diploma?

No, unless some special arrangement has been made.

FAQ #3: May homeschoolers participate in extra curricular activities? In high school athletics? In regular academic classes?

Yes to all, depending on the policy of the local district.

The MIAA (Massachusetts Interscholastic Athletic Association) has ruled that, at the discretion of the local district, home educated high school athletes may play on school teams.

In many districts, home-educated young people participate in school field trips, science fairs, assemblies, academic classes and after-school activities, including intramural and varsity sports. Public schools frequently make their libraries, gyms, language labs, computers, textbooks and other supplies available to homeschooling families.

FAQ #4: Do homeschoolers take the MCAS?

No. The frameworks that are tested by the MCAS are the curriculum for the public school. As *Charles* has indicated, parents can be required to provide instruction in the subjects required by G.L. c 71 sec 1, but there is no set sequence of instruction that must be followed. The DOE website confirms that homeschooled students "are not required nor entitled by law to participate in MCAS."

As *Charles* states, the superintendent may not "dictate the manner in which the subjects will be taught. This would involve the school authorities in an activity beyond the legitimate scope of the State interest involved." (*Charles* at 339) The passage of the Massachusetts Education Reform Act of 1993 did not affect the assessment guidelines that *Charles* established.

FAQ #5: Special Needs/Special Education

There is nothing in the law or court decisions that would prohibit parents from providing their special needs child with home education. 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. There are no separate homeschool regulations or special obligations for parents wanting to homeschool a child with special needs.

FAQ #6: Can school officials require parents to come to school for a meeting?

Charles and *Brunelle* do not directly discuss the issue of meetings between parents and school officials. However, *Brunelle* makes it clear that any conditions for approval of education proposals must be "essential" for evaluating the education of the child. Most districts in the Commonwealth do not require parents to meet with school officials as a condition of approval of the education proposal. Therefore, it is unlikely that such a requirement could be shown to be essential as a matter of course.

FAQ #7: Reporting and Assessment questions**a. How often are "periodic" reports required?**

Superintendents and parents who have chosen periodic progress reports or dated work samples as a form of evaluation decide on a mutually satisfactory reporting schedule, usually not more than once a year.

b. May school officials require more than one form of assessment?

The Court indicated that ONE method, not multiple methods, of assessment may be required. *Charles* discusses testing (see below) OR other means of evaluating the progress of the children, such as "periodic progress reports or dated work samples." (*Charles* at 340)

While superintendents may require testing, the law does not require them to do so.

c. What kind of testing may be required? How are the tests administered?

Charles provides that testing may be required, but that school authorities will consult with parents as to "where the testing is to occur and the type of testing instrument to be used. Where practical, a neutral party should administer the test." (*Charles* at 340)

FAQ #8: May school officials require a day-by-day hour-by-hour schedule to be filled out as a condition of approval?

Legally, there is no support for such a requirement. *Brunelle* specifically addresses the lack of a need for formal schedule in the homeschool. "While following a schedule may be an important consideration in a public school where preexisting schedules need to be maintained and coordinated, the perception and use of time in a home school are different." (*Brunelle* at 517 and 518)

Practically, requiring such a schedule would take away the educational advantages of personalized instruction and flexibility by imposing artificial time constraints on students. Classroom management issues faced by school teachers may call for rigid schedules, but the homeschooling environment does not. Homeschooled students are allowed to study in a way that maximizes learning. The student has the freedom to pursue an interest for hours, rather than being required to end an investigation simply because it is time to move on to the next class.

Virtually all the hours of the day in the homeschool comply with the DOE definition of "structured learning" time: "in addition to classroom time where both teachers and students are present, structured learning time may include directed study, independent study, technology-assisted learning, presentations by persons other than teachers."

Moreover, structured learning time may include home economics, technical studies, business, school-to-work opportunities, teacher/student advisory programs, and career planning. "Directed study" is the common condition of home educated students. Directed study "requires students to be engaged in activities directly related to their program of studies, and a teacher must be available to assist students." The number of hours that homeschooled students spend in this condition far exceeds the 990 hours that the Education Reform Act requires of the public schools. (See link to DOE page at <http://mhla.org/supt/FAQforsupt.htm>)

Summary of Guidelines Provided by the Court

School Officials MAY Consider

1. Subjects taught

No specific curriculum is required.

