

A Home Education v. Nonpublic Education Question

Steve White July, 2020

During these difficult COVID times, I receive many letters from parents who are considering home education for their children. In this article I would like to address a recent (and common) question that relates to 'home schooling' other children (other than their own):

"Is a parent of a child allowed to "homeschool" someone else's children? (i.e. someone who is considering homeschooling her daughter AND ALSO some of her friends)"

After lengthy hearings and much debate, the 1983 Montana Legislature passed SB445 (Senate 50-0) that created Montana's first section of law for home and nonpublic education. Since that important session, there have been a number of unsuccessful attempts to adversely modify those sections of law. Home school parents have worked hard over the years to defend the Montana home education laws, and thus they have remained unchanged to this day.

Compulsory Attendance

Every state in country has some form of 'compulsory attendance' in their law books. In Montana, every child is required to be in public school from 7-16 years of age - UNLESS exempted. SB445 created new sections of law for home AND nonpublic schools, that included requirements to be followed (by home and nonpublic schools) for exemption:

20-5-109. Nonpublic school requirements for compulsory enrollment exemption. To qualify its students for exemption from compulsory enrollment under 20-5-102 , a nonpublic or home school:

(1) shall maintain records on pupil attendance and disease immunization and make the records available to the county superintendent of schools on request;

(2) shall provide at least the minimum aggregate hours of pupil instruction in accordance with 20-1-301 and 20-1-302 ;

(3) must be housed in a building that complies with applicable local health and safety regulations;

(4) shall provide an organized course of study that includes instruction in the subjects required of public schools as a basic instructional program pursuant to 20-7-111 ; and

(5) in the case of home schools, shall notify the county superintendent of schools, of the county in which the home school is located, in each school fiscal year of the student's attendance at the school.

It is important to note that the first FOUR requirements are for BOTH nonpublic AND home schools. **BUT, (5) is only for home schools.**

As referenced in the above section is 20-5-102 MCA (MCA - 'Montana Code Annotated'), that section includes the **definition of home AND nonpublic schools:**

20-5-102. Compulsory enrollment and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of

age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:

- (a) the child's 16th birthday;
- (b) the date of completion of the work of the 8th grade.

And now jumping ahead to (2)(e) of this 'exemption' section of law:

(2)(e) enrolled in a nonpublic or home school that complies with the provisions of 20-5-109. For the purposes of this subsection (2)(e), **a home school is the instruction by a parent of the parent's child, stepchild, or ward in the parent's residence and a nonpublic school includes a parochial, church, religious, or private school. [Emphasis added]**

The lawmakers in 1983 purposely passed a bill that would allow a parent (or legal guardian) the opportunity to receive an exemption from compulsory enrollment, in order to instruct their own children - **ONLY IF 20-5-102(2)(e) and the above subsections (1) - (5) (of 20-5-109 MCA) were followed.** That was a great change to Montana's education laws.

Again, as shown above, 20-5-102(2)(e) is VERY specific in defining a 'home school' (and also a 'nonpublic school'): 'a **home school** is the instruction by a parent of the parent's child, stepchild, or ward in the parent's residence and a **nonpublic school** includes a parochial, church, religious, or private school.' **[Emphasis added]**

Home Schooling or Nonpublic Schooling

So back to the original question of whether someone else (other than the parent) can 'home school' a child.

A homeschooling parent is 100% responsible for their child's education. **But how much of the instruction must they provide?** According to HSLDA (Home School Legal Defense Association), a parent may use third-party instructional resources to supplement their instruction at home, including subject area tutors, co-op or online classes, and group field trips or other educational activities. But the parent is still ultimately responsible and should be directing the instruction. The more instruction a parent provides, the more clearly the program falls under the definition of a home school.

It is very interesting that the 1983 Legislature set up the SAME single section of law for 'home' and 'nonpublic' schools - **EXCEPT (5): '(5) in the case of home schools, [the parent] shall notify the county superintendent of schools, of the county in which the home school is located, in each school fiscal year of the student's attendance at the school.**' Thus, nonpublic schools are NOT required to notify the county superintendent annually - **ONLY** home schools (BUT still, subsections (1)-(4) apply equally to both).

