

# Is homeschooling legal in Kansas?

Last Updated Sunday, 13 July 2008

(Please note: the following discussion does not constitute the giving of legal advice and is not intended to be a substitute for competent legal counsel.)

## Overview

Homeschooling is perfectly legal in the state of Kansas. Unfortunately, Kansas's statutes do not mention homeschooling specifically, and thus some confusion exists on this issue, especially among public school officials and occasionally among local legal authorities. However, among the state's legal authorities, which includes the Kansas Attorney General, the Department of Social and Rehabilitation Services (SRS), the legal staff of the Kansas State Board of Education, and numerous district courts, the legality of homeschooling in Kansas is fairly well settled.

## Kansas Statutes

The 1996 Kansas Legislature amended K.S.A. 72-1111, the statute pertaining to compulsory school attendance in Kansas, to read as follows:

"72-1111(a) Subject to the other provisions of this section, every parent or person acting as parent in the state of Kansas, who has control over or charge of any child who has reached the age of seven years and is under the age of 18 years and has not attained a high school diploma or a general educational development (GED) credential, shall require such child to attend continuously each school year (1) a public school for the duration of the school term provided for in K.S.A. 72-1106, and amendments thereto, or (2) a private, denominational or parochial school taught by a competent instructor for a period of time which is substantially equivalent to the period of time public school is maintained in the school district in which the private, denominational or parochial school is located. If the child is 16 or 17 years of age, the parent or person acting as parent, by written consent, or the court, pursuant to a court order, may allow the child to be exempt from the compulsory attendance requirements of this section.

"(b) If the child is 16 or 17 years of age, the child shall be exempt from the compulsory attendance requirements of this section if (1) the child is regularly enrolled in a program recognized by the local board of education as an approved alternative educational program, or (2) the child and the parent or person acting as parent attend a final counseling session conducted by the school during which a disclaimer to encourage the child to remain in school or to pursue educational alternatives is presented to and signed by the child and the parent or person acting as parent. The disclaimer shall include information regarding the academic skills that the child has not yet achieved, the difference in future earning power between a high school graduate and a high school drop out, and a listing of educational alternatives that are available for the child."

Additionally, K.S.A. 72-53,101 imposes a one-time registration requirement at the establishment of a private school in Kansas:

"72-53,101. Each official custodian of a private elementary or secondary school shall register the name and address of the private elementary or secondary school with the state board of education."

## Analysis

The requirements imposed by these statutes can be broken down into several basic categories:

### Mandatory school attendance

Students in Kansas ages 7-18 must regularly attend "school" until they have either graduated or earned a high school diploma equivalency. (Students may also "drop out" with parental consent after reaching age 16 if they complete a "final counseling session" and sign a "disclaimer." See below.) This attendance requirement can be satisfied at a public school or at a "private, denominational or parochial school" (which would include a homeschool) meeting certain basic statutory requirements ("competent instructor" and "substantially equivalent" period of time). The choice of the type of school their children attend is left to parents.

### Competent Instructor

The term "competent instructor" is not defined either by statute or by case law, and thus its meaning is unclear. However, the Kansas Attorney General has specifically held that the statute does not require teachers in nonaccredited private schools to be certified. Additionally, there are no specific requirements for credentials or educational background for teachers in nonaccredited private schools, and thus it is not necessary for such teachers to possess a college degree or even a high school diploma. As a result, "competent" should be interpreted in its ordinary sense, and thus parents who establish an appropriate academic environment in their school, as evidenced by the presence of curriculum, planning and organization, testing, academic progress, and so forth, are presumed to be "competent" for this purpose.

### Substantially equivalent period of time

Kansas public schools must conduct classes for 1,116 academic hours (calculated as 186 days x 6 academic hours per day; academic hours consist of 50 minutes of classroom or instructional time.) Nonaccredited private schools in Kansas must be "substantially equivalent" to this. However, they are not required to follow the local public school's academic year or daily class schedule. Private schools are free to set their schedules and academic years as they choose. In meeting this requirement, homeschools include all activities that are considered part of the school's academic program, including:

- Classroom instruction and study time;
- Activities related to classroom instruction, e.g., field trips, library research, science fairs;
- Non-classroom activities similar to those offered in public schools, e.g., music lessons and performances, drama, sports, 4-H;
- Activities specific to the private school's philosophy, e.g., for Christian-based private schools, this could include Bible study, Scripture memorization, church and youth group activities, etc.

