

AN EDUCATION IN HOME SCHOOLING

MAJOR MICHAEL D. CARSTEN¹

I. Introduction

As of 2002, research estimated that between 1.725 million and 2.185 million school-aged children are being home schooled in the United States.² Although this number represents a small portion of the school-aged population, it is a one hundred-percent increase from the number of children taught at home a mere fifteen years earlier.³ Many with no personal involvement with home schooling think it is a fringe educational movement practiced mostly by religious fundamentalists. Although a large number of parents who home school their children are guided in part by religious convictions, others are driven by secular educational philosophies rather than religion.⁴

To the uninitiated, what defines home schooling can be uncertain or even unknown. Although it can take on many different variations, home schooling in its most basic form describes a situation in which parents who

1. Judge Advocate, U.S. Marine Corps. Presently assigned as Senior Defense Counsel, Legal Service Support Section, 3d Force Service Support Group, Okinawa, Japan. J.D. 1990, Hamline University, St. Paul, Minnesota; M.A. 1986, University of Minnesota; B.A., 1984, University of Minnesota-Duluth. Previous assignments include Student, 51st Judge Advocate Officer Graduate Course, The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia; Commanding Officer, U.S. Military Entrance Processing Station, Des Moines, Iowa, 1999-2002; Appellate Counsel, Appellate Government Division, Navy-Marine Corps Appellate Review Activity, Washington Navy Yard, Washington DC, 1997-1999; Staff Attorney, Military Law Branch, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington DC, 1995-1997; Secretary-Recorder, Marine Corps Uniform Board, Headquarters, U.S. Marine Corps, Washington DC, 1994-1995; Office of the Staff Judge Advocate, Marine Corps Logistics Base, Albany, Georgia, 1991-1994 (Defense Counsel, 1993-1994; Trial Counsel and Special Assistant U.S. Attorney, 1992-1993; Legal Assistance Attorney, 1991-1992). Member of the bars of Minnesota, Iowa, and the U.S. Court of Appeals for the Armed Forces. This article was submitted in partial completion of the Master of Laws requirements of the 51st Judge Advocate Officer Graduate Course.

2. Home School Legal Defense Association, *Homeschooling Research*, at <http://www.hslda.org/research/faq.asp> (last visited Oct. 29, 2003) (explaining that "[h]ome education has constantly grown over the last two decades. The growth rate is 7% to 15% per year").

3. RAY E. BALLMAN, *THE HOW AND WHY OF HOMESCHOOLING* 15 (1987).

4. Robert J. Grossman, *Home Is Where the School Is*, 46 H.R. MAG. (Nov. 2001), at <http://www.shrm.org/hrmagazine/articles/1101/default.asp?page=1101grossman.asp>.

lack state teaching licenses or certifications choose to instruct their children themselves.⁵ This instruction is not conducted in addition to public or private schooling, but rather, as an alternative to these mainstream forms of education. The home schooling parent usually purchases a number of curricula or correspondence courses that are readily available from educational suppliers and retailers. These materials are available for all grades and for any and all subjects that would be taught at the typical public or private school.⁶

Although many believe that home schooling is a relatively new concept in the United States, it is in actuality, the original form of education practiced in this country.⁷ From the arrival of the initial settlers during the 1600's and for the next 250 years, home education was the primary form of schooling for the majority of the population.⁸ State-sponsored public education, similar to the system that exists today, originated in Massachusetts in the 1840's. It took another sixty years before state-sponsored public education became widespread.⁹ "When public schools were formed and compulsory attendance laws were passed throughout the country in the early 1900's, home schooling almost died out. Not until the 1970's was the modern home school movement born."¹⁰

As the number of home schooled children continues to increase in the United States, "more and more military and Department of Defense (DOD) civilian families are turning to this educational alternative."¹¹ Numerous reassignments make home schooling "a logical choice in the

5. CHRISTOPHER J. KLICKA, *THE RIGHT CHOICE: THE INCREDIBLE FAILURE OF PUBLIC EDUCATION AND THE RISING HOPE OF HOME SCHOOLING* 122 (1992).

6. *Id.* at 202-06.

7. *Id.* at 112. A logical response to such a statement might be that home schooling was the form of education of necessity, not choice. Although that may have been true in the frontier, there was much discussion and many strongly held beliefs about preferred methods of instruction in colonial America. Highly regarded individuals, such as Thomas Jefferson, added fuel to the discussion. Although historians give Thomas Jefferson much credit for developing public education in the Commonwealth of Virginia, he stopped short of making attendance mandatory. On the subject of compulsory state-sponsored public education, he said: "It is better to tolerate the rare instances of a parent refusing to let his child be educated, than to shock the common feelings and ideas by the forcible asportation and education of the infant against the will of the father." SAUL K. PADOVER, *JEFFERSON: A GREAT AMERICAN'S LIFE AND IDEAS* 169 (1942).

8. *Id.*

9. *Id.* at 115.

10. *Id.* at 112.

11. National Center for Home Education, *Military Home Schooling Overseas Home*, at <http://www.hslda.org/docs/nche/000000/00000032.asp> (last visited Oct. 29, 2003).

military, providing a stable environment for children in the midst of frequent change.”¹² These military dependents are receiving home school instruction both within the United States and overseas. As the issues and reporting requirements home schoolers face are unique, the chain of command must be aware of its responsibilities and limitations regarding these military dependents.

