

# OHIO HOME EDUCATION COALITION

## *Homeschooling Notification: Why Minimal Compliance is an Important Action to Protect Our Freedoms*

August 2004

Revised from original dated July 2000

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**Summary:** *Over the last few years, we have seen a growing disregard for the administrative laws that govern homeschooling in Ohio by local school superintendents. These administrative laws are found in Ohio Administrative Code (OAC), Section 3301-34 entitled Rules for Excuses From Compulsory Attendance for Home Education. By their own Statement of Purpose, the administrative laws are meant to “safeguard the primary right of parents to provide the education for their child(ren).”*

*Homeschoolers must be diligent in safeguarding each aspect of those regulations, in order to ensure the ground on which we stand remains firm. Any erosion of the regulations will impair the freedom of all homeschoolers to homeschool according to their own beliefs and principles. This fact sheet will:*

- *Discuss the homeschooling climate before the administrative laws were enacted;*
  - *Provide examples of challenges to the administrative laws;*
  - *Suggest ways to minimally comply with all aspects of the administrative laws;*
  - *Describe what we can do when local superintendents exceed their authority regarding homeschooling administrative laws.*
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### **Background**

The administrative laws (also known as regulations) governing homeschooling were developed by an ad hoc committee, which primarily included a few homeschoolers and several school superintendents and principals. For more than a year, the committee met to reach agreement on each word of the document. The State Board of Education (SBE) finally adopted the administrative laws in the summer of 1989.

Prior to their implementation, there was an inconsistent approach to homeschooling policies in each of more than 600 school districts across Ohio. Depending on the school district, the superintendent or the administrative staff...depending on the acceptance of parents' rights to direct their children's education or the challenge to those rights...depending on how cooperative or threatened a school district felt...homeschoolers faced uncertainty and

challenge. Not many homeschoolers in Ohio are aware of the climate for homeschoolers from those times.

Prior to 1989, the atmosphere maintained by local school districts was frequently antagonistic toward homeschoolers. Some private schools “enrolled” homeschoolers in “satellite” programs. Other homeschoolers were able to work out arrangements with reasonable public school superintendents. Still others who were challenged in their homeschooling rights were “underground.” Accustomed to using aliases, they kept post office boxes to remain connected with other homeschoolers for support. Many families lived in fear that they might fall into the hands of a hostile local superintendent. Therefore, their children did not play outside the house during school hours and rarely accompanied parents on errands to avoid conversation with locals about school. These families were cautious about attending publicized meetings or events for homeschoolers and never

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shared their phone number.

Their caution was legitimized by reported incidents, such as one superintendent who had been informed of known meetings, conducted by families whose children were homeschooled. He drove by the meeting and recorded the license plate numbers of parked cars outside the meeting place in order to learn who these families were. Often, truancy and abuse charges were brought against parents because they refused to fully appease superintendents by completing “required” documents before being “approved.” These lengthy documents, usually written in educationese, required detailed information concerning curriculum and lesson plans for every subject. Challenged families sometimes found these documents to be in conflict with personal or religious philosophies. Completing documents “required” them to complete even more documents.

Consider the C. family from a Northwest Ohio district. In the early 1980’s, their first-grade child had been classified as “learning disabled” by the school district. They insisted on treating the child if he were “learning disabled,” even after the parents discovered that the child’s needs were not being addressed due to a hearing impairment. When the school district continued to classify the child as “learning disabled,” the family withdrew the child and began homeschooling. When challenged by the superintendent, the family agreed to teacher visits and curriculum review. Even meeting those demands, they were repeatedly threatened with truancy and eventually juvenile court charges were formalized. Although they had now incurred a few thousand dollars in attorney’s fees, they moved from their home and the charges were dropped. They continued to homeschool in another location.

Remembering the difficulties for those homeschooling prior to the adoption of the administrative laws, the authors believe it is imperative to safeguard the administrative laws that, although not perfect, are less restrictive

than those in many other states. We must preserve our freedoms in both the general and in the specific application of the administrative laws. We must stand together if we are to ensure that all Ohio homeschoolers are treated equitably in accordance with the administrative laws.

