



Karen B. Salmon, Ph.D.
State Superintendent of Schools

TO: Members of the State Board of Education
FROM: Karen B. Salmon, Ph.D.
DATE: July 23, 2019
SUBJECT: COMAR 13A.10.01.01 and .05
Home Instruction
ADOPTION

PURPOSE:

The purpose of this item is to request that the State Board adopt the amendments to COMAR 13A.10.01.01 and .05 *Home Instruction*.

REGULATION PROMULGATION PROCESS:

Under Maryland law, a state agency, such as the State Board, may propose a new or amended regulation whenever the circumstances arise to do so. After the State Board votes to propose such a regulation, the proposed regulation is sent to the Administrative, Executive, and Legislative Review Committee (AELR) for a 15-day review period. If the AELR Committee does not hold up the proposed regulation for further review, it is published in the Maryland Register for a 30-day public comment period. At the end of the comment period, the Maryland State Department of Education (MSDE) staff reviews and summarizes the public comments. Thereafter, the MSDE staff will present a recommendation to the State Board of Education to either: (1) adopt the regulation in the form it was proposed; (2) revise the regulation and adopt it as final because the suggested revision is not a substantive change; or (3) revise the regulation and re-propose it because the suggested revision is a substantive change. At any time during the process, the AELR Committee may stop the promulgation process and hold a hearing. Thereafter, it may recommend to the Governor that the regulation not be adopted as a final regulation or the AELR Committee may release the regulation for final adoption.

BACKGROUND/HISTORICAL PERSPECTIVE:

As an alternative to enrolling in a public or private school, parents in Maryland may provide a home instruction program for their child in one of two ways: 1) under the supervision of the local school system; or 2) under the supervision of a nonpublic school or institution (that has either obtained a certificate of approval from MSDE or is operated by a bona fide church organization and is therefore exempt).

Completion of a home instruction program does not lead to a Maryland High School Diploma. If a child transfers from a home instruction program to a public school and meets all graduation requirements, then he or she may receive a Maryland High School Diploma. Another frequently used option is to obtain a Maryland High School Diploma by examination, which requires a child to successfully complete the General Educational Development (GED) test.

If a home instruction program is supervised by the local school system, the parent must maintain a portfolio of materials to demonstrate the provision of regular, thorough instruction during the school year in the studies usually taught in the public schools to children of the same age. The portfolio is generally reviewed at the conclusion of each semester at such times as are mutually agreeable to the local school system and the parent. In addition to the portfolio review, the parent must agree to permit a representative of the local school system to observe instruction at a time and place that is mutually agreeable to both parties.

If a home instruction program is supervised by a nonpublic school or institution, the parent must either have preenrollment and periodic conferences with the school or institution or be assigned a school-based teacher who can assist the parent in implementing the home instruction program. In addition, schools or institutions offering an educational program operated by a bona fide church organization must make annual visits to the site where the child is receiving instruction, which is usually the family home.

The proposed amendments were the result of stakeholder feedback. Local school systems do not provide funding for the level of staffing required to observe instruction, nor can they ensure staff safety in private homes. Given the increasing number of families utilizing home instruction, local school systems rely heavily on portfolio review. Nonpublic schools and institutions also find annual visits burdensome, and some have considered turning to technologies like Skype instead. Finally, several home instruction organizations have expressed concerns about supervision that includes observing instruction in the family home. Their concerns related to privacy as well as practicality (i.e., whether visiting the home to observe a single lesson leads to valid conclusions about the home instruction program).

While portfolio reviews and parent conferences would remain intact, the proposed amendments would eliminate references to observing instruction and annual home visits from the current regulations. This would bring Maryland into alignment with several other states, including Virginia, Pennsylvania, New York, and Massachusetts. Each of these states utilizes various methods to evaluate a child's progress (e.g., review of work samples, standardized assessments), but none of them requires first-hand observation of instruction or home visits.

