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HOME-BASED EDUCATION IN AN ALABAMA PRIVATE SCHOOL

Alabama law requires “every child between the ages of six and 17 years” to “attend a public school, private school, church school, or be instructed by a competent private tutor for the entire length of the school term.” Ala. Code § 16-28-3(a). This law, combined with legislation that took effect in 2014, means there are now three home education options recognized in the Code of Alabama: (1) attendance at a church school; (2) *attendance at a private school*, and (3) instruction by a competent private tutor (must be an Alabama-certified teacher).

This memorandum will address the second (private school) option due to recent statutory changes and a document posted by the Interim State Superintendent of Education detailing his interpretation of these changes, both of which have prompted many questions about this relatively new option for home education and whether parents need to utilize any of the above options.

In 2014 (through Act 2014-245) the Alabama Legislature modified the definition of a private school to include “home programs” and eliminate the requirement that private schools hold a certificate from the State Superintendent of Education showing that the school met certain standards, including teacher certification, instruction in the “branches of study” taught in public school, and detailed attendance records. This created an option for families to establish their own home-based private school and provide home-based education through this private school.

The current definition of a private school is as follows: “PRIVATE SCHOOL. Includes only such schools that are established, conducted, and supported by a nongovernmental entity or agency offering educational instruction in grades K-12, or any combination thereof, including preschool, through on-site or home programs.” Ala. Code § 16-28-1(1).

The Legislature affirmed that parents have the right to homeschool by stating the following: “A parent or guardian shall have the right to select the type [of] school or method of his or her choice for the K-12 education of his or her child, whether public or nonpublic, religious or nonreligious, and *including home-based education*.” Ala. Code § 16-1-11.2(a) (emphasis added).

The Legislature emphasized the autonomy of this right in the next subsection: “Nonpublic schools, including *private*, church, parochial, and religious schools, offering educational instruction in grades K-12, *as well as home-schooled students*, are not subject to licensure or regulation by the state or any political subdivision of the state, including the State Department of Education.” Ala. Code § 16-1-11.2(b) (emphasis added).

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While these changes leave no doubt that parents may continue to educate their children at home, the Legislature did not change the compulsory school attendance law which requires attendance at a public, private, or church school, or instruction by a private tutor. Thus, the Legislature did not create a legally distinct homeschool option for complying with the compulsory school attendance mandate of section 16-28-3(a).

LEGAL OPERATION OF A PRIVATE SCHOOL

So what requirements do apply to home-based private schools? Three reporting requirements remain in statutory law: (1) yearly registration with the State Department of Education, (2) yearly enrollment reporting to the local county or city superintendent, and (3) weekly reporting of unexcused absences and/or changes in enrollment, if any. Private schools are also required to keep an attendance register (Ala Code § 16-28-8), require proof of immunization or a medical or religious exemption (Ala. Code §§ 16-30-3 and 16-30-4), and provide a system of physical education (Ala. Code § 16-40-1).

I. Private School Registration

Regarding yearly registration, section 16-1-11 states: “All private schools or institutions of any kind having a school in connection therewith, except church schools as defined in Section 16-28-1, shall register annually on or before October 10 with the Department of Education and shall report on uniform blanks furnished by the Department of Education.” Ala. Code § 16-1-11. The registration forms (“blanks”) must include statistics such as the number of pupils, the number of instructors, enrollment, attendance, course of study, length of term, cost of tuition, funds, value of property, and the general condition of the school.

The Alabama State Department of Education (ALSDE) will not accept registration from private schools that are being operated out of a home. In an undated memorandum posted on the ALSDE’s website, the Interim State Superintendent of Education confirms that registration forms submitted by home-based private schools will not be accepted. He makes equally clear, however, that home-based education—without a cover school—is a legitimate means of complying with Alabama’s compulsory school attendance law. In fact, he goes so far as to say: “The true intent of the private school law was to allow for the complete and total autonomy of nonpublic schools including private, church, parochial, and religious schools, including home-schooled students and to eliminate any and all governmental requirements or regulations actual or implied.” (See the attached “Private School Law” memorandum.)

Alabama law tasks the state superintendent with explaining “the true intent and meaning of the school laws and of the rules and regulations of the State Board of Education.” Ala. Code § 16-4-4. However, this role does not authorize the creation of new provisions or an interpretation that contradicts statutory provisions.