## *Notification Requirements and Challenges by School Districts*

The administrative laws for issuing excuses from compulsory attendance, as approved by the SBE<sup>1</sup>, are straightforward. They have served homeschooling families and the state in their purpose to meet the state’s mandate of compulsory attendance.<sup>2</sup> School district officials are not allowed to add to, delete from or change the administrative laws in anyway.<sup>3</sup> Nor is a school district permitted to establish “requirements and limitations to home education.”<sup>4</sup> Minimal compliance with the administrative laws is very important for homeschoolers to maintain their rights to homeschool and to ensure the least restrictive means for ourselves, other homeschoolers and future homeschoolers. Offering more information than minimally required by administrative laws voluntarily sets precedents that may lead to increased regulation of homeschoolers.

This fact sheet section will demonstrate how parents can meet their obligation to the state with

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<sup>1</sup> As per Ohio Revised Code, Section 3321.04(C): “The state board of education may by rule prescribe conditions governing the issuance of excuses, which shall be binding upon the authorities empowered to issue them.”

<sup>2</sup> Of course, there are some parents who believe that even the Ohio regulations exceed rights that come only from a greater origin than the state. Until compulsory attendance laws are repealed, however, the law requires that each child between the ages of 6 and 18 in Ohio is of compulsory school age.

<sup>3</sup> *Questions and Answers Regarding Home Education*, June, 1993, Ohio Department of Education states: “These are rules of the State Board that carry the same effect as law, and school districts may not add to these requirements.”

<sup>4</sup> This statement is from correspondence with the Port Clinton City Schools. This fact sheet will explain this and subsequent references to school district correspondence on page 3, paragraph 2.

minimal compliance. Although the administrative laws are very readable and clear, there are aspects where superintendents and parents make consistent errors in their attempts to comply.

[OHEC has assembled a collection of correspondence and policy statements prepared by school districts. For use in this fact sheet, we will cite from materials for eight of those districts, distributed since the fall of 1999. Each cited example demonstrates non-compliance with the administrative laws. The administrative laws have been condensed, expanded, changed or rewritten. We cite areas of non-compliance that are most troublesome. Most areas concern the notification and assessment process, although there are other regulatory aspects that require compliance by both school districts and homeschoolers. This is not a definitive representation of the 612 school districts in Ohio. We also note that we have seen examples of school district correspondence that we believe were in compliance with the administrative laws.]

When a parent files a homeschooling notification, they are doing just that: Notifying the local superintendent of their chosen method of complying with the compulsory attendance law. They are not seeking “permission”, “approval” or making “application.” This is one of the most abused expectations by local superintendents.<sup>5</sup>

Frankly, some homeschoolers do not at first recognize the distinction in the use of these words. For example, parents have both a legal and a customary authority for their children. As parents, we most certainly understand the dif-

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<sup>5</sup> The word “approval” or “approved” is used by Fairfield City Schools, Port Clinton City Schools, Lakewood City Schools, Hamilton County Educational Service Center, Lake County Educational Service Center, Mentor Public Schools, and the Lucas County Educational Service Center. Fairfield City Schools and Port Clinton City Schools additionally use the words “application” and “request”. Fairfield City Schools uses the word “permission” as well.

ference between our child “notifying” us of a planned adventure versus seeking our “permission” or “approval”. The administrative laws require a “notifying” to a school superintendent. They do not grant authority to a superintendent to “approve,” only to “issue an excuse.” It is extremely important for homeschooling parents to be assured in their understanding of this point: You are notifying the superintendent--nothing more.