First, this article discusses the home school requirements of four states with significant military populations, California, Georgia, North Carolina, and Virginia. It also summarizes common themes in state requirements. Next, it outlines the development of home schooling overseas. This includes the obligations and requirements that exist between the command and service members who choose to home school their children. The article then analyzes what constitutes educational neglect in a home school environment. Finally, the article summarizes key points regarding home schooled children.

II. Home Schooling Within the United States

In one form or another, all fifty states authorize parents to educate their children at home. When a child is a military dependent, the command to which the parent belongs has an interest in ensuring that the military member abides by the rules within the jurisdiction where the child resides.¹³ Regardless of whether the child resides on a military installation or in the civilian community, parents must adhere to the applicable state rules regarding home schooling.¹⁴ Because the DOD defers to the state in which the child resides in order to ascertain home school requirements, it is a simple matter to determine the home school guidelines in any particular case. Although researching the statutes for any particular state is a simple matter, encapsulating the requirements across all jurisdictions is another matter. The reason for this difficulty is that there are as many variations to home school requirements as there are states.

Although home schooling is allowed in all jurisdictions, some states place such extreme limitations, controls, or reporting requirements upon it

12. National Center for Home Education, *Home Schoolers Gain Equal Access to Department of Defense Schools* at <http://www.hslda.org/docs/nche/000002/00000258.asp> (last visited Sept. 12, 2002).

13. Memorandum, DOD Education Activity, subject: Home Schooling (6 Nov. 2002) [hereinafter Home Schooling Memo, 6 Nov. 2002].

14. *Id.*

that home schooling becomes exceedingly cumbersome, and only the most dedicated parents can comply with the state requirements. In contrast, other jurisdictions, under certain circumstances, impose no constraints or reporting requirements on the practice of home schooling. The home school requirements of four states that contain large military populations, California, Georgia, North Carolina, and Virginia, provide good examples to demonstrate the variance in controls and limitations on home schooling families. The discussion begins with the most restrictive of the four regulatory regimens in California. It then discusses the moderately restrictive systems in Georgia and North Carolina, and ends with a discussion of the least restrictive system, in Virginia, which in some instances places almost no state control over home schooled children.

A. California

Under the California Education Code, “[e]ach person between the ages of [six] and [eighteen] years not exempted under the provisions of this chapter . . . is subject to compulsory full-time education.”¹⁵ Three alternatives exist for parents who wish to place their children in an alternative other than a public school environment: private tutors; enrollment in a private full-time day school; or an arrangement for an independent study program through the local public school district.¹⁶

If parents elect to hire a private tutor, the tutor must possess California teaching credentials for the grades taught.¹⁷ A parent with state teaching credentials can act as the tutor under this option. The tutor’s instruction must be for at least three hours per day, for 175 days each calendar year, and must occur between the hours of eight o’clock a.m. and four o’clock p.m.¹⁸ The instruction must be in English and must consist of the subjects required in the public schools.¹⁹

Private full-time day schools are another alternative to enrollment in the public education system. This instruction must also be in English and must consist of the subjects the public schools teach.²⁰ Although the instructors at a private full-time day school need not possess California

15. CAL. EDUC. CODE § 48200 (2003).

16. *Id.* §§ 48200, 48220, 48224, 51745.

17. *Id.* § 48224.

18. *Id.*

19. *Id.*

20. *Id.* § 48222.

teaching credentials, they must be “persons capable of teaching.”²¹ To qualify as a private school, the school administration must file an annual Private School Affidavit²² with the California Department of Education.²³

The final alternative for parents who wish to educate their children in a setting other than the traditional public education classroom is an independent study program.²⁴ Unlike the other educational options, which qualify as exemptions to mandatory public school enrollment, independent study does not. Instead, independent study is merely an alternative form of public education that is conducted and administered by the local school district outside the normal classroom environment.²⁵

B. Georgia

Georgia’s rules for home education are typical of the majority of states. Unlike California, the majority of jurisdictions permit parents with high school diplomas or general equivalency diplomas (GED) to give home school instruction.²⁶ Jurisdictions like Georgia, while expanding upon whom may home school, require parents to do three things: (1) provide instruction in specified subjects; (2) report the child’s educational progress to appropriate state officials; and (3) have the child take standardized achievement tests.²⁷

Under Georgia law, children “between their sixth and sixteenth birthdays shall [be] enroll[ed and sent] . . . to a public school, private school, or a home study program.”²⁸ Regardless of whether a child is enrolled in

21. *Id.*

22. *Id.* Most California home schooling families operate under this option. The current position of the California Department of Education (CDE), however, is that non-credentialed parents who exclusively home school their children are operating outside the law, even when the parents file the Private School Affidavit with CDE. California Dept. of Educ., *Home Schooling*, at <http://www.cde.ca.gov/privateschools/homeschool.html> (last visited Jan. 19, 2003). A plain reading of the applicable code section does not appear to conform to the meaning the CDE assigns to it. CAL. EDUC. CODE § 48222. Time will tell whether a home schooling family is prosecuted, let alone successfully, for truancy under CDE’s interpretation of the Code.

23. CAL. EDUC. CODE § 48222.

24. *Id.* § 51745.

25. *Id.*

26. *Id.* § 48224; GA. CODE ANN. § 20-2-690(c)(3) (2002).

