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Education and Homeschooling: Background Information

According to U.S. Department of Education estimates, millions of students are homeschooled in the United States.

The United States Supreme Court has not addressed the issue whether states may prohibit homeschooling. Some lower courts have addressed the issue, and concluded that it is constitutionally permissible to ban homeschooling. For example, the New Mexico Court of Appeals ruled in *State v. Eddington* in 1983 that the state's compulsory attendance law did not violate Equal Protection guarantees in the United States and New Mexico Constitutions. The court determined that the compulsory attendance law promotes a legitimate state interest by exposing children to "at least one other set of attitudes, values, morals, lifestyles and intellectual abilities," in addition to those provided by parents, guardians, or other immediate family members.

Prior to 1980, states generally either expressly prohibited homeschooling, or they did not address the issue. Some states still have laws that ban homeschooling. In those states, parents typically are able to homeschool by other means, such as following laws applicable to private schools. However, most states have enacted homeschooling statutes and regulations. In court challenges alleging that it is unconstitutional to treat home schools differently than public schools, courts have typically sided with the state and allowed the differential treatment in part because it is more difficult to assess the quality of home instruction.

Some states specifically permit homeschool students to enroll in public school classes or extracurricular activities. In other states without such statutes, when challenged by homeschooling parents, courts have found that a student does not have a right to participate. Oftentimes, state rules concerning sports or other competitive interscholastic activities preclude participation by students who are not full time.

States vary on how they approach enforcing the statutory restrictions on homeschooling. In some jurisdictions, home instructors bear the burden to show they are complying with the law. In other states, the state bears the burden to show that a home school does not meet legal requirements. Some states have not addressed the issue.

The [No Child Left Behind Act of 2001](#) does not apply to homeschooled students. However, according to the [Individuals with Disabilities Education Act](#), children with disabilities are entitled to a "free, appropriate public education." This entitlement applies to homeschooled children as well, and means that a homeschooled child with a disability is entitled to special education and related services at public expense with public supervision and direction. The services must be provided in conformity with a child's individual education plan.

Homeschool statutes and regulations typically fall into four categories:

- **Instructor qualification requirements:** A handful of states require home instructors to possess a teaching certification or a bachelor's degree. Some other states have a general requirement that parents be qualified to teach.
- **Pupil assessment requirements:** More than half the states require homeschooled pupils to be tested or assessed for academic progress. **Visitation requirements:** Some jurisdictions require that home schools allow visits and observation by state education officials.
- **Instruction requirements:** Depending upon the jurisdiction, home schools may be required to provide instruction that is "equivalent," "substantially equivalent," or "comparable" to public school programming. Certain subjects may be required.

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