This regulation came before the State Board on March 26, 2019. The Board granted permission to publish on that date and the changes to the regulation were posted for public comment in the Maryland Register from June 7, 2019 to July 8, 2019. The MSDE received 116 comments. Comments were submitted by parents who were home schooling their children, home school advocacy groups, home school providers, and other interested individuals. Of the 116 comments 115 supported the changes to the regulations and one opposed the changes. All comments are included in the summary and a copy of a full letter in support is attached for review. The MSDE recommends no changes to the proposed regulation as published in the Maryland Register.

EXECUTIVE SUMMARY:

For parents whose child's home instruction program is being supervised by the local school system, the proposed amendments would eliminate the need for the parent to agree to permit a representative of the local school system to observe instruction as part of the portfolio review process. For parents whose child's home instruction program is being supervised by a nonpublic school or institution, the proposed amendments would similarly eliminate annual visits by supervisory personnel to the site where the child is receiving instruction, which is usually the family home. The proposed amendments reflect current practice and available staffing in local school systems, as well as address the privacy concerns of home instruction organizations.

ACTION:

The MSDE requests that the State Board adopt the amendments to COMAR 13A.10.01.01 and .05 *Home Instruction*.

Attachments:

COMAR 13A.10.01 and 05 *Home Instruction*

Summary of Comments/Letter

C. Testing Personnel.

[A.] (1) Local Accountability Coordinators (LACs).

[(1)] (a) (text unchanged)

[(2)] (b) The LAC shall have oversight of the:

[(a)] (i) — [(c)] (iii) (text unchanged)

[(3)] (c) (text unchanged)

[B.] (2) School Test Coordinators (STCs).

[(1)] (a) Each school system shall designate one individual per school to serve as the Primary School Test Coordinator (STC).

(b) A Principal may not serve as the STC unless permission has been granted by the Department.

(c) *STCs shall possess a valid Maryland State Department of Education (MSDE) certificate for professional school staff.*

(d) *Eligible STCs include the following:*

(i) *State-certified teachers; and*

(ii) *State-certified guidance counselors, library media specialists, school psychologists, pupil personnel workers, and school administrators (other than the Principal).*

[(2)] (e) The Primary STC shall:

[(a)] (i) — [(b)] (ii) (text unchanged)

[(3)] (f) The school system may further designate, one or both, an:

[(a)] (i) — [(b)] (ii) (text unchanged)

(3) *Test Administrators (TAs).*

(a) *TAs are selected by each public school's principal subject to review and approval by the local Superintendent.*

(b) *For any multi-state assessment consortium testing, TAs shall possess a valid Maryland State Department of Education (MSDE) certificate for professional school staff.*

(4) *Proctors.*

(a) *A local school system may use Proctors.*

(b) *A Proctor shall be under the direct supervision of an eligible TA.*

(c) *TAs may serve as Proctors.*

(d) *Proctors may include:*

(i) *Instructional assistants and aides; or*

(ii) *Substitutes or other staff members who are employees of the school system.*

(5) *Accommodators.*

(a) *Accommodators may provide accommodations to students during testing.*

(b) *Accommodators shall be under the direct supervision of an eligible TA.*

(c) *Accommodators may include:*

(i) *Test Administrators;*

(ii) *Instructional assistants and aides; or*

(iii) *Substitutes or other staff members who are employees of the school system.*

KAREN B. SALMON, Ph.D.
State Superintendent of Schools

Subtitle 10 HOME INSTRUCTION

13A.10.01 General Regulations

Authority: Education Article, §§2-205 and 7-301, Annotated Code of Maryland

Notice of Proposed Action

[19-093-P]

The Maryland State Board of Education proposes to amend Regulations .01 and .05 under **COMAR 13A.10.01 General Regulations**. This action was considered at the March 26, 2019, meeting of the State Board of Education.

Statement of Purpose

The purpose of this action is to eliminate observing instruction as part of the portfolio review process for home instruction programs.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Walter J. Sallee, Director, Student Services and Strategic Planning, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0417 (TTY 410-333-6442), or email to walter.sallee@maryland.gov, or fax to 410-333-0880. Comments will be accepted through July 8, 2019. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the State Board of Education during a public meeting to be held on July 23, 2019, 9 a.m., at 200 West Baltimore Street, Baltimore, MD 21201.