27. GA. CODE ANN. §§ 20-2-281(a), 20-2-690(b)(4), 20-2-690(c)(5), (6), (7) (2002).

28. *Id.* § 20-2-690.1 (2002).

public school, private school, or a home study program, an academic year consists of at least 180 days of instruction.²⁹ The public or private school or home study program must provide, at the very minimum, instruction in reading, language arts, mathematics, social studies, and science.³⁰

To be eligible to provide a home study program, the “teaching parent” must have obtained at least a high school diploma or a GED equivalent.³¹ “Parents or guardians may teach only their own children in the home study program . . . but the parents or guardians may employ a tutor who holds at least a baccalaureate college degree to teach such children.”³² Parents electing to provide a home study program must submit a declaration of intent to give home school instruction to the local public school superintendent thirty days after the establishment of a home study program, and by 1 September every year thereafter.³³ A home study program day must consist of at least four and one-half hours.³⁴ Parents must maintain attendance records and submit them to the local public school superintendent each month.³⁵ Parents must prepare an annual progress report for each child enrolled in a home study program,³⁶ and retain the annual progress report for three years.³⁷ Children enrolled in a home study program must take a national standardized achievement test every three years, commencing with the end of third grade.³⁸ Although standardized achievement tests are required, there is no requirement that the parents submit the test scores to the public school superintendent.³⁹

C. North Carolina

North Carolina imposes fewer restrictions on home education than California and Georgia. Under North Carolina law, children between the ages of seven and sixteen must be enrolled in a state-authorized education program.⁴⁰ State law defines a home school as a nonpublic school in which

29. *Id.* §§ 20-2-168(c)(1), 20-2-690(b)(3), 20-2-690(c)(5).

30. *Id.* §§ 20-2-281(a), 20-2-690(b)(4), 20-2-690(c)(4).

31. *Id.* § 20-2-690(c)(3).

32. *Id.*

33. *Id.* § 20-2-690(c)(2).

34. *Id.* § 20-2-690(c)(5).

35. *Id.* § 20-2-690(c)(6).

36. *Id.* § 20-2-690(c)(8).

37. *Id.*

38. *Id.* § 20-2-690(c)(7).

39. *Id.*

40. N.C. GEN. STAT. § 115C-563 (2003).

one or more children of not more than two families receive instruction from parents, legal guardians, or members of either household.⁴¹ The persons providing academic instruction in a home school shall possess at least a high school diploma or its equivalent.⁴² Parents electing to home school their children must make an election to operate as either a private church school or as qualified nonpublic school.⁴³ Regardless of which option the home school elects, a nationally standardized test must be administered to all third, sixth, and ninth graders.⁴⁴ The selected standardized test must measure achievement in English grammar, reading, spelling, and mathematics.⁴⁵ All eleventh graders, regardless of the educational system the parents elect, must take a nationally standardized high school competency test.⁴⁶ The selected test must measure competency in verbal and quantitative areas.⁴⁷

What makes North Carolina one of the least restrictive jurisdictions for home-based education is that it: (1) permits different families to home school together; (2) provides for minimal interaction with state officials; and (3) does not require parents to provide instruction in specified subjects.⁴⁸ Additionally, North Carolina establishes a separate category for those who desire to establish a Private Church School.⁴⁹

D. Virginia

The home-based educational requirements in Virginia are a study of contrasts. In many ways, as discussed below, the commonwealth is restrictive. Virginia, however, also allows families to opt out of the public education system for religious reasons.⁵⁰ If a family qualifies for this exemption,

41. *Id.*

42. *Id.* § 115C-564.

43. *Id.*

44. *Id.* §§ 115C-548, 115C-557.

45. *Id.*

46. *Id.* §§ 115C-550, 115C-558.

47. *Id.*

48. *Id.* § 115C-563.

49. *Id.* § 115C-564.

50. VA. CODE ANN. § 22.1-254 (2002).

the commonwealth places no guidelines or controls upon the education of the child.⁵¹

Under the Virginia Code, children between the ages of five and eighteen must enroll in and attend a public school, private school, or other state-authorized educational program.⁵² If the parent of a child under the age of six believes the child is not prepared to attend school, however, the parent can delay the child's attendance for one year.⁵³ Parents may elect to provide home school education in lieu of school attendance provided the teaching parent: (1) possesses a baccalaureate degree from an accredited institution of higher learning; (2) is qualified as a teacher by the Board of Education; (3) uses a curriculum that has been pre-approved by the Superintendent of Public Instruction; or (4) uses a curriculum or program of study that includes the state's Standards of Learning for mathematics and language arts, and shows evidence that the parent is capable of providing an adequate education for the child.⁵⁴ Home schooling parents must notify the Superintendent annually by 15 August if they intend to home school their children; the notice must include evidence satisfying one of the four criteria.⁵⁵ By 1 August of the year after the first year of home school instruction, the parent must also provide either of the following:

- (i) evidence that the child has attained a composite score in or above the fourth stanine [23rd percentile] on a battery of achievement tests . . . or
- (ii) an evaluation or assessment which . . . indicates that the child is achieving an adequate level of educational growth and progress.⁵⁶

In addition to the home schooling options and requirements previously stated, "[a]ny pupil who, together with his parents, by reason of bona fide religious training or belief is conscientiously opposed to attendance at

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* § 22.1-254.1.

