

New Mexico Statutes

22-1-2. Definitions.

As used in the Public School Code:

D. "department" means the public education department;

E. "home school" means the operation by the parent of a school-age person of a home study program of instruction that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science;

O. "school-age person" means a person who is at least five years of age prior to 12:01 a.m. on September 1 of the school year and who has not received a high school diploma or its equivalent.

U. "school year" means the total number of contract days offered by public schools in a school district during a period of twelve consecutive months;

22-1-2.1. Home school; requirements.

Any person operating or intending to operate a home school shall:

A. submit a home school registration form made available by the department and posted on the department's web site to notify the department within thirty days of the establishment of the home school and to notify the department on or before August 1 of each subsequent year of operation of the home school;

B. maintain records of student disease immunization or a waiver of that requirement; and

C. provide instruction by a person possessing at least a high school diploma or its equivalent.

22-2-2. Department; general duties.

The department shall:

H. enforce requirements for home schools. Upon finding that a home school is not in compliance with law, the department may order that a student attend a public school or a private school;

22-2-8.1. School year; length of school day; minimum.

A. Except as otherwise provided in this section, regular students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

(1) kindergarten, for half-day programs, two and one-half hours per day or four hundred fifty hours per year or, for full-day programs, five and one-half hours per day or nine hundred ninety hours per year;

(2) grades one through six, five and one-half hours per day or nine hundred ninety hours per year; and

(3) grades seven through twelve, six hours per day or one thousand eighty hours per year.

B. Up to thirty-three hours of the full-day kindergarten program may be used for home visits by the teacher or for parent-teacher conferences. Up to twenty-two hours of grades one through six programs may be used for home visits by the teacher or for parent-teacher conferences. Up to twelve hours of grades seven through twelve programs may be used to consult with parents to develop next step plans for students and for parent-teacher conferences.

C. Nothing in this section precludes a local school board from setting a school year or the length of school days in excess of the minimum requirements established by Subsection A of this section.

D. The secretary may waive the minimum length of school days in those school districts where such minimums would create undue hardships as defined by the department as long as the school year is adjusted to ensure that students in those school districts receive the same total instructional time as other students in the state.

E. Notwithstanding any other provision of this section, provided that instruction occurs simultaneously, time when breakfast is served or consumed pursuant to a state or federal program shall be deemed to be time in a school-directed program and is part of the instructional day.

22-12-2. Compulsory school attendance; responsibility.

A. Except as otherwise provided, a school-age person shall attend public school, private school, home school or a state institution until the school-age person is at least eighteen years of age unless that person has graduated from high school or received a high school equivalency credential. A parent may give written, signed permission for the school-age person to leave school in case of hardship approved by the local superintendent.

B. A school-age person subject to the provisions of the Compulsory School Attendance Law shall attend school for at least the length of time of the school year that is established in the school district in which the person is a resident or the state-chartered charter school in which the person is enrolled and the school district or state-chartered charter school shall not excuse a student from attending school except as provided in that law or for parent-authorized medical reasons.

C. Any parent of a school-age person subject to the provisions of the Compulsory School Attendance Law is responsible for the school attendance of that person.

D. Each local school board and each governing body of a charter school or private school

shall enforce the provisions of the Compulsory School Attendance Law for students enrolled in their respective schools.

ANNOTATIONS

Duty to protect children. — Compulsory attendance laws in no way restrain a child's liberty so as to render the child and his parents unable to care for the child's basic needs. Thus, the state does not incur under the due process clause an affirmative duty to protect school children who attend state-run schools from deprivations by private actors merely on the basis of compulsory attendance laws. *Maldonado v. Josey*, [975 F.2d 727](#) (10th Cir. 1992), cert. denied, 507 U.S. 914, 113 S. Ct. 1266, 122 L. Ed. 2d 662 (1993).

Constitutionality of prohibiting home instruction. — The exclusion of home instruction by a parent, guardian or custodian of a child from satisfying the requirements of the compulsory school attendance law does not violate equal protection as guaranteed in the United States and New Mexico constitutions. *State v. Edgington*, [1983-NMCA-036](#), [99 N.M. 715](#), [663 P.2d 374](#), cert. denied, [464 U.S. 940](#), [104 S. Ct. 354](#), [78 L. Ed. 2d 318](#) (1983) (decided prior to 1985 amendment).

Legislature did not intend for the law to require a student to attend the public schools of his district, nor that such a student be required to do so by any rule of any other body. 1973 Op. Att'y Gen. No. [73-59](#).

Validity of regulations prohibiting school attendance by certain students. — A rule which requires the withdrawal of a student when it is known that she is pregnant and when the school officials do not believe that such attendance is proper, clearly violates the compulsory attendance law, therefore, if the girl is physically capable of attending school, the local school board may not prohibit her attendance by rule or regulation merely because she is pregnant. 1967 Op. Att'y Gen. No. [67-117](#).

Married students. — Children under 17 (now 18) years of age may not be excluded or exempted from school because they are married. 1967 Op. Att'y Gen. No. [67-117](#).

Law reviews. — For comment, "Compulsory School Attendance - Who Directs the Education of a Child? *State v. Edgington*," see [14 N.M.L. Rev. 453](#) (1984).

New Mexico Homeschool Regulations

6.10.8.7 DEFINITIONS:

D. "Home school" means the operation by the parent of a school-age person of a home study program of instruction that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science.

E. "Home school truant" means a school age child whose parent(s)/guardian(s) have filed a home school notification about that child with the department but the child has failed or refused to participate in, or is no longer being offered, any home-study program of instruction.

6.10.8.8 REQUIREMENTS:

A. It is the policy of this state that school age persons receive an education and do not dropout or otherwise withdraw prematurely prior to completing an educational program. To that end, a school-age

person shall attend public school, private school, home school or a state institution until the school-age person is at least eighteen years of age unless that person has graduated from high school or received a general educational development certificate. A parent may give written, signed permission for the schoolage person to leave school in case of a documented hardship approved by the local superintendent. [6.10.8.8 NMAC - N, 12-30-04; A, 09-30-09; A, 05-15-14]

6.10.8.11 HOME SCHOOLS:

Upon receipt of verified information that a school age child whose parent(s)/guardian(s) have previously filed a home school notification about that child with the department but that child has failed or refused to participate in, or is no longer being offered, any home-study program of instruction, the department may obtain a reasonable assurance from the parent(s) or guardian that the child is actually engaged in a home-study program of instruction. In addition to any other remedies permitted by the compulsory school attendance law or the children's code, upon a determination that a home school student is repeatedly not (or no longer) engaged in a home-study program of instruction, the department may order that the home school habitual truant attend a public school, or at the election of his parent/guardian, a private school. Prior to pursuing these other remedies, the public education department shall make a reasonable effort to accommodate the parents'/guardians' preference for maintaining their child in a home school [6.10.8.11 NMAC - N, 12-30-04; A, 09-30-09]