Based on the state superintendent's position and the practical reality that registration is not feasible, HSLDA does not deem it necessary for home-based private schools to register with the state in order for parents to utilize the private school option.

II. Enrollment Reporting

Regarding enrollment reporting, section 16-28-7 contains yearly and weekly requirements: "At the end of the fifth day from the opening of the public school, the principal teacher of each public school, *private school*, and each private tutor, but not church school, shall report on forms prescribed by the State Superintendent of Education to the county superintendent of education . . . the names and addresses of all children of mandatory school attendance age who have enrolled in such schools; and thereafter . . . at least weekly the names and addresses of all children of mandatory school attendance age who enroll in the school or who, having enrolled, were absent without being excused, or whose absence was not satisfactorily explained by the parent, guardian, or other person having control of the child." Ala. Code § 16-28-7 (emphasis added).

HSLDA recommends that private home-based education programs comply with the annual and weekly reporting requirements prescribed by section 16-28-7 of the Alabama Code (outlined above). Since it is not currently feasible to register a home-based private school with the ALSDE, and to avoid confusion at the local level, HSLDA recommends sending a cover letter along with your yearly enrollment form to the local superintendent. We have prepared a form notice of home-based education in a private school letter that HSLDA members can access at <http://members.hsllda.org/state/AL/default.asp>.

For a plain English summary of Alabama homeschool law, visit <http://www.hsllda.org/hs101/AL.aspx>. Please feel free to contact our office with any questions about this memorandum or homeschooling in Alabama.

PRIVATE SCHOOL LAW

The Private School law (Act 2014-245), codified as **Sections 16-1-11.1** through **16-1-11.3** in the Code of Alabama 1975, deals with the autonomy of K-12 nonpublic schools.

Section 16-1-11.1

Autonomy of nonpublic schools - Legislative findings.

The Legislature finds and declares all of the following:

(1) That a parent or guardian in Alabama has a constitutional right to choose the type of K-12 education that is best for his or her child, whether public or nonpublic, religious or nonreligious, and including home-based education.

(2) That many parents choose to home school or enroll their children in elementary and secondary nonpublic schools, including private, church, parochial, or religious schools, that are not subject to state regulation and do not receive state or federal funds.

(3) That other than reporting on the enrollment of students, these nonpublic K-12 schools have been primarily exempt from state regulation and have only been required by state law to report the enrollment of students.

(4) **That there is no national or state constitutional mandate that the government provide, license, or regulate nonpublic education, including private, church, parochial, and religious schools, or home-schooled students.**

(5) That regulation by the state, including the State Department of Education, the State Board of Education, or the State Superintendent of Education, of any school with a religious affiliation would be an unconstitutional burden on religious activities in direct violation of the Alabama Religious Freedom Amendment and the First Amendment to the United States Constitution; and further that **the State of Alabama has no compelling interest to burden by license or regulation nonpublic schools, which include private, church, parochial, and religious schools offering educational instruction in grades K-12, as well as home-based schools and home-schooled students.**

Section 16-1-11.2

Autonomy of nonpublic schools - Education selection by parents; exemption from licensure or regulation.

(a) A parent or guardian shall have the right to select the type school or method of his or her choice for the K-12 education of his or her child, whether public or nonpublic, religious or nonreligious, and including home-based education.

(b) Nonpublic schools, including private, church, parochial, and religious schools, offering educational instruction in grades K-12, as well as home-schooled students, are not subject to licensure or regulation by the state or any political subdivision of the state, including the State Department of Education. This section shall not be interpreted or construed as preventing a nonpublic school from voluntarily participating in state audits or other state administrative oversight in order to comply with requirements of federal grant provisions, except that any such voluntary participation may be withdrawn by the nonpublic school at-will and immediately.

Section 16-1-11.3

Autonomy of nonpublic schools - Applicability of statutory requirements.

Each nonpublic school, including private, church, parochial, and religious schools, offering educational instruction in grades K-12, as well as home-schooling entities, shall comply with the requirements of Chapter 28 of this title, relating to school attendance; Chapter 22A of this title, the Alabama Child Protection Act of 1999; and Chapter 7 of Title 38, relating to criminal history background checks on persons responsible for children, the elderly, and the disabled.