55. *Id.*

56. *Id.*

school” is exempt from the requirements placed upon the four other home school options, above.⁵⁷

E. Common Themes in State Requirements

A comparison of the four states reveals that requirements for home-based education are diverse. Despite this diversity, there are several common requirements the commander should understand, regardless of jurisdiction. States generally specify compulsory education for a specified age group and generally permit education outside of the traditional public or private school environment. Although all states allow for some form of home-based education in lieu of enrollment in a public or private school, the requirements vary from state-to-state. State law, however, generally imposes the following limitations: (1) a requirement to inform the appropriate state or local officials of the intent to home school;⁵⁸ (2) a requirements to declare which state-authorized exemption the parents cite as a legal basis for home-based education;⁵⁹ (3) a requirement that the teaching parents achieve specific educational levels or obtain state teaching credentials;⁶⁰ (4) a minimum number of days that the home-based education must be in session;⁶¹ (5) a requirement that the parents include certain core subjects in the home based curriculum;⁶² and (6) a requirement that the home schooled children participate in standardized achievement testing, or some other form of periodical review to assess academic progress or proficiency.⁶³ Finally, states that permit home schooling under religious exemptions generally do not extend their usual regulatory requirements to such cases.⁶⁴

57. *Id.* § 22.1-254.

58. GA. CODE ANN. § 20-2-690(c)(2) (2002); N.C. GEN. STAT. § 115C-564 (2003); VA. CODE ANN. § 22.1-254.1 (2002).

59. GA. CODE ANN. § 20-2-690(c)(2); N.C. GEN. STAT. § 115C-564; VA. CODE ANN. § 22.1-254.1.

60. CAL. EDUC. CODE § 48224 (2003); GA. CODE ANN. § 20-2-690(c)(3); N.C. GEN. STAT. § 115C-564; VA. CODE ANN. § 22.1-254.1.

61. CAL. EDUC. CODE § 48224; GA. CODE ANN. § 20-2-690(c)(5).

62. CAL. EDUC. CODE § 48224; GA. CODE ANN. § 20-2-690(c)(4); VA. CODE ANN. § 22.1-254.1.

63. GA. CODE ANN. § 20-2-690(c)(7); N.C. GEN. STAT. §§ 115C-548, 115C-550, 115C-557, 115C-558; VA. CODE ANN. § 22.1-254.1.

64. VA. CODE ANN. § 22.1-254.

III. Home Schooling Overseas

The decision to home school military dependents overseas presents issues not encountered with home schooling within the United States. The main concern of home schooling stateside is compliance with applicable state laws, but overseas home schooling must address the interplay between U.S. statutes, the DOD Education Activity (DODEA), DOD directives, and the applicable status of forces agreement⁶⁵ the United States has with the host nation.

A. History

Although the DOD has operated schools for dependents overseas for over fifty years,⁶⁶ the Overseas Defense Dependents' Education Act of 1978 directed the Secretary of Defense to create a unified education system for military dependents located overseas.⁶⁷ Specifically, the Act required "[t]he Secretary of Defense [to] establish and operate a program (hereinafter in this chapter referred to as the 'defense dependents' education system') to provide a free public education through secondary school

65. The Status of Forces Agreements (SOFAs) the United States has with Germany, Japan, and South Korea do not exempt military dependents from the application of host nation civil law. Status of Forces in the Federal Republic of Germany, Aug. 3, 1959, 14 U.S.T. 531, 481 U.N.T.S. 262; Treaty of Mutual Cooperation and Security Between the United States of America and Japan, Jan. 19, 1960, U.S.-Japan, 11 U.S.T. 1652; Mutual Defense Treaty Between the United States of America and the Republic of Korea, July 9, 1966, U.S.-Rep. of Korea, 17 U.S.T. 1677. By implication, military dependents should be bound by the education requirements of host nations. For example, Article XVI of the Japanese Constitution states, "All people shall have the right to receive an equal education correspondent to their ability, as provided by law. All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free." JAPAN CONST. art. XXVI. Education officials related, however, that foreign nationals are not included within the meaning of "people" under Article XXVI. Interview with Captain James Weirick with Chief, Education Section, Ishikawa City Office, Okinawa, Japan (Aug. 19, 2003). Thus, foreign nations are exempt from the Japanese compulsory education requirements.

66. U.S. Dep't of Defense Education Activity, *DODEA Facts*, at <http://dodea.edu/communications/dodeafacts2002.htm> (last visited Aug. 17, 2003) [hereinafter *DODEA Facts*]. "Shortly after the end of World War II, the United States military established schools for the children of its service men and women stationed in Europe and the Pacific. Schools for the children of military members stationed at various bases in the United States were already well established." *Id.*

67. Overseas Defense Dependents' Education Act of 1978, 20 U.S.C.S. § 921(a) (LEXIS 2003).

for dependents in overseas areas.”⁶⁸ The Act also stated that “[t]he Secretary shall ensure that individuals eligible to receive a free public education under [this Act] receive an education of high quality.”⁶⁹ The Director of the DODEA was given the responsibility for the day-to-to day operations of the defense dependents’ education system.⁷⁰ “The defense dependents’ education system is operated through the field activity of the DOD known as the DODEA.”⁷¹

The Act resulted in the creation of the DOD Dependents’ Schools (DODDS).⁷² The mission assigned DODDS was to:

provide, pursuant to [The Defense Dependents’ Education Act of 1978] and DOD Directive 1342.13, a free public education of high quality from pre-kindergarten through grade twelve for eligible minor dependents of U.S. military and civilian personnel of the [DOD] stationed overseas; and . . . to provide a free appropriate education for children with disabilities, ages 3 through 21; and . . . to provide a community college program for eligible students in Panama.⁷³

In its original form, the Act was silent about the issue of compulsory enrollment in the defense dependents’ education system.⁷⁴ Additional guidance was needed to establish the extent of the DODEA’s role in the education of overseas dependents. It was not initially clear whether attendance was mandatory in the defense dependents’ education system; a DOD directive clarified this question: “DOD dependent students may be provided education in approved non-DOD dependent schools or may receive correspondence courses at U.S. Government expense only at locations

68. *Id.*

69. *Id.* § 921(b)(1).

