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March 10, 1982

TO: Local School Districts

FROM: Fred G. Burke, Commissioner of Education (Initialed)

SUBJECT: Commonly Asked Questions Relating to Home Schooling

As you are no doubt aware, there is a small but growing nationwide movement for parents to seek to educate their children at home. The following question and answer format has been developed in order to provide you with assistance in meeting your obligations to ensure compliance with the compulsory school attendance laws of this state and to help define the procedure for dealing with requests for "home schooling."

1. What is the statutory authority for requiring school attendance?

The present statutory scheme compels parents or guardians to cause children between the ages of six and sixteen:

"to attend the public schools of the district or a day school in which there is given instruction equivalent to that provided in the public schools for children of similar grades and attainments or to receive equivalent instruction elsewhere than at school."

N.J.S.A. 18A:38-25

2. What obligation does the local school district have relative to compulsory attendance?

Pursuant to the above statute, parents or guardians have three options in regard to meeting their obligation. They may send them to the public schools of the district, they may send them to a day school, or they may cause them to receive equivalent instruction elsewhere. The obligation of the local district is limited to requiring that one of these three options is provided to a child. If parents opt to send their children to a "day school," equivalency of instruction is accepted since there presently does not exist any mechanism for the regulating

of private day schools in the state of New Jersey. If parents

elect to educate their children at home, they bear the burden of introducing evidence that there has been compliance with N.J.S.A. 18A:38-25 (State v. Vaughn, 44 N.J. 142 (1965)). Once such evidence has been introduced, the ultimate burden of persuasion as the lack of equivalency of instruction rests with the state, or in fact with the local district which is a creation of the state. Further, equivalency has been interpreted to be limited to academic equivalency and not equivalency of social development. (State v. Massa, 95 N.J. Super. 382 (Morris County, 1967)). It must likewise flow from such decision that equivalency means equivalency of curricular content [e.g. math, science, history, etc.] not equivalency or quality of instruction or outcome.

3. What course of action should a local district take relative to parents who appear to be violating the compulsory attendance laws?

Procedures for compelling attendance at school are spelled out in N.J.S.A. 18A:38-27-31. Jurisdiction for issuing the necessary summons or warrant alleging the violation rests with the local municipal court. Since parents or guardians charged with violations of N.J.S.A. 18A:38-25 may raise the "Massa defense," local districts are advised not to proceed in court if they know that the issue is one of "home schooling" rather than truancy. The more appropriate action under such circumstances would be to request that the parents provide the district with the curriculum to be taught to the child or children being educated at home. If, upon review, the district determines that it is not equivalent, it should then proceed through the court to seek enforcement of N.J.S.A. 38-25 where the question of equivalency will be determined upon the assertion of such defense by the parent or guardian.

4. What is the status of correspondence schools or a home schooling networks?

Schooling under the above described circumstances would be subject to the same requirement as that educational program directly provided by the parent, namely equivalence of instruction.

5. Does the local school district have a responsibility to determine progress of any student educated at home? May a school district require that children educated at home submit to the local district testing program?

"You are advised, therefore, that there does not exist an obligation on the part of a local board of education to ensure through a testing program that an equivalent education is being provided to children receiving instruction in a private school or at home."

Therefore, the local board of education has no responsibility for determining progress of students being instructed at home and there is likewise no authority to require testing.

6. Do children educated at home enjoy the right to participate in extra-curricular activities such as dances and trips?

Since students instructed at home are not carried on local registers, they have no right to attendance at any school function limited to enrolled students or to participation in extracurricular activities.

7. Are pupils educated at home entitled to a local district diploma or certificate of completion of program?

Pupils educated other than at public or private day schools enjoy no entitlement to any diploma or certificate of completion issued by a local school district.

8. Must pupils scheduled at home meet high school graduation requirements?

The meeting of such requirements are prerequisite to the obtaining of a state endorsed diploma. Since they do not attend the public schools and not entitled to any diploma, the district has no obligation to require evidence of successful completion of high school graduation requirements other than to ensure equivalence of instruction as required and interpreted by State v. Massa, supra.

9. What course of action should a local district pursue when Children educated at home or on correspondence programs seek admission to the schools of the district?

It is suggested that any local New Jersey school district faced with the question of acceptability of credits or course work carefully and objectively evaluate the student's skill and achievement levels before making a determination as to acceptability of credits or appropriate grade level placement. Consultation with the County Superintendent prior to making a formal decision is highly recommended.

10. Does not the absence of assurance concerning the quality of instruction and the achievement of pupils scheduled at home violate the requirement that every child be provided with a thorough and efficient" education?

T&E goals apply only to students who attend the public schools. The court's decision in State v. Massa, supra, was rendered prior to the passage of N.J.S.A. 18A:7A-1 et seq.; however, until a test case is brought and the court rules that social interaction and various other elements required under T&E constitute elements of an equivalent educational program, the court's position in State v. Massa must stand.

11. Should not the determination as to equivalency be made at the state level?

Making equivalency determinations at the state level is impractical since the responsibility for enforcing the compulsory education statute rests with the local district through the courts, and it is the courts who must determine if the local district has met the burden of proof for demonstrating lack of equivalency. The office of the County Superintendent is always available to the local district for the purpose of rendering assistance and providing guidance.

I hope that the questions and concerns addressed in this memo will serve to provide guidance to local school administrators and boards of education. Further requests for assistance on questions unanswered by this bulletin should be referred to your county office.