- There is no required form for notification. In fact, a homeschooler could simply write a letter to the superintendent covering all the required points of notification. The administrative laws state in 3301-34-03(B): “The information required in paragraph (A) of this rule **may** [emphasis added] be provided on a form prescribed by the superintendent of public instruction.” The superintendent of public instruction refers to the State Superintendent, not any local superintendent. In addition, it is important to note the word “may”. There is no requirement for a homeschooler to use any form. This can be misunderstood by homeschoolers when they receive “forms” from the local school district. Some school districts that provide a “form” direct or imply that this “form” is required for notification purposes.<sup>6</sup> One school district implies that their locally prepared “application” is an official “State of Ohio, Department of Education” document.<sup>7</sup>
- Notification is provided to and excuse is received from the superintendent. OAC 3301-34-01 defines superintendent as: “the superintendent of schools of the city, county, or exempted village school district in which the parent resides.”<sup>8</sup> It does not mean a “desi g-

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<sup>6</sup> Hamilton County Educational Service Center, Fairfield City Schools, Lake County Educational Service Center.

<sup>7</sup> Fairfield City Schools.

<sup>8</sup> Notify a school superintendent of a “city” or an “exempted village” school district directly. If the official title of a school district has the word “local” included in it, then the **county** superintendent is the official superintendent for homeschooling notification purposes. (Typically, county superintendents are in charge of more than one “local

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nee,”<sup>9</sup> a “Director of Special Services,”<sup>10</sup> a “Consultant of Student Services,”<sup>11</sup> a “Coordinator of Related Student Services,”<sup>12</sup> a “Coordinator of Pupil Services,”<sup>13</sup> or a “Secretary.”<sup>14</sup> Therefore, any correspondence regarding the administrative laws should be directed only to the appropriate superintendent.

- The administrative laws state that providing a family’s telephone number is optional. If the district’s “form” lacks a notation that a telephone number is optional, this may be the first indication to a homeschooler that the district’s “forms” should be scrutinized for other areas of non-compliance.
- Only one parent’s name is required to be used by the administrative laws, both as a part of the notification items and as a signature.<sup>15</sup> In order to help prevent an unfair and unwarranted bias being directed toward single parents, homeschoolers might consider providing only one name, even if two parents will take an active role in homeschooling.
- In the last few years, a growing number of school districts, when requesting a child’s name and birthdate, exceed the administrative laws by requesting “grade level” and/or previous “school district and building attended.”<sup>16</sup> This information is not required by the administrative laws.
- When specifically addressing the list of subjects required, school districts at times

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school district”--each with its own subordinate superintendent).

<sup>9</sup> Fairfield City Schools and Lakewood City Schools.

<sup>10</sup> Fairfield City Schools.

<sup>11</sup> Hamilton County Educational Service Center.

<sup>12</sup> Mentor Public Schools.

<sup>13</sup> Lakewood City Schools.

<sup>14</sup> Toledo Public Schools.

<sup>15</sup> Port Clinton City Schools.

<sup>16</sup> Port Clinton City Schools, Lakewood City Schools, Fairfield City Schools and Lucas County Educational Service Center.

fail to include in their “forms” or correspondence the following language from Section 3301-34-03(A)(5) of the administrative laws: “...home education shall not be required to include any concept, topic, or practice that is in conflict with the sincerely held religious beliefs of the parent.”<sup>17</sup> Also, the list of subjects specified in the administrative laws is complete and may not be expanded upon with school district requests for added information, such as “Additionally, I plan to teach (list of courses not included above).”<sup>18</sup>

- Two notification items are “for informational purposes only.” The administrative laws require homeschoolers to 1) give a brief outline of intended curriculum and 2) list books, curricula and other materials. Historically, compliance with these two requirements has provided the most examples for mistaken assumptions on the part of both the superintendent and homeschoolers. A homeschooler cannot be challenged based on the materials chosen and the manner in which they will be presented. They are a statement of information, not a measure to be weighed by the superintendent. You need not offer long explanations, written in appropriate “educationese,” in order to demonstrate the validity of your family’s choice. It is the right of parents to provide their children’s education in accordance with their principles and beliefs. Lists of materials and a few brief paragraphs on how they will be utilized provide sufficient information for compliance with these two requirements. “For informational purposes only” has been the detail most often omitted in school district prepared notification “forms.”<sup>19</sup>
- No provision is made in the administrative laws for school districts to provide suggestions or “samples” regarding curriculum or materials. School districts have, at times, specifically recommended curricula, including religious-

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<sup>17</sup> Port Clinton City Schools, Lakewood City Schools.