There are no specific requirements concerning record keeping related to a private school's academic program. Homeschoolers are encouraged to keep sufficient records to document their program. Set educational goals for the year. Translate those goals into daily or weekly lesson plans. Prepare and follow some type of schedule to help keep your school's educational program on track. Recommended items for record keeping include lesson plans and schedules, a portfolio of schoolwork, attendance records, grades (if your program allows) and standardized test scores, if available.

### Registration

As noted above, Kansas's statutes require private schools to register. Registration is a simple process that involves providing the name and address of both the school and the custodian of the records to the Kansas State Department of Education. No further information must be supplied. Registration is required only at the establishment of a private school. Annual re-registration is not required. There is no fee. Registration can be accomplished through the mail by completing the standard registration form and mailing it to KSDE in Topeka. If you wish to verify that your registration has been received and processed, send two copies of the registration form and a SASE. You can also register online.

### Academic Subjects

K.S.A. 72-1101 requires accredited schools in Kansas to provide instruction in "reading, writing, arithmetic, geography, spelling, English grammar and composition, history of the United States and the state of Kansas, civil government and the duties of citizenship, health and hygiene." Although not required of nonaccredited private schools, this listing nonetheless provides a useful benchmark.

### Special Needs Children

K.S.A. 72-977 states:

"When a school district or a state institution provides special education services for exceptional children and a determination has been made that a child is an exceptional child and special education services are necessary for such child, it shall be the duty of the lawful custodian of such exceptional child to require such child to enroll for and attend the special education services which are indicated."

The above has caused a number of public school officials to incorrectly conclude that parents cannot legally homeschool a special needs child in Kansas, because such a child appears to be required by statute to attend public school special education programs.

However, in Opinion No. 87-113, the Kansas Attorney General has held: "The statute requires exceptional children to attend special education services but does not state that exceptional children must attend public schools. Special education services, then, could be provided by private sources."

Thus, parents of special needs (e.g., gifted, learning disabled or handicapped) children in Kansas are free to homeschool those children. Parents must then take care to document those special needs are being addressed.

### Summary

There is no specific mention of "homeschools" in Kansas's statutes, and thus homeschools fall into the more general category of "private, denominational or parochial schools." A homeschool in Kansas is simply a nonaccredited private school that has been established in a residence. There are no statutory or case law restrictions which preclude the establishment of a private school in a residence, the restriction of the school's student body solely to the children of a single family, or the utilization of parents as teachers in a private school to teach their own children. Accordingly, so long as the school meets the basic statutory requirements, as noted above, and the case law (as well as common sense) requirement of maintaining a regular and credible educational program, a nonaccredited private school established in a home, i.e., a homeschool, is perfectly legal in the state of Kansas.

## Exit Procedures and "Dropping Out "

### Formal Withdrawal

Kansas's homeschooling families are strongly encouraged to formally withdraw their children from their current school, especially if that school is a public school, rather than simply disappearing. Per Kansas statutes, three consecutive unexcused absences constitute truancy and accordingly will automatically result in a report of a "child not attending school"; and thus an investigation by either the SRS or the county/district attorney.

Formal withdrawal is simply a matter of informing the current school that a student will no longer be attending classes at that school. Withdrawal can be accomplished in person, by phone, or by letter. (A sample letter of withdrawal is available in the Kansas Homeschool Manual) This will automatically end the prior school's authority concerning the family's children and thus the family is under no obligation to explain their decision to withdraw, submit to testing, attend meetings or conferences or allow inspections of the home or curriculum by personnel from the prior school.

The most recent change to K.S.A. 72-1111 is new section (b) pertaining to students age 16-17 who wish to "drop out." Previously, such students could be exempted from compulsory attendance simply by written consent from their parent or guardian. (Prior to that, students age 16-17 could drop out on their own.) Now, such students can withdraw from school only if:

"(1) the child is regularly enrolled in a program recognized by the local board of education as an approved alternative educational program, or (2) the child and the parent ... attend a final counseling session conducted by the school during which a disclaimer to encourage the child to remain in school or to pursue educational alternatives is presented to and signed by the child and the parent ...."

Obviously, this requirement is not applicable to families who are withdrawing their children from public school to homeschool. Such students are simply transferring from one legal educational alternative (public school) to another (private, denominational or parochial school), and thus any statutory provisions regarding a "final counseling session"; or a "disclaimer"; is simply not relevant.