.01 Home Instruction Program.

A.—D. (text unchanged)

E. A parent or guardian shall agree to permit a representative of a local school system to review the portfolio of educational materials[,] and discuss the instructional program, [and observe instruction] provided that all of the following requirements are met:

(1) — (3) (text unchanged)

F. (text unchanged)

.05 Home Instruction Under Supervision of Nonpublic School or Institution.

A. A parent or guardian may provide a home instruction program for his or her child without compliance with the requirements of this regulation, other than the requirements of Regulations .01B(1)(b) and .04 of this chapter, if that program offers regular, thorough instruction during the school year in the studies usually taught in the public schools to children of the same age and is under the supervision of a:

(1) School or institution offering an educational program operated by a bona fide church organization, and the supervision includes at a minimum all of the following components:

(a) (text unchanged)

(b) Textbooks, lesson materials, and other instructional materials or equipment designed to be used independently by the pupil at a site other than a school; and

[(c) Annual visits by supervisory personnel to the site where the pupil is receiving instruction, and]

[(d)] (c) (text unchanged)

(2) (text unchanged)

B.—D. (text unchanged)

KAREN B. SALMON, Ph.D.
State Superintendent of Schools

COMAR 13A.10.01.01 and .05-Home Instruction

COMMENT: "I support both proposed changes to COMAR 13A.10.01, the home instruction regulation."			Total Number	MSDE Recommendation
Marianna Cashmore	Courtney Wright	Kathy Pugh	103	Accept
Jennifer Crispell	Ed -Edward Whitsett	Margo Bain		
Kim Ennis	Pamela Kinney	Amie Beal		
Sheri A. Mullikin,	Kristine Dubyoski	JP Bunn		
Angie Hubbard	Robin O'Brien	Rosemary Sheppard		
Savannah Justice	Felicia Harris	K [first and last name not provided]		
Robin Hazel	Bill N Linda	Cathy J. Cruzan		
Susan Burger	Dwayna Eller	M.Martí [Marielys Marti]		
Jackie [No last name provided]	Sahteva M Arata	Karla Pool		
Dona Schewe	Elizabeth Scheerer	Ivanna M.		
Jessica Dickerson	Sandra Mueller	Tanya Press		
Shannon Nazzal	Hannah Thomas	Leanna Canby		

COMAR 13A.10.01.01 and .05-Home Instruction

Rachel Corsey	Sarah Jones	Sarah Mentzer		
Lauren Menn of Clarksburg	Mariam Snare	Beth Nicholas		
Kline Family	Shaun R. Adams	Lucas Walther		
Maimunah Marah	Joyce Austin	Deborah Mackall		
Lady Paula Staton Family Life Ministry Director	Amanda Putman	Helen Whitehead		
Shannon Keller	Jewel Lennon	Kori [No last name provided]		
Travis Wanner	Nicole Hesselink	Lisa Everly		
Lori Butler	Y. Nunez	Mrs. Amy L. Ditto		
Jennifer Warnack	Jessica Hankerson	Heather Santiago		
Lori Gallagher	Fabiola Jamieson	Angelique Hamilton		
Cendoria Dean, Esquire	April Croissant	Dr. Emma Hadley		
Charisse VanDerwerken	Tisa Ellis,RN,BSN,CCHC	Margaret Wiley		