<sup>18</sup> Port Clinton City Schools.

<sup>19</sup> Port Clinton City Schools, Lakewood City Schools, Lake County Educational Service Center.

based curricula, which could not even be used within their own public school systems.<sup>20</sup>

### *Assessment*

- OAC 3301-34-04 contains three options for compliance with assessment requirements:
  - ✓ results of a nationally-normed, standardized achievement test administered by a currently-certified Ohio teacher of the parent's choosing or administered by a person mutually agreed upon by the parent and superintendent or administered by a person authorized by the publisher of the test; OR
  - ✓ a written narrative indicating that a portfolio of samples of the child's work has been reviewed and that the child's academic progress for the year is in accordance with the child's abilities. The written narrative is to be prepared by a currently-certified Ohio teacher or by another person mutually agreed upon by the parent and the superintendent; OR
  - ✓ an alternative academic assessment of the child's proficiency mutually agreed upon by the parent and the superintendent.
- State-developed Ohio Proficiency (or Achievement) Tests do not meet the criteria of a nationally-normed standardized achievement test.<sup>21</sup> Nonetheless, homeschoolers have received invitations from the local school district to participate in Proficiency testing to meet the assessment requirement.<sup>22</sup>

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<sup>20</sup> Fairfield City Schools, Toledo Public Schools.

<sup>21</sup> Standardized tests are typically norm-referenced tests. In these types of tests, students are compared to each other. However, in criterion-referenced testing, such as proficiency testing, students are measured against a set standard. The SBE has formally adopted state standards and the Proficiency Tests drive the content of the material presented in schools—"teaching to the test."

<sup>22</sup> Toledo Public Schools, Lakewood City Schools.

- If a homeschooling family chooses the portfolio option, the child's portfolio is for review only by their chosen certified teacher. It is never necessary to submit the portfolio itself or examples of any tests taken to the school district.<sup>23</sup> Additionally, the certified teacher only needs to sign a statement "indicating that a portfolio of samples of the child's work has been reviewed and that the child's academic progress for the year is in accordance with the child's abilities." There is no requirement for the teacher to provide detailed notes as a part of his or her signed statement. In other words, portfolio content, any analysis of the child's progress or any specific discussion concerning the child is a private matter between the family and their chosen certified teacher.
- There is no regulation that requires confirmation "that the student has mastered the content of the course."<sup>24</sup> In fact, even if standardized achievement testing is the option selected for assessment, in OAC 3301-34-04(B)(1)(b) the administrative laws call for: "Results should demonstrate reasonable proficiency as compared to other children in the district at the same grade level. Any child that has a composite score at or above the twenty-fifth percentile should be deemed to be performing at a level of reasonable proficiency."
- Homeschoolers have been invited by school districts to take part in their scheduled testing throughout the year. Homeschoolers are not required to participate in these tests; and if they do participate, there should be no cost incurred by the parent. Additionally, if a child who is now homeschooling had been enrolled in the school district when nationally-normed standardized achievement testing was administered and the child took part in that testing, then that child's test scores can be used as an assessment for that school year when notifying for a subsequent year.

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<sup>23</sup> Port Clinton City Schools.

<sup>24</sup> Port Clinton City Schools.