70. *Id.* § 922(a).

71. Until 1994, there were two separate but parallel systems to educate dependent children, “the Department of Defense Dependents Schools (DODDS) overseas, and the Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS) in the United States. In 1994, the two systems were brought together under an umbrella agency, the Department of Defense Education Activity (DODEA).” *DODEA Facts, supra* note 66.

72. U.S. DEP’T OF DEFENSE, DIR. 1342.6, DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS (DODDS) (17 Oct. 1978), *cancelled by* U.S. DEP’T OF DEFENSE, DIR. 1342.6, DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS (DODDS) (13 Oct. 1992) [hereinafter DOD DIR. 1342.6].

73. *Id.* para. 3.

74. 20 U.S.C.S. §§ 921-932.

where DOD dependents schools are not available or are operating at maximum capacity.”⁷⁵ The directive also gives overseas commanders the responsibility to inform inbound personnel of all aspects of DODDS, to include the use of non-DODDS schools.⁷⁶ These provisions establish that the defense dependents’ education system was not intended to be the exclusive vehicle for the education of overseas dependents.⁷⁷

In 1987, President Reagan issued Executive Order 12,606, addressing the formulation of family policies by the Executive Department and its agencies.⁷⁸

In formulating and implementing policies and regulations that may have significant impact on family formation, maintenance, and general well-being, Executive departments and agencies shall, to the extent permitted by law assess such measures in light of the following questions:

- (a) Does this action by government strengthn [sic] or erode the stability of the family and, particularly, the marital commitment?
- (b) *Does this action strengthen or erode the authority and rights of parents in the education, nurture, and supervision of their children?*
- (c) *Does this action help the family perform its functions, or does it substitute governmental activity for the function?*
- (d) Does this action by government increase or decrease family earnings? Do the proposed benefits of this action justify the impact on the family budget?
- (e) *Can this activity be carried out by a lower level of government or by the family itself?*
- (f) What message, intended or otherwise, does this program send to the public concerning the status of the family?

75. U.S. DEP’T OF DEFENSE, DIR. 1342.13, ELIGIBILITY REQUIREMENTS FOR EDUCATION OF MINOR DEPENDENTS IN OVERSEAS AREAS para. 5.1.3 (8 July 1982) [hereinafter DOD DIR. 1342.13].

76. *Id.* para. 6.4-6.4.4. The DODDS Manual also discusses the same responsibility, stating that installation commanders shall “[e]ncourage all eligible dependents who have not completed high school to enroll in a DoDDS approved education program. If a DoDDS program is unsuitable to the parents, the installation commander shall encourage the parents to enroll their dependents in an alternate program.” U.S. DEP’T OF DEFENSE, MANUAL 1342.6-M, ADMINISTRATIVE AND LOGISTIC RESPONSIBILITIES FOR DOD DEPENDENTS SCHOOLS para. C1.4.3.6. (11 Aug. 1995).

77. DOD DIR. 1342.13, *supra* note 75, paras. 5.1.3, 6.4-6.4.4.

78. Exec. Order No. 12,606, 52 Fed. Reg. 34,188 (Sept. 9, 1987).

(g) What message does it send to young people concerning the relationship between their behavior, their personal responsibility, and the norms of our society?⁷⁹

The impact of Executive Order 12,606 on home schooling is that it “imposes an obligation on the military departments and commanders to carefully consider any policy or regulatory action that would tend to erode the rights and authority of parents in the education of their children.”⁸⁰ A subsequent directive repeated the spirit and intent of Executive Order (EO) 12,606. The directive stated that “[f]amily policy-making criteria, as prescribed in [EO] 12606 be followed, to the extent permitted by law, in formulating and implementing policies that have significant impact on DOD personnel and their families.”⁸¹ Consistent with its restatement of Executive Order 12,606, the directive states, “DoD personnel, both married and single, bear primary responsibility for the welfare of their families.”⁸²

B. Recent Developments

Congress has taken action to ensure that the DODDS supports those who choose home education. The Armed Forces Committee report that accompanied the National Defense Authorization Act for Fiscal Year 2000 addressed the issue of home schooling overseas.

The committee believes that military families who decide to home school their children should be supported by Department of Defense Overseas Schools (DODDS) to the extent possible The committee is aware that the Department of Defense Education Activity (DODEA) claims that it fully supports home schooling. DODEA’s published material⁸³ and the actual experience of some parents⁸⁴ belie that claim, however. The committee believes that DODEA should take a more proactive approach in establishing a clear policy and providing parents information about available DODEA support for home schooling overseas, rather than merely directing parents to the over-

79. *Id.* (emphasis added).

80. Memorandum, Office of the Judge Advocate General, U.S. Army, to General Counsel, U.S. Dep’t of Defense, subject: The Overseas Commanders’ Responsibility Regarding Home Schooling (12 July 2002) [hereinafter The Overseas Commanders’ Responsibility Regarding Home Schooling Memo].