Act 2014-245 also amended existing portions of the Code of Alabama dealing with private schools (amended portions are in red).

Section 16-1-11

Private schools to register and report;

All private schools or institutions of any kind having a school in connection therewith, except church schools as defined in Section 16-28-1, shall register annually on or before October 10 with the Department of Education and shall report on uniform blanks furnished by the Department of Education, giving such statistics as relate to the number of pupils, the number of instructors, enrollment, attendance, course of study, length of term, cost of tuition, funds, value of property, and the general condition of the school. **This section may not be interpreted or construed to authorize the Department of Education, the State Board of Education, or the State Superintendent of Education to license or regulate any private, nonpublic, or church school offering instruction in grades K-12, or any combination thereof.**

Section 16-28-1

Definitions.

For purposes of this article, the following words, terms and phrases shall have the following respective meanings, unless clearly indicated otherwise:

(1) PRIVATE SCHOOL. Includes only such schools **that are established, conducted, and supported by a nongovernmental entity or agency offering educational instruction in grades K-12, or any combination thereof, including preschool, through on-site or home programs.**

(2) CHURCH SCHOOL. Includes only schools that offer instruction in grades K-12, or any combination thereof, including **preschool, through on-site or home programs**, and are operated as a ministry of a local church, group of churches, denomination, and/or association of churches which do not receive any state or federal funding.

Section 16-28-7

Report of enrollment.

At the end of the fifth day from the opening of the public school, the principal teacher of each public school, private school, and each private tutor, **but not church school**, shall report on forms prescribed by the State Superintendent of Education to the county superintendent of education, in the event the school is operated in territory under the control and supervision of the county board of education, or to the city superintendent of schools, in the event the school is operated in territory under the control and supervision of a city board of education, the names and addresses of all children of mandatory school attendance age who have enrolled in such schools; and thereafter, throughout the compulsory attendance period, the principal teacher of each school and private tutor shall report at least weekly the names and addresses of all children of mandatory school attendance age who enroll in the school or who, having enrolled, were absent without being excused, or whose absence was not satisfactorily explained by the parent, guardian, or other person having control of the child. The enrollment

and attendance of a child in a church school shall be filed with the local public school superintendent by the parent, guardian, or other person in charge or control of the child on a form provided by the superintendent or his or her agent which shall be countersigned by the administrator of the church school and returned to the public school superintendent by the parent. Should the child cease attendance at a church school, the parent, guardian, or other person in charge or control of the child shall by prior consent at the time of enrollment direct the church school to notify the local public school superintendent or his or her agent that the child no longer is in attendance at a church school. **This section may not be interpreted or construed as authorizing the Department of Education, the State Board of Education, or the State Superintendent of Education to license or regulate any private, nonpublic, or church school offering instruction in grades K-12, or any combination thereof.**

PERTINENT INFO:

1. While not pointed out in the Private School law, **Section 16-4-4** of the Code of Alabama refers generally to the duties of the State Superintendent of Education and as applicable, **the State Superintendent of Education shall explain the true intent and meaning of the school laws and of the rules and regulations of the State Board of Education...**
2. The State Department of Education has no authority under the private school law to license or regulate any K-12 private, nonpublic or church school (including homeschools).
3. The definition of PRIVATE SCHOOL while including the words on-site and home programs does not rise to the level of a homeschool parent/guardian/private tutor being considered as a nongovernmental entity or agency for the purposes of **registration** with the State Department of Education, nor at any time was the intent of the law to require homeschoolers to register with the Department.
4. **Section 16-1-11** dealing with **private school registration** was amended only to include the language estopping the State Department of Education, the State Board of Education, or the State Superintendent of Education from licensing or regulating any private, nonpublic, or church school offering instruction in grades K-12, or any combination thereof.

This section should have been deleted when the private school law was being crafted as it only was pertinent when K-12 private schools were still being licensed by the State Department of Education and in order to obtain a certificate of licensure a private school had to provide certain statistics with regard to:

- Number of pupils
- Number of instructors
- Enrollment
- Attendance
- Course of study
- Length of school term
- Cost of tuition
- Funds
- Value of property
- General condition of the school

By the very nature of these requirements, the registration process was and still remains a regulation only with regard to brick and mortar K-12 private schools in our state. Since we no longer license K-12 private schools and the original intent and reason for registering with our Department was with regard to obtaining a license for those brick and mortar K-12 private schools, we **DO** comply and allow for annual registration as noted on our website portal* during the required time frame required by law of such brick and mortar K-12 private schools, which has not and does not include home schools or home school programs.

