



The Home Education Foundation

"Home Educators' Voice at the Capitol"

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Together We Stand Free

Private schools and home education programs are different options for meeting the compulsory attendance law in Florida, and different statutes define each option. The laws governing home education programs are all neatly packaged in to 1002.41 FL. St. The laws governing private schools are not all found in one simple statute. The new School Code references the educational statutes relating to private schools in 1002.42 FL. St., but the laws relating to health, safety, sanitation and environment are scattered throughout Florida Statutes and Rule and Federal Code and Regulations. The laws governing private schools and home education programs were designed to protect children and provide accountability. Both give us the freedom to direct and control the education of our children without government interference.

In 1985, the crafters of the home education law built in accountability. Even though Florida does not have a compulsory education law, rather a compulsory attendance law, those who negotiated the terms of the home education law realized that if there was no accountability written into the law that there would be great potential for abuse. Since attendance at home in a home education program is meaningless, another accountability measure had to be established. House Bill 50, which was introduced by Rep. Walter Young for the Dept. of Education in September 1984, incorporated the requirement of an annual evaluation by a licensed psychologist and established the standard that a child make educational progress commensurate with his/her ability. Recognizing that this was a higher standard than is required by any of the other four options for meeting compulsory attendance, the home education proponents were willing to accept that standard if other options for evaluation were included and parents remained in control of the evaluations.

According to John W. Whitehead and Wendell R. Bird in the book, *Home Education and Constitutional Liberties*, published in 1984, the US Supreme Court employs a test to determine when First Amendment liberties and fundamental rights prevail over governmental requirements. They say that the state must establish that it has a compelling interest and, if it does, then that interest must be applied in the least burdensome means possible. Establishing the right to home educate and negotiating the least burdensome accountability measures was of paramount importance to the home education negotiators in light of the climate in Florida. At that time the only legal way for parents to home educate their children was through private, religious, denominational, or parochial schools.

However, in 1983 and 1984, five Florida families, who were teaching their children through private or religious schools, had truancy or neglect charges brought against them. One family lost custody of their children to the court. One father was arrested and jailed. Another family lost their case and appealed. The other cases were still pending when House Bill 50 was filed. At that time any one of the truancy cases could have been taken through the courts to establish a parent's right to home educate through a private school. There was no organization in Florida with the funds to defend the rights of those families, and there were not enough families who

knew about the need to, or were willing to, support the legal defense of those families. Families were afraid to come out of hiding because the risks were too great.

Therefore, with a bill already filed in the Legislature, several families who had made contact during that time decided to find a legislator who would support a bill more favorable to home educators. Craig Dickinson, a trial attorney, drafted the bill and contacted Rep. Daniel Webster, who filed HB 326 in February 1985. When the bill was signed into law at the end of the 1985 Session, the pending charges against the families and the appeal was dropped. The home education statute settled the issue of whether it was legal in Florida for parents to teach their own children. The issue of whether a parent could teach his children in a private school was never decided formally either through the courts or specifically in statute. At that time, the state knew that parents were still teaching their own through private schools; it chose, and still does, not to pursue any further legal action because teachers in private schools are not regulated in Florida. The real question was "Did parents have the right to teach their own children?" Once the legislature said that parents had that right, and that home education was a legal option to satisfy the compulsory attendance laws, the state conceded.

Individual families were protected from harassment by an attendance officer or social worker, and from prosecution of truancy or neglect, by registering their home education programs with the state. The Superintendent, who was charged with the responsibility of making sure every child in his district of compulsory attendance age was attending school regularly, now knew that parents could teach their children at home. The home education law settled the issue and made Florida one of the best, if not the best home education law in the nation. It has just enough accountability to satisfy the state's compelling interest without being burdensome and overly restrictive.

Accountability has become the buzzword in education over the last eight years, and vouchers have been the link that has brought private schools into the accountability debate. Because vouchers will have some strings attached, it behooves both private schools and home educators to work together to design laws that limit the strings. Theoretically, if a school does not receive state or federal dollars, then they are not accountable to the government. However, well-meaning leaders in the school choice movement, in an effort to respond to the opponents of vouchers, proposed that all voucher students take the state assessment test and have gone so far as to suggest that private schools agree to administer the FCAT. So far we have been able to prevent the state assessment from being imposed as the accountability measure. We must continue to stand strong and fight this battle together.

In the event that private schools eventually become regulated because of vouchers, we still have the home education option. If home education comes under attack, we may have the private school option. It benefits us all to support and defend each other's rights and to stand against governmental regulation on any form of private education and to protect both options.