Local public school officials who insist on such procedures either do not understand the statute or are attempting to harass the family into changing its decision to homeschool.

Some confusion exists even among state officials as to what requirements exist for homeschoolers in this area. In a recent memorandum from the Kansas Dept. of Education discussing these requirements, KDOE officials noted that homeschool students who:

"are not currently being home schooled and have not graduated from their home school, then they should be referred to their school district of residence for the required "final Counseling session" and to sign a disclaimer."

This assertion is inconsistent with the plain language of the statute. Nowhere does the statute require that "final counseling"; be conducted only by public schools. Specifically, the statute requires parents and students to attend a final counseling session conducted "by the school," which would seem to indicate the school being attended when the decision to drop out was made, and thus a final counseling session could be conducted by any permissible type of school in Kansas, i.e., public, private, denominational, or parochial.

In summary, the statute appears to require that homeschools must also provide a "final counseling session"; including a "disclaimer"; to students age 16-17 who intends to drop out. While there is no officially mandated format for either the counseling session or the disclaimer, these must meet the minimum statutory requirements of "encourage[ing] the child to remain in school"; and providing "information regarding the academic skills that the child has not yet achieved, the difference in future earning power between a high school graduate and a high school drop out, and a listing of educational alternatives that are available for the child." Homeschoolers who permit their children age 16-17 to quit school should take care to document their compliance with these requirements.

In light of the confusion even among state school personnel on this issue, it is likely that new Kansas homeschooling families will encounter local school officials who will attempt to insist upon exit counseling and disclaimers when high school-age students are withdrawn to homeschool, believing that such requirements apply to all departures from public school. Kansas's homeschoolers are encouraged to become familiar with the new statutory provisions so as to deal intelligently with such misinformation.

### Requests for Student Records

Student records in grades K-8 will consist primarily of items such as grades, attendance records, transcripts and test scores, i.e., items that parents should already possess. However, records for grades 9-12 become part of the student's high school transcript and should be obtained. A form to request the release/transfer of a

student's records from the former school is available in the Kansas Homeschool Manual. The purpose of such a request is twofold: 1) to obtain the actual records, so as to permit the new school to utilize them as needed, and 2) to officially notify the former school that the student is not truant but is instead withdrawing from the school and transferring to another.

Please be aware that public school officials do not always honor these requests for records, especially if they become aware of the family's intent to homeschool. Legally, every parent has the right to inspect such records under the Freedom of Information Act, but this does not always translate into easy access for parents.

#### Public School Participation

While some families choose to homeschool and sever ties with the public school, other families want to continue working with the public schools in some fashion, e.g., taking a class, playing in the school band or participating in athletics. At present, there is no statewide policy concerning parttime enrollment in public schools and matters are thus left to be addressed on a district-by-district basis. If you are interested in participating in public school activities, contact other homeschooling families in your area or simply contact your local school district about participation.

Activities at the high school level involving inter-district competition, e.g., athletics, debate, and music competitions, are under the jurisdiction of the Kansas State High School Activities Association. Under current KSHSAA rules, homeschooled students cannot participate on public high school teams in these areas without jeopardizing the team's eligibility. For public school activities not under the KSHSAA's jurisdiction (all junior high and middle school activities; high school activities not involving inter-district competition, e.g., class enrollment, driver education, drama, vocal and instrumental musical groups excluding competitions), participation by homeschooled students is permissible if the district so chooses.

#### Establishing a Homeschool in Kansas

Kansas families are strongly encouraged not to withdraw their children from their current school, especially if that school is a public school, until all preparations for their homeschool have been completed. If children withdraw and do not immediately transfer to a functioning school, they are technically truant. However, if an unacceptable situation exists, for example if school officials are insisting on student testing to which the family objects or if a student's physical safety is in jeopardy, obviously parents cannot afford to wait. But barring such an extreme situation, there are several recommended steps to establishing a homeschool in Kansas.

- Register your school with the Kansas State Department of Education. As noted, registration can be accomplished by mail or online at KSDE's web site.
- Establish your homeschool program. Curriculum, lesson plans, schedules, and so forth are the defining characteristics of a "school." Once these are in place, your homeschool is officially ready to go, and students can enroll at any time.
- Enroll with HSLDA. Although legal problems in Kansas are infrequent, it never hurts to have help if problems arise. Home School Legal Defense Association provides the best help around.
- Formally withdraw from the current school. Don't just disappear. Specifically inform the present school (by phone, by letter, or in person) that your student is withdrawing.