



Frequently Asked Questions: Homeschooling

In New Jersey, the Legislature under the compulsory education law (N.J.S.A. 18A:38-25) has permitted children to receive “equivalent instruction elsewhere than at school,” including the home. The following homeschooling questions and answers are intended to assist a parent/guardian and public school district(s) in dealing with issues that frequently arise in this context.

1. What are the statutory requirements regarding compulsory education?

The following New Jersey statutes apply to compulsory education:

- N.J.S.A. 18A:38-25 requires that “every parent, guardian or other person having custody and control of a child between six and 16 to ensure that such child regularly attends 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.”

Note: The provision, “to receive equivalent instruction elsewhere than at school” in N.J.S.A. 18A:38-25, permits a parent/guardian to educate the child at home.

- N.J.S.A. 18A:38-31 states that “a parent or guardian or other person having charge and control of a child between the ages of 6 and 16 years, who shall fail to comply with any of the provisions of the article (N.J.S.A. 18A:38-25) relating to his/her duties, shall be deemed to be a disorderly person and shall be subject to a fine of not more than \$25.00 for the first offense and not more than \$100.00 for each subsequent offense, in the discretion of the court.”

2. What case law exists regarding homeschooling?

There are two major court decisions in New Jersey relative to homeschooling:

- State v. Vaughn 44 N.J. 142 (1965): This case deals with the procedures to be employed when a parent/guardian is charged with failing to cause the child to attend school under the compulsory education law. During the prosecution of a case against a parent/guardian for a violation of the compulsory education law, the State needed only to allege a violation of the statute. It was then incumbent upon the parent/guardian to introduce evidence showing that they are relying on one of the two statutory exceptions (day school or equivalent instruction elsewhere than at school). Once there is such evidence in the case, the burden of persuasion with respect to whether the education comes within the exception is with the State.
- State v. Massa 95 N.J. Super 382 (1967): In court, the parents were charged with failing to cause the child to attend school under the compulsory education law. The only issue before the court was whether the parents were providing equivalent instruction. The court held that the language under the compulsory education law, providing for equivalent instruction

elsewhere than at school, required showing only academic equivalency and not equivalency of social development derived from group education. In educating the child at home, the parents were required to show only that “the instruction was academically equivalent to that provided in the local public school.”

3. What is the responsibility of the local board of education regarding compulsory education?

The local board of education is required to enforce the compulsory education law, N.J.S.A. 18A:38-25. If the local board of education determines that there is credible evidence that the parent/guardian or other person(s) having custody and control of a school-age child is not causing the child either to attend school (public or nonpublic) or to receive equivalent instruction elsewhere than at school, the board may request documentation, such as a letter of intent from the parent/guardian confirming that the child is either attending a nonpublic school or receiving equivalent instruction elsewhere than at school. The mere fact that a child has been withdrawn to be homeschooled is not, in itself, credible evidence of a legal violation. If it appears that the child is not receiving an education in accordance with N.J.S.A. 18A:38-25, the board may wish to consult with its attorney regarding possible charges against the parent/guardian for failure to have the child educated.

4. Under what circumstances will a parent/guardian of a child be required to inform the local board of education of the intent to educate his/her child elsewhere than at school?

There are two circumstances in which a parent/guardian of a child will be required to inform the local board of education of the intent to educate his/her child elsewhere than at school:

- If a parent/guardian attempts to register a student in a local school district and the district refuses to enroll the student, the parent may provide the district with an *intent to appeal* such denial. If the parent does not provide the district with an *intent to appeal*, the parent/guardian is required to provide a statement of verification regarding whether the student will be attending school in another school district or a nonpublic school, or will be receiving instruction elsewhere than at school (N.J.A.C. 6A:22-4.2(d)); AND
- If a parent/guardian decides to remove an enrolled student from his/her high school educational program, the parent/guardian will be required to complete a *transfer form* which includes information related to the intent to provide instruction elsewhere than at school for the purposes of collecting accurate data on high school enrollment.

For any other circumstances, the New Jersey Department of Education encourages parents to notify the local board of education of the intent to educate the child elsewhere than at school so that questions do not arise with respect to the parent’s compliance with the compulsory education law.

5. Is the local board of education required to review and approve the curriculum for a child educated elsewhere than at school?

The law does not require or authorize the local board of education to review and approve the curriculum or program of a child educated elsewhere than at school. When parent/guardian educate a child elsewhere than at school, they are responsible for the educational outcomes of the child. The local board of education is not required or authorized to monitor the outcomes of the child.

6. May the parent/guardian of a child educated elsewhere than at school request information regarding a curriculum from the local board of education?

Parents may seek information about the school curriculum from the local board of education. If the parent/guardian requests such information, the board must provide it since a district's curriculum is a matter of public record in accordance with N.J.S.A. 47:1A et seq. The parent/guardian may be charged for the cost of copying documents in accordance with the rates established by law, N.J.S.A. 47:1A-5(b).

7. Is the local board of education required to establish a record for a child educated elsewhere than at school?

A board of education is not required to establish a record for a child who is educated elsewhere than at school. If the board of education receives information from the parent/guardian of a child educated elsewhere than at school, the board may establish a record for a child for the sole purpose of documenting that the child is receiving an education as required by law.