81. U.S. DEP’T OF DEFENSE, DIR. 1342.17, FAMILY POLICY para. 4.1 (30 Dec. 1988).

82. *Id.* para. 4.3.

seas commander. To that end, the committee directs the Secretary of Defense to develop clear policy on support for home schooling overseas. That policy, which would officially implement what DODEA representatives state is actual practice, should specify that home schooled students may be supported with library services, music, sports, single classes, and other programs without having to actually enroll in DODDS.⁸⁵

Responding to the report issued by the House Armed Services Committee, the Interim Director, DODEA, implemented new policy for home schooling.

It is the policy of the Department of Defense Education Activity (DODEA) to neither encourage nor discourage sponsors from home schooling their minor dependents. DODEA recognizes that home schooling is a sponsor's right and can be a legitimate form of education for their dependents. . . .

83. The Committee is most likely referring to the following provision:

DODDS does not have a policy favoring or disfavoring home schooling. The Defense Dependents Education System Act imposes on DODDS the duty to provide a "free appropriate public education to DOD dependents overseas who are 'command sponsored.'" However, except as required by foreign law, DOD dependents are required by law to enroll in our schools. . . . When a family declines to enroll a dependent in our schools, the installation commander may call the family to account for this decision. The commander controls access to the military installation, and whether the overseas dependents are "command sponsored" or not, the commander may predicate continued logistical support (e.g., exchange privileges) for the sponsor's school age dependents on enrollment in some school program that serves the interest of the child. Hence, the installation commander may require attendance at our school, some alternative school approved by DODDS, or some alternative program acceptable to the commander as a condition of continued "command sponsorship."

OFFICE OF DEPENDENTS SCHOOLS, MANUAL. 2948.1, FAMILY POLICY para. 24 (7 Mar. 1990).

84. On occasion, overseas installation commanders have attempted to prohibit home schooling, mandating that all dependent children not attending a DODDS school or a DODDS-approved alternative school be immediately enrolled in a DODDS school. National Center for Home Education, *Military Home Schooling Overseas*, at <http://www.hslda.org/docs/nche/000000/00000032.asp> (last visited Dec. 9, 2002).

85. H.R. REP. NO. 106-162 (1999).

Upon request, DODEA shall provide dependents who are home schooled with library services and, consistent with existing regulations and policy, single classes, special education services, and participation in extra-curricular and interscholastic activities such as music and sports programs. Home schoolers who choose to use DODEA services must complete a registration form. When classes carry prerequisites for admission, verification of competence must also be included.

DODEA does not provide home schooling materials, such as textbooks, workbooks, software, etc., to DOD sponsors wishing to home school their dependents. Obtaining these materials is the responsibility of the DOD sponsor. However, DODEA schools will loan material to sponsors if those materials would be helpful to the home school program.⁸⁶

Not satisfied with DODEA's 27 March 2000 policy memorandum concerning home schooling, Congress used the National Defense Authorization Act for Fiscal Year 2002 to attach an amendment to the Overseas Defense Dependents' Education Act of 1978.⁸⁷

(d) Auxiliary services available to home school students

(1) A dependent who is educated in a home school setting, but who is eligible to enroll in a school of the defense dependents' education system, shall be permitted to use or receive auxiliary services of that school without being required to either enroll in that school or register for a minimum number of courses offered by that school. The dependent may be required to satisfy other eligibility requirements and comply with standards of conduct applicable to students actually enrolled in that school who use or receive the same auxiliary services.

(2) For purposes of paragraph (1), the term "auxiliary services" includes use of academic resources, access to the library of the school, after hours use of school facilities, and participation in music, sports, and other extracurricular and interscholastic activities.⁸⁸

86. Memorandum, DOD Education Activity, subject: Home Schooling (27 Mar. 2000) [hereinafter Home Schooling Memo, 27 Mar. 2000].

87. 20 U.S.C.A. § 926(d) (West 2002).

Upon the President's signing of the Fiscal Year 2002 Authorization Act, the White House issued the following statement:

The Act provides important improvements in the quality of life for the members of our Armed Forces, who have dedicated their lives to the defense of their fellow citizens The legislation . . . addresses important needs of military families, such as improved job training and education opportunities for military spouses and access for home schooled children of military families to facilities and programs of Department of Defense dependent schools.⁸⁹

Recently, DODEA issued a new policy memorandum concerning home schooling that "supercedes all previous policies issued by the Department of Defense Education Activity (DODEA)."⁹⁰ Like its predecessor,⁹¹ the policy neither encourages nor discourages DOD sponsors from home schooling their dependents.⁹² Unlike its predecessor, however, the new policy memo provides detailed discussion concerning the degree of support DODEA will provide to home schooled dependents, to include an attachment that addresses "Frequently Asked Questions" concerning: (1) what constitutes an "auxiliary service;" and (2) what are the eligibility and enrollment requirements before a home schooler can partake in an "auxiliary service."⁹³ Specifically, the policy memo does not require home schooled dependents to enroll with the DODDS to obtain auxiliary services, but merely to prove "eligibility."⁹⁴ A sponsor can establish eligibility by providing a copy of his orders and with some proof of the dependent's identity, such as a birth certificate, passport, or DOD identification card.⁹⁵ The process of requiring home schoolers to prove eligibility before using auxiliary services, but not requiring home schoolers to complete an enrollment form, represents the balancing of two competing interests. The 2002 Amendment to the Overseas Defense Dependents' Education Act of 1978 placed new requirements upon DODDS schools and overseas commanders. Regardless of whether Congress intended to

88. *Id.*

89. Press Release, The White House, Statement by the President (28 Dec. 2001), available at <http://www.whitehouse.gov/news/releases/2001/12/print/20011228-4.html>.