COMAR 13A.10.01.01 and .05-Home Instruction

Krista Keysar	Ian Sipple	Michelle Schneider		
Curtis & Patricia Plunk	Heidi Grauel	Steph Amsel		
Farrah Lakhani, OD, FAAO	Debi Jasen	Karen Scotton		
Trisha Law	Wendy Preisinger	MaryAnna Cashmore		
Georgette Hoyah	Teresa Klauber			
Self-identified home schooling parents:				
Njeri Nembhard Homeschool Parent	Jordan Mckee Homeschooling Family	Karen Ochs (mother of three home schooled children)		
Stephanie Farrell Homeschooling Parent-	Olufunmike Woods	Joy Fink		
Alexandria Capps	Dr. Christine Nickel	Renee Hatcher		
Leah Mack	Deborah Fields	Kymerly Kent		
Nicole Royster	La Tasha and Marion Vanzie	Jennifer Lederer		
	Michael Capps Homeschool Parent	Angela MacDonald		

COMAR 13A.10.01.01 and .05-Home Instruction

<p>Dawn Bowders</p>		
<p>COMMENT-Do not support.</p>	<p>1</p>	<p>MSDE Recommendation</p>
<p>Shannon</p> <p>I do not support this change. I am a former home schooled kid, now a 29 year old graduate student While I received a great literary education I also failed math courses, and my mother allowed me to pass anyway despite my not understanding the material. I've had to make up my math education piecemeal. Accountability is also necessary to making sure children are not abused. While I firmly believe homeschooling should be allowed, lessening oversight will create more possibilities for children to be harmed without anyone noticing.</p>		<p>The current regulation requires regular, thorough instruction in the studies usually taught in the public schools to children of the same age. There is no evidence that observing instruction would supplement this requirement. Going into a student's home, which may be viewed by some families as a violation of privacy, and observing instruction does not provide proof</p>

COMAR 13A.10.01.01 and .05-Home Instruction

		of regular, thorough instruction, nor does it provide information regarding the safety of the student.
COMMENTS -support but different wording.	12	
Takiyah Glaze I appreciate the freedoms we have here in the United States of America and I fully support both proposed changes to COMAR 13A.10.01, the home instruction regulation.		
Lisa Schaum Support		
Donald Robidoux Teresa Robidoux Heather Everett Christy L Smith I support both proposed changes to COMAR 13A.10.01, the home instruction regulation as follows: 1.Delete the phrase “observe instruction” in COMAR 13A.10.01.E that pertains to county homeschool liaisons; AND 2. Delete the entire requirement for “Annual visits by supervisory personnel to the site where the pupil is receiving instruction.” in COMAR 13A.10.05(1)(c) that pertains to umbrella reviewers.		

COMAR 13A.10.01.01 and .05-Home Instruction

<p>Scott Woodruff, Esq.</p> <p>HSLDA supports removing the “observe instruction” provision for 7 reasons: It is impossible to administer consistently, it is prohibitively expensive to visit every home, it is unconstitutional, it is meaningless to watch a mother instruct a child while in a school office, it is not a proper implementation of State law, this rule has not been struck down only because it is commonly abandoned when challenged, it is currently implemented in a discriminatory manner.</p>		
<p>Gina Aubel</p> <p>I want to let you know that I support both proposed changes to COMAR 13A.10.01, the home instruction regulation. I think this would help alleviate an immense amount of stress and pressure from parents so that we can redirect that time and energy more effectively to our kids schooling.</p>		
<p>Ann Snyder</p> <p>I support both proposed changes to COMAR 13A.10.01: the home instruction regulation. Maryland is the only state with a requirement for observation of instruction. Because it is against the Fourth Amendment of the US Constitution, it is unenforceable. Eliminating this from Maryland law will avoid confusion.</p>		
<p>Alessa Giampaolo Keener, M.Ed.</p> <p>I am writing to express my support for the two changes that have been proposed for COMAR 13A.10.01, the regulation pertaining to homeschooling. I believe that removing the identified language is a justified and appropriate change.</p>		
<p>Karen Nations</p> <p>I wanted to express my support for the proposed changes to COMAR 13A.10.01. Thank you for your support for homeschooling families in Maryland and a mutually beneficial relationship between these families and the local and state departments of education.</p>		
<p>Tabitha Ferreira</p> <p>I support both proposed changes to COMAR 13A.10.01, the home instruction regulation. True education happens in any place and during any time, both the requirement to observe instruction and view the site do not prove anything other than that a show can be put forth. Neither requirement proves regular and thorough instruction. Proving regular and thorough</p>		