2. Competency of parents

Parents do not need special qualifications to homeschool. See Court rulings point 5

3. Length of school year and hours of instruction

There is no regulation requiring a certain number of hours for any subject. See Court rulings point 6

4. Access to textbooks and other instructional aids, bearing in mind that many curricular materials may be found "apart from the four corners of a text or workbook." (*Brunelle* at 518)

See Court rulings point 4. Since this access is only to determine the type of subjects to be taught and the grade level of the instruction, many school officials do not expect to view actual textbooks. Rather, they view the list of titles submitted in the educational plan. There is no requirement to use textbooks. See Court rulings point 7

5. Means of evaluation

The form and frequency of evaluation will be agreed upon by the parents and the school officials. See Court rulings point 8

School Officials MAY NOT

1. "Require home visits as a condition to the approval of [parents'] home education plans" (*Brunelle* at 519)

See Court rulings point 9

2. "Dictate the manner in which subjects will be taught" (*Charles* at 339)

See Court rulings point 7

3. "Apply institutional standards to this non-institutionalized setting" (*Brunelle* at 517)

See Court rulings point 10

Subjects Not Directly Considered in Court Rulings

1. Homeschooling begun without prior approval

There is no educationally sound reason for keeping the child in school while processing the home education plan, nor for declaring truant a child who is being educated at home. See FAQ#1a

2. Diploma

Homeschoolers are not generally issued diplomas by their school districts. See FAQ#2

3. Athletics/extracurriculars/school classes

Many homeschoolers participate in school activities. Homeschool students may participate in high school athletics with the approval of their school district. See FAQ#3

4. MCAS

Homeschoolers do not take the MCAS. See FAQ#4

5. Special ed

Homeschooling works for special needs students. See FAQ#5

6. Meetings

None required. *Brunelle* makes it clear that any conditions for approval of education proposals must be "essential" for evaluating the education of the child. See FAQ#6

7. Periodic Assessment

School officials and parents decide on a mutually satisfactory reporting schedule, usually not more than once a year. See FAQ#7

8. Kinds of Assessment

The Court indicated that ONE method, not multiple methods, of assessment may be required. See FAQ #7b

9. Schedules

None required. See FAQ#8

Selected Research Relevant to Homeschooling

Links to the full texts, as well as longer summaries of these articles, may be found at <http://mhla.org/supt/research.htm>.

1. Homeschooling Comes of Age by Patricia M. Lines *The Public Interest* July 1, 2000

from the article:

[V]irtually all of the reported data show that homeschooled children score above average, sometimes well above average. Self-selection may affect this result, just as it affects other aspects of homeschooling research. **But there is certainly no evidence to suggest that homeschooling harms academic achievement.**

.....

Significantly, a handful of studies suggest that **student achievement for homeschoolers has no relation to the educational attainment of the homeschooling parent.** This is consistent with tutoring studies that indicate that the education level of a tutor has little to do with the achievement of a tutored child. One explanation might be that the advantages of one-to-one learning outweigh the advantages of professional training.

2. The Scholastic Achievement and Demographic Characteristics of Home School Students in 1998, by Lawrence M. Rudner, Ph.D.

from the study:

Significantly, there was also no difference found according to whether or not a parent was certified to teach.

3. Strengths of Their Own—Home Schoolers Across America, a study performed by Brian Ray of the National Home Education Research Institute, and sponsored by the Home School Legal Defense Association

from the study:

This and other studies indicate that very few background variables (e.g., socioeconomic status of parents, regulation by the state) explain the academic achievement of the home educated. **It is possible that the home education environment ameliorates the effect of variables that are typically considered a detriment to students.** A variety of students in a variety of home education settings have performed very well in terms of academic achievement.

4. Parental Involvement, an article on the website of the College of Education and Human Endowment, University of Minnesota

from the article:

The research is overwhelmingly clear: When parents play a positive role in their children's education, children do better in school. This is true whether parents are college-educated or

grade school graduates and regardless of the family income, race, or ethnic background. **What counts is that parents have a positive attitude about the importance of a good education and that they express confidence their children will succeed.**

5. Parents' Literacy and Their Children's Success in School! Recent Research, Promising Practices, and Research Implications, a research report produced by the United States Department of Education

from the article:

Auerbach's work also shows that "indirect factors including frequency of children's outings with adults, number of maternal outings, emotional climate of the home, **amount of time spent interacting with adults**, level of financial stress, enrichment activities, and parental involvement with the schools had a stronger effect on many aspects of reading and writing than did direct literacy activities, such as help with homework" (Auerbach, 1989).

6. The Case for Authentic Assessment, ERIC Digest

from the article:

What most defenders of traditional tests fail to see is that it is the form, not the content of the test that is harmful to learning...A move toward more authentic tasks and outcomes thus improves teaching and learning: students have greater clarity about their obligations (and are asked to master more engaging tasks), and teachers can come to believe that assessment results are both meaningful and useful for improving instruction.

7. How Home Schooling Will Change Public Education By Paul T. Hill, Nonresident Senior Fellow, Governmental Studies Program, *Hoover Digest*, Summer 2000, No. 3

from the article:

Even a casual perusal of the home-schooling literature reveals the scale and intensity of home-schooling parents' search for ideas, materials, and relevant standards of performance.

Home schooling is a very large teacher training program, and many tens of thousands of people are learning how to teach, assess results, and continuously improve instruction. It also must be one of the biggest parent-training programs in the country.

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