90. Home Schooling Memo, 6 Nov. 2002, *supra* note 13.

91. Home Schooling Memo, 27 Mar. 2000, *supra* note 86.

92. Home Schooling Memo, 6 Nov. 2002, *supra* note 13.

93. *Id.*

94. *Id.*

95. *Id.*

do so, opening DODDS auxiliary services to home schooled dependents has changed resource requirements. Not only do DODDS schools have to make resources available to DODDS enrollees, but also to home schoolers who may elect to use DODDS auxiliary services. By requiring proof of eligibility, the DODEA obtains data concerning the services and funds it must commit to support home schoolers using auxiliary services; this system also allows the DODDS to avoid offending some home schooling sponsors who view the completion of a more detailed enrollment form to be objectionable.⁹⁶

IV. Child Neglect

A discussion of home schooling would not be complete without addressing the issues of child neglect and educational neglect. According to the U.S. Department of Health and Human Services (HHS), there is no generally accepted definition of child neglect.⁹⁷

Differences in definitions of child neglect in State laws and in community standards reflect significant variations in the judgments of professionals and nonprofessionals concerning what constitutes child neglect. Some State statutes emphasize the condition of the child without any mention of parental fault; others stress the condition of the child resulting from parental actions or fault. Some communities have determined that no child under age 10 should be left at home alone, while other communities "permit" working parents to leave their children unsupervised after school.⁹⁸

Education neglect is an identified form of child neglect. Individuals and state agencies have sometimes alleged educational neglect for the following reasons: (1) sincere concern for the child; (2) opposition to the right to

96. *In the Trenches: Access for Military Students Clarified*, HOME SCH. CT. REP., Nov./Dec. 2002, at 27 (Home School Legal Defense Association, Purcellville, VA).

97. U.S. Dep't of Health and Human Serv., *Child Neglect: A Guide for Intervention*, at <http://www.calib.com/nccanch/pubs/usermanuals/neglect/define.cfm> (last visited Nov. 17, 2002) [hereinafter HHS Web Site].

98. *Id.*

home school; or (3) hostility toward the family, even when the state knew the family was actively engaged in home schooling.⁹⁹

A. What is Educational Neglect?

The HHS identifies three forms of educational neglect: (1) failure to enroll; (2) permitted chronic truancy; and (3) inattention to special education needs.¹⁰⁰ Failure to enroll is defined as “[f]ailure to register or enroll a child of mandatory school age, causing the school-aged child to remain at home for nonlegitimate reasons (e.g., to work, to care for siblings, etc.) an average of at least 3 days a month.”¹⁰¹ Permitted chronic truancy is categorized as “[h]abitual truancy averaging at least 5 days a month classifiable under this form of maltreatment if the parent/guardian ha[s] been informed of the problem and ha[s] not attempted to intervene.”¹⁰² Inattention to special education needs is identified as the “[r]efusal to allow or failure to obtain recommended remedial educational services, or neglect in obtaining or following through with treatment for a child’s diagnosed learning disorder or other special education need without reasonable cause.”¹⁰³

Home-based education is most susceptible to claims of education neglect under the first form identified by the HHS—failure to enroll. The other two forms of educational neglect have minimal applicability to a family that is actively engaged in home schooling. Accordingly, families can avoid allegations of educational neglect by understanding the home school enrollment requirements for their jurisdiction. In addition to knowing the state requirements, the best way for home schooling families to avoid allegations of educational neglect is to meet all state reporting deadlines. These deadlines typically include the date by which the family must: (1) inform state officials of their intent to home school; (2) report their children’s academic progress to state officials; (3) have their children take

99. Home School Legal Defense Association News, *Colorado Home School Family Charged with Educational Neglect*, at <http://www.hslda.org/hs/state/CO/200207090.asp?PrinterFriendly=True> (last visited Nov. 17, 2002).

100. HHS Web Site, *supra* note 97.

101. *Id.*

102. *Id.*

103. *Id.*

standardized achievement tests; and (4) submit the results of the standardized test to state officials.

B. Department of Defense and Service Definitions

The DOD defines educational neglect¹⁰⁴ as “[a]llowing for extended or frequent absence from school, neglecting to enroll the child in school, or preventing the child from attending school for other than justified reasons (e.g., illness, inclement weather).”¹⁰⁵ The Army and Marine Corps Family Advocacy Programs are unclear as to whether educational neglect rises to the level of child abuse or neglect. Both, however, describe educational neglect merely as a potential indicator of child abuse or neglect.¹⁰⁶ The Navy defines neglect as “[a]ctions or omissions by a parent, guardian, or caretaker, which includes [sic], but is not limited to, deliberate or negligent withholding or deprivation of necessities (nourishment, shelter, clothing, and health care), lack of adequate supervision, emotional or educational neglect, and abandonment.”¹⁰⁷ The Navy specifically refers to *DOD Directive 6400.2* for a definition of educational neglect.¹⁰⁸ Unlike the other services, the Air Force does not attempt to define or categorize abuse or neglect. Instead, the Air Force Family Advocacy Pro-

104. This same instruction defines child abuse or neglect as “[t]he physical injury, sexual maltreatment, emotional maltreatment, deprivation of necessities, or other maltreatment of a child [by someone] responsible for the child’s welfare, under circumstances that indicate that the child’s welfare is harmed or threatened. The term encompasses both acts and omissions on the part of a responsible person.” U.S. DEP’T OF DEFENSE, INSTR. 6400.2, CHILD AND SPOUSE ABUSE REPORT para. E2.A2.8.a (10 July 1987) [hereinafter DOD INSTR. 6400.2].