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### *When to notify*

The date when homeschooling begins often lacks clear understanding by both homeschoolers and superintendents. In 2000, the Ohio Department of Education issued an opinion regarding timing of notifications. (See OHEC Fact Sheet March 2000 for details). The opinion was issued in response to a question regarding one family. It was an opinion that deviated from long-held, common practice on notification timing in Ohio and contradicted long-held, verbal statements from ODE. Since 1989, and even since the 2000 opinion, tens of thousands of homeschoolers have used the following information to guide them when complying with the homeschooling administrative laws:

- There is no date specified in the administrative laws as to when a child may begin homeschooling.
- There is no statement made in the administrative laws regarding a waiting period that new or existing homeschoolers must honor before beginning to homeschool. A superintendent has been allowed 14 days to review (not approve) the submitted notification, to process the paperwork, and to issue an excuse from compulsory attendance or to state in writing the specific respects in which the notification is incomplete.
- Homeschoolers who are not enrolling at the beginning of a school year consistently have been verbally informed by the Ohio Department of Education that notification is due by the first day of school in their district.
- If a child is enrolled and attending a public school and then decides to homeschool, there is no regulation regarding a necessary waiting period after a parent submits a notification.
- Any attempt to force an enrolled child to remain enrolled while paperwork is processed exposes that child to a potentially hostile environment, as well as levying unequal treatment on the child in compar-

son to any other child whose parents are exercising a chosen educational option at will (i.e. public school to private or charter school transfer.)<sup>25</sup>

Frequently, we have witnessed examples of superintendents arbitrarily choosing “due dates” for homeschooling notification and assessment. As stated above, no date is specified in the administrative laws.<sup>26</sup> In addition, the academic assessment report for each child is required to be submitted to the superintendent at the time of subsequent notification under OAC 3301.34-04(A). There is no requirement that it be submitted earlier or sent separately to school district personnel.

### *Other sections of the administrative laws*

Time and again, superintendents or those preparing the “forms” and correspondence directed to homeschoolers add to or delete information from the administrative laws. A few examples of this disregard include:

- Requests for proof of certification for a teacher performing assessments<sup>27</sup> or for the signature of a person assisting in “monitoring” the home education program.<sup>28</sup> No such information is required by the administrative laws. There is no discussion in the law of a “monitor.”

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<sup>25</sup> For more information on this very important issue, refer to the OHEC fact sheet (March 2000) entitled: *Opinion Issued by Department of Education Undermines Homeschooling Freedom* and the addendum (April 2000). For an example of school district established policy, see Lake County Education Service Center at [http://www.lcesc.k12.oh.us/Home\\_School/home\\_school.htm](http://www.lcesc.k12.oh.us/Home_School/home_school.htm)

<sup>26</sup> Fairfield City Schools, August 21; Lakewood City Schools, June, 2000; Hamilton County Education Service Center, August 25, 2000; Mentor Public Schools, June 7, 2000; Lucas County Educational Service Center, July 15, 2000.

<sup>27</sup> Fairfield City Schools.

<sup>28</sup> Port Clinton City Schools, which has, in fact, established an entirely new provision in its “form” with the notion of a “homeschooling monitoring program.” Although no such program is even mentioned in the regulations, Port Clinton uses this language in multiple places on its “form.”

- Non-compliant homeschooling “forms” and policies written by a school district which condense, exclude or alter the administrative laws concerning: academic assessment; rights to due process hearings and appeals; re-enrollment in public school without discrimination or prejudice; and remediation, if necessary. Each of these items is clearly detailed in the administrative laws.

### ***Recently developing concerns***

In the case of at least one school district, Lake County Education Service Center, their online policy statement concerning homeschoolers includes links to a public charter (charter) school under the heading “Additional information about home schooling.”<sup>29</sup> Enrollment in a charter school is distinctly different than homeschooling. Charter schools, including the cyber charter schools, are state funded and controlled. Decisions regarding curriculum, assessment and philosophy are no longer determined by families but by state standards. They are not regulated by home education administrative law but by charter (community) school law.

Although some charter schools now view homeschooling as a “market,” the distinctions between enrollment and homeschooling, both legally and in practice, are well-established, clear and should never be confused.