8. Who is responsible for a child educated elsewhere than at school when the child is taught by a person other than the parent or when the child takes a correspondence course or web-based program?

The parent/guardian of the child educated elsewhere than at school are solely responsible for any program selected. The state or local board of education is not required or authorized to approve the selected program. The parent/guardian may work directly with any teacher or host school/administrator regarding the program; but they are not required to do so.

9. Is a parent/guardian or person(s) teaching the child elsewhere than at school required to be certified as a teacher in the State of New Jersey?

A parent/guardian or person(s) teaching a child elsewhere than at school is not required by law to be certified as a teacher in the State of New Jersey.

10. Is the local board of education required to allow a child educated elsewhere than at school to participate in the regular school curriculum or in extracurricular or sports activities?

The local board of education is not required by law to allow a child educated elsewhere than at school to participate in the regular school curriculum or in extracurricular or sports activities. Such participation is at the sole discretion of the board once the child is identified as educated elsewhere than at school as identified below:

- **Curricular and Extracurricular** - A board of education may, but is not required by law to, allow a child educated elsewhere than at school to participate in curricular and extracurricular activities or sports activities. Before deciding to do so, however, a board of education may wish to consult with its attorney to consider the full implications of such participation.
- **Textbooks** - A board of education may, but is under no obligation to, loan books or materials to a child educated elsewhere than at school.

- **County Shared-Time Vocational Schools** - A vocational board of education should adopt a non-discriminatory policy regarding a child educated elsewhere than at school. If a parent/guardian is a resident of the county, the child educated at home may apply on an annual basis to the county vocational school. The county vocational school may permit the child being educated elsewhere than at school to attend a shared-time county vocational school to the extent that space is available according to N.J.A.C. 6:43-3.11(b). Once a child educated elsewhere than at school is enrolled in a shared-time vocational school program, the child then becomes a public school student and is entitled to the payment of tuition through the resident district.
- **Special Education Services** - In accordance with the federal special education law, Individuals with Disabilities Education Act (P.L. 108-446 §612), the board of education must ensure that “all children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of the disability, and who are in need of special education and related services, are identified, located and evaluated...”

When the public school district receives a written request for special education evaluation, the district must review the request in a meeting of the child study team, the parent/guardian and the regular education teacher. This procedure applies to children who are educated at home. At the meeting, current information about the child is reviewed to determine whether an evaluation is warranted. If an evaluation is warranted, another determination will be made regarding the assessment procedures. Written notice of the determinations is given to parent/guardian. Once the assessments are completed, a meeting in accordance with N.J.A.C. 6A:14-2.3(i)1 is held to determine whether the child is eligible for special education and related services.

If the child is eligible for special education and related services, the public school district must make a free, appropriate public education available only if the child enrolls in the district. If the child does not enroll in the public school district, but the district chooses to provide services, the district would develop a plan for the services to be provided.

11. Is a child educated elsewhere than at school eligible for transportation to a shared time vocational school program?

Once a child educated elsewhere than at school is enrolled in a shared-time vocational school program, the child then becomes a public school student and is entitled to the payment of tuition and transportation services. Transportation services are provided in accordance with N.J.S.A. 18A:39-1 and the rules and policies of the board of education.

12. Is a child educated elsewhere than at school eligible to participate in district/state testing?

The local board of education is not required or authorized to test a child educated elsewhere than at school. The local board of education does not have to ensure through testing or another mechanism that instruction is being appropriately delivered or achieving its desired effect, to review the quality of instruction, or to monitor the results. A child educated elsewhere than at school is not required to sit for a state or district standardized test.

13. How will grade placement be determined for a child educated elsewhere than at school who returns to school?

When a child returns to school following a period of homeschooling, the local board of education treats the child as any other new or returning child (i.e. assessed as to the acceptance of credits and the appropriate grade level for purposes of placement). There are no special provisions made for the child who was educated at home. Placement should be based on an objective assessment that is given to all students for that subject or grade. In assessing the child educated elsewhere than at school, the child may not be held to a higher standard than similarly situated students within the district or transferring from other public or nonpublic schools. Also, if a child educated elsewhere than at school re-enrolls in the public school in order to obtain a high school diploma, an assessment is made as to the child's compliance with state and local requirements, as the board of education would with any new or returning student, since no diploma can be issued when such requirements are not met. A determination on a student's grade placement may include scores on the state assessments applicable to the proposed grade of entry.

14. Does a child educated elsewhere than at school receive a high school diploma from the local board of education?

A child educated elsewhere than at school does not receive a state-endorsed high school diploma from the board of education. If the child educated elsewhere than at school re-enrolls in the public school to obtain a high school diploma, an assessment is made as to the child's compliance with state and local requirements and eligibility for a high school diploma.

The child educated elsewhere than at school may also obtain a New Jersey State High School Diploma: by passing the General Educational Development (GED) Test; or by completing 30 general education credits leading to a degree at an accredited institution of higher education and by performing at the proficient or advanced proficient level of achievement in all sections of the High School Proficiency Assessment (HSPA).

Please note that the **Homeschooling Frequently Asked Questions** document is intended to promote general guidance for a parent/guardian and school administrator(s), and does not constitute legal advice or state directives. A board of education may wish to consult with its attorney regarding specific situations or questions.