Public Comment Summary

ATTACHMENT II

COMAR 13A.10.01.01 and .05-Home Instruction

education is better done through the review process where a parent is able to show what has been instructed through a variety of means that is relatable and appropriate.		
	Total comments: 116 One opposed, 115 agree with proposed changes	

PRESIDENT	J. Michael Smith, Esq. CA, DC, VA
VICE PRESIDENT	James R. Mason III, Esq. OR, DC
SENIOR COUNSEL	Scott A. Woodruff, Esq. VA, MO Darren A. Jones, Esq. CA, DC Michael P. Donnelly, Esq. MA, NH, WV, DC
ATTORNEY	Thomas J. Schmidt, Esq. CA Peter K. Kamakawiwoole, Esq. MO, VA Daniel T. Beasley, Esq. CA, WI
OF COUNSEL	Mary E. Schofield, Esq. CA Tom Sanders, Esq. TX

July 8, 2019

Walter Sallee
Director, Student Services and Strategic Planning
Maryland State Department of Education
200 West Baltimore St.
Baltimore, MD
21201

COMMENTS ON PROPOSED HOMESCHOOL REGULATION: REMOVE "OBSERVE INSTRUCTION"

Dear Mr. Sallee:

Thank you for the opportunity to submit these comments to the proposed revisions to the Maryland homeschool regulations.

The change now being considered removes the language that currently empowers a school official to observe the instruction of a home-schooled child.

HSLDA supports removing the "observe instruction" provision for 7 reasons:

1. It is impossible to administer in a consistent manner.
2. It would be prohibitively expensive to visit every child's home to observe instruction.
3. It is meaningless to try to evaluate home instruction in a setting other than the home.
4. It is unconstitutional if the official insists on observing of instruction in a family's home.
5. It is not a proper implementation of state law.
6. The rule has not been struck down only because it is routinely abandoned when challenged.
7. It is currently implemented in a discriminatory manner.

1. Impossible to Administer Consistently

Presumably if county officials observe instruction, they will find some cases where instruction passes muster and some where it does not. What objective standards will they use in making the decision?

In the decades the rule has been on the books, I have learned of no school system that has an objective standard for evaluating the delivery of homeschool instruction. This is not surprising since education schools do not teach prospective teachers anything about homeschooling!



Classroom teachers are poorly equipped to sit in judgment over an educational paradigm that is radically different from the one in which they have been trained.

Furthermore, there is vigorous discussion even within the homeschool community concerning the “best” way to homeschool a child. Indeed, a common theme is that the instruction must be individually tailored to the child. How then could a classroom teacher evaluate what kind of instruction is right for the unique child under consideration?

This is simply an unrealistic expectation. Classroom teachers are trained to deliver a standardized product using standardized books in a standardized setting. In homeschooling, every parameter is adjustable to create the best fit for the student.

Homeschool parents can only shake their head in disbelief to think about a former public school classroom teacher watching them teach their child for a few minutes, and then pronouncing judgment on their homeschool program. Classroom instruction standards cannot rationally be used to evaluate homeschool instruction practices.

By default, school systems will just let each observer decide on his or her own. This is precisely the kind of subjective enforcement that is not constitutionally permitted.

2. Prohibitively Expensive to Visit Every Homeschooled Child’s Home

In order for any observation of instruction to be valid, it would need to take place in the student’s home—where the instruction normally occurs.

With thousands of students now being homeschooled in Maryland, however, it would be prohibitively expensive for a county school official to spend the time necessary to observe the instruction of every student in the student’s home.

County school officials are already strained to the limits with their routine responsibilities.

The cost involved of assigning an official to visit the home of every homeschooled child would be quite shocking. Due in part to this cost, they simply never do it.