### ***What we can do***

We can obtain a copy of the administrative laws as they were originally written and we can study those administrative laws. We would like to believe that school districts, when asked, would only distribute correct homeschooling information and the actual administrative laws in their entirety. Unfortunately, since the administrative laws were first implemented, this has not necessarily been the case. Those inter-

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<sup>29</sup> Lake County Educational Service Center, [http://www.lcesc.k12.oh.us/Home\\_School/home\\_school.htm](http://www.lcesc.k12.oh.us/Home_School/home_school.htm)

ested can obtain copies of the administrative laws from homeschooling support groups, local libraries or on-line.<sup>30</sup>

We can refer to other well-written material on minimum compliance, such as the Taking Charge column in *Home Education Magazine* of September/October, 1999 by Larry and Susan Kaseman entitled: “Doing the Minimum to Comply With Homeschooling Laws and Other Good Ideas.”<sup>31</sup>

We can respond to school district correspondence. By studying the letters and any accompanying paperwork and comparing it word for word to the administrative laws, we can then respond to the superintendent in a rational and informed manner. This response may even be a letter of appreciation if the administrative laws are met in every detail. If a copy of the two-and-one-half pages from the actual OAC volume is received, and nothing more, we can thank the superintendent, both for the information and for his or her trust that we are competent in fulfilling the notification and assessment requirements without any “interpretation” on the part of the school. We can send copies of this thank you letter to our elected school board members as well.

If a school district continues to provide incorrect information, we can attend school board hearings and ask for time on the agenda to address the board, describing the errors and expressing concerns. We can invite others from the homeschooling community to attend these meetings with us. We can ask to make a presentation to the board’s policy-making committee regarding the administrative laws. We can stand firm in polite insistence that any school policy comply with the administrative laws.

We can discuss concerns about local school district policy within our support groups or in on-

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<sup>30</sup> Volume 33 of Ohio Administrative Code or Anderson Online Docs <http://onlinedocs.andersonpublishing.com/oac/> (Scroll the left index to Section 3301 and open; scroll again in the left index to Chapter 3301-34 and open. Or, use search for 3301-34)

<sup>31</sup> Home Education Magazine, [http://homeedmag.com/HEM/165.99/so\\_clmn\\_tch.html](http://homeedmag.com/HEM/165.99/so_clmn_tch.html)

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line Ohio homeschooling discussions. Chances are that many members of the same support group live within the same school district and would have common concerns. This would be especially helpful to any new homeschoolers, particularly those who chose the school district as a first point of contact about homeschooling.

We can write letters to the local newspapers if the violations by school districts are especially egregious.

We can encourage other homeschoolers to be aware of their rights, to study copies of the administrative laws and to not set precedents by not exceeding what is required in the administrative laws.

We can recognize our responsibility to stand together for the future protection of our administrative laws.

### *Regarding the Ohio Home Education Coalition...*

- **Notice:** Nothing in this fact sheet is intended or should be taken as the giving of legal advice. This fact sheet is not intended to substitute for privately retained legal counsel.
- **About OHEC:** This information was prepared by the Ohio Home Education Coalition (OHEC), a grassroots, inclusive coalition of interested homeschoolers who come together to raise awareness of issues facing homeschoolers in Ohio.
- **Support Groups:** OHEC gives permission for this fact sheet to be **duplicated in its entirety, including this information regarding OHEC**, and distributed to homeschooling support group members or distributed to individual homeschoolers. Please notify OHEC of these uses of the fact sheet at [ohec1@earthlink.net](mailto:ohec1@earthlink.net)
- **OHEC's e-mail list:** When necessary, we prepare alerts to homeschoolers and their allies who are interested in preserving homeschooling under Ohio Administrative Code 3301-34 as it was first enacted in 1989. If you would like to be on that email list, please send an email to [ohec1@earthlink.net](mailto:ohec1@earthlink.net) and state in the subject line "add my name."
- Ohio Home Education Coalition will never share anyone's email address for any reason.
- OHEC's email address is not interactive. Due to the importance of being with our families, we cannot reply to emails.
- **OHEC supports the We Stand For Homeschooling Statement and Resolution at <http://www.westandforhomeschooling.org/>**