The bottom line is that it could be possible for a person (or parent) to establish a small nonpublic school for instructing other children, by complying only with (1) - (4):

(1) shall maintain records on pupil attendance and disease immunization and make the records available to the county superintendent of schools on request;

(2) shall provide at least the minimum aggregate hours of pupil instruction in accordance with 20-1-301 and 20-1-302 ;

(3) must be housed in a building that complies with applicable local health and safety regulations;

(4) shall provide an organized course of study that includes instruction in the subjects required of public schools as a basic instructional program pursuant to 20-7-111

By establishing a small ‘nonpublic school’ (i.e. private, ‘micro-school’, etc) for instruction, the simple answer to the original question, at this point, is ‘YES’.

Complications (The Rest of the Story)

But, the ‘Education’ section of Montana law deals ONLY with instruction/education, NOT ‘land use’. Anytime a nonpublic school is established, there are likely other state and local regulations, for ‘public, health and safety’.

If the nonpublic school is located in a city, then there are probably regulations for a business permit, zoning conformance, fire & building inspections, etc. If the school is outside the city, there are often multiple county zoning district regulations that need to be considered. In many county zoning districts, a school is ONLY allowed with a ‘Conditional Use Permit’ (CUP). A CUP may be granted by the County Commissioners after a public hearing, that allows for the public and neighbors to comment. The issuance of the CUP often adds extra conditions to ease the burden on the neighborhood (that may result from additional traffic, noise, etc). The County Commissioners can approve or deny the CUP application. In addition to the zoning, if the home is in a subdivision, then there could be subdivision covenants to deal with. In some counties a business permit/license may also be required.

There also could be some issues at the state level for fire codes compliance. If meals are prepared, then the commercial kitchen regulations (with inspections) could kick in. Also, for the paid instructor/teacher, there are likely some Montana Department of Labor requirements (i.e. Worker Comp) that may need to be addressed. There could be a number of other state or county or city regulations to deal with when caring for children. And of course, liability insurance is also an important consideration.

The above ‘Complications’ relate to a nonpublic school when the instructor is paid. I often get a number of calls where a friend or close relative (i.e. grandmother, etc) wants to do the instruction - for no cost. In that case it is likely not a ‘for-profit commercial’ endeavor, thereby possibly being exempt from ‘commercial’ regulations. That is a question for an attorney or the local governing jurisdiction.

Conclusion

To successfully comply with Montana law in setting up a nonpublic school, requires not only the ‘Education’ section of the law be satisfied - but also other possible requirements for governmental approval (as noted above).

A great deal of time and hard work have been done over the last 35 years for the benefit of those who choose to home school their children in Montana. It is important to know and follow the law for home and/or nonpublic schooling to achieve exemption from Montana’s compulsory attendance law.

Author: Steve White / Steve is a founding member of the Montana Coalition of Home Educators (MCHE) in 1988, and publisher of the online Montana Guide to Home Education. Steve and his wife Pam home schooled their son Matt (K-12), who graduated from home education in 2000, then graduated from MSU in 2004. Steve has represented the Montana home education community (MCHE) before the Montana legislature for over 35 years. He has also spoken at the National Leadership Conference on Home Education in 1991. He is the webmaster of the MCHE statewide website: www.mtche.org.

NOTE: The author is not an attorney, and this article does not represent a legal opinion. Legal advice can only be obtained from a licensed attorney.

After review, from HSLDA:

"You are right that Montana makes it very easy to establish a nonpublic school. And since accreditation is not required, many homeschool support groups or co-ops could conceivably become nonpublic schools, so long as they comply with the requirements of § 20-5-109. Of course, there is the added issue of ensuring any building used meets all local health and safety requirements, and there could be other legal considerations unique to nonpublic schools (insurance, background checks for employees, child care licensing, etc.). But Montana is a state that makes hybrid homeschooling quite possible from a legal perspective." Daniel T. Beasley, Staff Attorney - Home School Legal Defense Association, Purcellville, VA