3. Insisting on Observing Instruction in the Home is Unconstitutional

Aside from the stunning cost that would be incurred in visiting the home of every homeschooled child in order to observe instruction, it would be unconstitutional to insist on coming to the child’s home

A number of states and localities have imposed “observe instruction” requirements over the years. They have been a frequent source of litigation. In all cases, the requirement has been struck down, or (often spurred by a lawsuit) there was a change in the law that wiped out the “observe instruction” mandate.

Maryland now stands alone as the only state to impose “observing instruction.” Fate has not been kind to “observe instruction” rules in other states.

Rhode Island

In *Kinstedt v. East Greenwich School Committee* (R.I. Comm’r of Educ, Aug 7, 1986), the Rhode Island Commissioner of Education struck down, on constitutional grounds, a school system’s requirement that a school representative observe a family’s homeschool instruction.

Rhode Island law gives local boards of education power to approve or disapprove homeschool programs. The East Greenwich school board (actually called a “school committee”) adopted a policy requiring that school officials observe instruction as a condition of approval. The Kinstedts refused to submit to the requirement. The school committee refused to grant approval for the homeschool program.

With HSLDA representing the family, they appealed to the Commissioner of Education. The Commissioner ruled that the “observe instruction” mandate violated the Fourth Amendment.

The Commissioner said:

“ ... [i]t is our view that both the Fourth Amendment and also the constitutionally derived right to privacy and autonomy which the United States Supreme Court has recognized protect individuals from unwanted and warrantless visits to the home by agents of the State under circumstances such as those present here.”

New York

Two homeschool families in Oswego County, New York, encountered a local rule which required a school official to come into their home to observe instruction. The families refused on constitutional grounds. The school system initiated a lawsuit against them. HSLDA defended the families.

In *In the Matter of Dixon*, No. N-37-86, Oswego County, Nov. 21, 1988, and subsequently in *In the Matter of Standish*, No. N-125-86, Oswego County, Dec. 23, 1988, the trial court struck down the requirement as unconstitutional. The school system did not appeal in either case.

New York homeschool regulations were subsequently changed to eliminate the possibility of such unconstitutional observation.

Pennsylvania

In Pennsylvania, many school districts formerly required families to allow an official to observe instruction. The state statute upon which such local demands were based was vague enough to provide colorable justification for those local demands.

With HSLDA representing them, the Jeffery family filed a federal lawsuit. In *Jeffery v. O'Donnell*, 702 F. Supp. 516 (M.D. PA 1988) the federal judge ruled that the entire statute violated the U.S. Constitution because it was so vague. There was no appeal.

The Pennsylvania legislature subsequently enacted a new homeschool statute that eliminated home visits.

South Dakota

A South Dakota law formerly required homeschool families to allow an official to observe instruction. With HSLDA representing them, a family filed a federal lawsuit against the Newell School District in the U.S. District Court for South Dakota in 1993. The family asked the judge to rule that the requirement was unconstitutional.

With the federal lawsuit bringing attention to the issue, the legislature repealed the law. This rendered the lawsuit moot

Massachusetts

Massachusetts law allows local school systems considerable discretion in establishing requirements for giving families approval to homeschool. The Lynne school system created a rule that required families, as a condition of approval, to let a school representative into their home to observe their homeschool instruction.

With HSLDA representing them, the Brunelle family filed suit to challenge this requirement. The case went to the highest court in the state, the Supreme Judicial Court.

The court struck down the requirement. In *Brunelle vs. Lynne Public Schools*, 428 Mass. 512 (1998) the court ruled that this requirement was not a proper administration of the state statute which required families to obtain local approval.

Minnesota

For many years, Minnesota law required that homeschoolers submit to a home visit or submit a portfolio very similar to a Maryland portfolio (containing materials to show the required subjects were being taught, including class schedules, materials used for instruction, and methods used to assess student achievement). See Minn. Stat. Ann §§120A.26 and 120.24. The home visit component was widely recognized as a Fourth Amendment infringement. It was abolished by the legislature in 2011 (sec. 37 of House File No. 26).