**Online private school registration forms are available annually from August 1 through October 10 on the ALSDE website located at <http://www.alsde.edu>.*

5. When we communicate with K-12 private schools, we are clear in letting them know that while the law still exists regarding registration of K-12 private schools with the State Department, the only reason they would want to register according to existing law is for the statutory purposes as set forth in **Section 16-1-11.3** as it relates to criminal background checks for the purposes of teacher certification and/or compliance with the Alabama Child Protection Act wherein a private school has to obtain a certain code assignment from the State Department's Information Systems Division in order to be recognized as a private school for such purposes.

Additionally, we advise that if a K-12 private school wishes to participate in the Child Nutrition Program administered through the State Department of Education they must register with us to obtain a certain code assignment from our Information Systems Division in order to be recognized as a private school for CNP purposes as well.

6. Once again pointing to the inconsistencies in the private school law, **Section 16-28-7** dealing with **compulsory attendance** was amended only to include the same language estopping the State Department of Education, the State Board of Education, or the State Superintendent of Education from licensing or regulating any private, nonpublic, or church school offering instruction in grades K-12, or any combination thereof.

This amended language in and of itself makes the very nature of requiring attendance to be reported by a private school or private tutor unenforceable at any level with regard to the State Department of Education, the State Board of Education or the State Superintendent of Education.

Moreover, it also estops enforceability by local boards of education by virtue of language in **Section 16-11-2** stating that nonpublic schools, including private, church, parochial, and religious schools, offering educational instruction in grades K-12, as well as home-schooled students, are not subject to licensure or regulation by the state **or any political subdivision of the state** (i.e., local boards of education).

Additionally, under the private school law, home school programs offering K-12 instruction also fall under the definition of a church school and as such they are specifically exempt from the compulsory attendance requirements of **Section 16-28-7** and therefore there would be no violation by not complying.

PLEASE NOTE: While unenforceable, the State Department of Education does provide local boards of education with forms that can be used for any private schools/private tutors reporting enrollment and attendance.

CONCLUSION:

The true intent of the private school law was to allow for the complete and total autonomy of nonpublic schools including private, church, parochial, and religious schools, including home-schooled students and to eliminate any and all governmental requirements or regulations actual or implied.

It is clear that under the private school law the State Department of Education, the State Superintendent of Education, the State Board of Education and local boards of education have absolutely no governance, regulation or enforceability over nonpublic schools including private, church, parochial, and religious schools, including home-schooled students.

Under the statutory authority afforded the State Superintendent of Education to explain the true intent and meaning of the education laws and the rules and regulations of the State Board of Education, the State Department of Education, by and through the State Superintendent of Education, believes it is correct in the assertion that homeschoolers are not required to register with this Department and are not in violation of a

portion of existing law that was intended solely as it pertained to licensing requirements of K-12 (brick and mortar) private schools which we (by law) no longer provide.

Additionally, while a portion of the private school law indicates that compulsory attendance is to be adhered to by nonpublic schools, including private, church, parochial, and religious schools, offering educational instruction in grades K-12, as well as home-schooling entities, and existing statute still requires private schools and private tutors to comply, due to its unenforceability at any level with regard to the State Department of Education, the State Board of Education, the State Superintendent of Education or local boards of education, no correlation should be made on the part of homeschoolers that a lack of their registering as a private school equates to a violation of any sort as it relates to compulsory attendance.

Moreover, due to statutory inconsistencies and prohibitions against any governmental intrusion by the State Department of Education, the State Board of Education, the State Superintendent of Education or local boards of education, nonpublic schools, including private, church, parochial, and religious schools offering educational instruction in grades K-12, as well as home-schooled students, on July 8, 2014 the State Board of Education approved the repeal of any existing rules that may have related to regulation of nonpublic schools.

Act 2014-245 was intended to provide nonpublic schools (including homeschool) with complete autonomy from any state regulation whatsoever and as such, the State Department of Education, by and through the State Superintendent of Education, is upholding the true intent of the private school law.