Maryland's rule is the "last man standing" among the various obsolete efforts to force families to allow an official to observe instruction. It is time for Maryland to enter the modern era and eliminate this fossil.

4. Meaningless to Watch a Mother "Instruct" a Child While in a School Office

The alternative to visiting every home would be to observe a parent instructing a child while the official is conducting a portfolio review in the school office. However, this would not be valid

as an evaluation. If one wishes to evaluate the delivery of instruction, one must observe it in the location where it is normally delivered.

For example, if a mother picks up a history book and reads it to her child for 2 or 3 minutes in a school office, that certainly constitutes “instruction.” But could any meaningful conclusions be drawn? Obviously not.

No meaningful conclusions can be drawn from observing instruction of a child outside the child’s customary place of instruction.

This is widely acknowledged in the arena where it is most frequently encountered: the evaluation of a child for an IEP. It is commonly understood that if a child’s IEP evaluation takes place *outside* of the child’s usual educational setting, the evaluation is invalid.

The setting can hugely impact both the instructor and the student. This is well established by the research.

For many homeschool parents and children, a public school office is an alien, unfriendly, stressful place. No legitimate conclusions can be drawn from watching a mother instruct her child in that unfamiliar location.

To add a final perspective on the futility of “observing instruction,” it should be noted that the child would not even need to be present. Much instruction occurs today electronically—where the teacher and the student are not physically in the same location.

Let’s take an example of a child who is taking an online class. A school representative could “observe instruction” by signing in as a guest to watch the online class. The school representative could see the instruction the student is receiving, even though the child would not be in the same physical locality as the school representative.

5. Not a Proper Implementation of State Law

In order to be legitimate, the Maryland homeschool regulations must properly administer Education Code §7-301. The code requires “regular, thorough instruction.”

However, watching a parent teach their child for a few minutes gives an official no meaningful information as to whether the parent provides either regular instruction or thorough instruction.

Therefore the “observe instruction” rule is not a proper implementation of the statute.

6. The Rule Has Not Been Struck Down Only Because It Is Commonly Abandoned When Challenged

Since the “observe instruction” rule is unconstitutional and not a proper administration of §7-301, why has no court ever struck it down? As section 3 above shows, HSLDA has been at the

forefront of the elimination of “observe instruction” requirements everywhere else around the nation. Why not in Maryland?

For the simple reason that *without exception*, every time over the past 20 years when HSLDA has assisted Maryland families, when the HSLDA representative has told a school representative that the rule is unenforceable, they have backed down and elected to not enforce it.

Every school representative has abandoned the rule when confronted with its flimsy status.

7. “Observe Instruction” is Currently Implemented in a Discriminatory Manner

I have heard numerous reports that school systems DO enforce the rule against families who are not members of HSLDA. When a family has no access to legal back up, they are afraid to say “no” to a school representative, even when the school representative is in the wrong.

This results in rampant discriminatory enforcement. Families with legal backup are, in effect, exempted from the rule; families without legal backup are vigorously subjected to the extra scrutiny, stress and inconvenience of the rule.

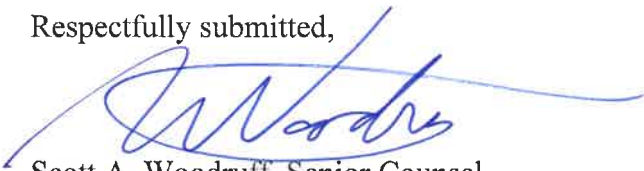
It creates at least the appearance that school authorities actually *know* that what they are doing is wrong, and they only do it when they believe they will not be held accountable.

This is ripe for a civil rights-oriented lawsuit. What Fredrick Douglas said would aptly describe this situation:

“Find out just what any people will quietly submit to and you have the exact measure of the injustice and wrong which will be imposed on them.”

As a matter of policy, the state of Maryland should not maintain a rule that is only enforced against underprivileged families without access to legal backup.

Respectfully submitted,



Scott A. Woodruff, Senior Counsel