105. *Id.* para. E2.A2.13.d(7).

106. In establishing indicators of possible child abuse, the Army and Marine Corps adopt identical language. “Neglect [that] tends to be chronic in nature and involves inattention to the child’s minimal needs for nurturing, food, clothing, shelter, medical care, dental care, safety or education.” U.S. DEP’T OF ARMY, REG. 608-18, THE ARMY FAMILY ADVOCACY PROGRAM para. 3-5e (1 Sept. 1995); U.S. DEP’T OF NAVY, MARINE CORPS ORDER P1752.3B, MARINE CORPS FAMILY ADVOCACY PROGRAM STANDARD OPERATING PROCEDURES app. B, para. 2 (1 July 1994).

107. OFFICE OF THE CHIEF OF NAVAL OPERATIONS, INSTR. 1752.2A, FAMILY ADVOCACY PROGRAM encl. 1, para. d (17 July 1996).

108. *Id.*

gram uses the word “maltreatment” as “[a] general term [to] encompass[] child abuse or neglect and spouse abuse or neglect.”¹⁰⁹

The common thread running through the service specific regulations on abuse and neglect is that no additional guidance exists. Therefore, the definition of educational neglect in *DOD Directive 6400.2* is the definition that applies to questions of educational neglect.¹¹⁰ The DOD’s definition of educational neglect requires non-enrollment in school or extended, frequent or unjustified absences from school.¹¹¹ As the U.S. Code¹¹² and DODEA¹¹³ have accepted home schooling as “a legitimate alternative form of education,”¹¹⁴ the fact that a family is engaged in a home schooling program cannot be the basis of an investigation for educational neglect within the DOD.¹¹⁵

V. Recommendations

Over the past thirty years, the phrase “military readiness” has changed from focusing on issues such as whether a soldier has the proper tools, equipment, training, and skills to perform assigned duties, to encompassing a broader inquiry. In addition to factors that were identified with mil-

109. U.S. DEP’T OF AIR FORCE, INSTR. 40-301, FAMILY ADVOCACY attachment 1 (1 May 2002).

110. DOD INSTR. 6400.2 para. E2.A2.13.d(7), *supra* note 104.

111. *Id.*

112. 20 U.S.C.S. § 926(d) (LEXIS 2002).

113. Home Schooling Memo, 6 Nov. 2002, *supra* note 13.

114. *Id.*

115. A related issue, but beyond the scope of this article, is whether authorities can or should take any action if some evidence suggests that a family claiming that it is home schooling is not actively engaged in home based education.

Generally, the overseas, installation commander has the discretion to revoke . . . privileges for appropriate cause. In cases of . . . educational neglect or failure to supervise it may be appropriate for the overseas, installation commander to revoke some or all of these privileges to remedy the situation. The commander . . . may [also] order the advance return of the civilian family members of soldiers and civilian employees to the United States if the commander determines that the dependent’s continued presence would be prejudicial to the order, morale, and discipline of the command.

The Overseas Commanders’ Responsibility Regarding Home Schooling Memo, *supra* note 80.

itary readiness in the past, the term now includes matters such as providing adequate recreational activities, improving housing, and providing a quality environment for military dependents.¹¹⁶ A portion of this focus on military dependents encompasses the educational opportunities afforded the children of service members. After the enactment of the Overseas Defense Dependents' Education Act of 1978, the DODEA's focus, for the first twenty years, was on providing a high quality education for military dependents through the DODDS and DDESS systems. With DODEA's congressionally mandated policy changes and the 2002 Amendment of the Overseas Defense Dependents' Education Act, the breadth of DODEA's mission has expanded to the point that DODEA now recognizes home schooling as a legitimate educational choice and has an affirmative duty to support those who home school.

State regulations of home schooling differ widely but contain common elements. Commanders must understand the fundamentals of these state regulations, as well as the impact of recent legislation, and how both have changed the responsibilities they share with the DODEA to support home schooled dependents. The key point regarding state regulations is that home schooling programs must comply with the regulations of the state in which the child resides, regardless of whether the home is located on or off the military installation.¹¹⁷ Most state regulations specify an age range for compulsory education, a minimum number of hours of instruction, specific required subjects, standardized testing requirements, authorized alternatives to public education, and notification requirements. Under these notification requirements, parents must notify state officials before initiating a home schooling program, which exemption to the state's compulsory public education requirement they intend to invoke, what specific educational level or other qualifications they themselves possess. Neither the DODEA nor host nations regulate or restrict U.S. service members who choose to home school their dependents overseas. Recent legislation also gives the DODEA and installation commanders an affirmative obligation to support to home schooled dependents with auxiliary services. New DOD standards also clarify that home schooling does not constitute educational neglect.

Finally, DODEA current policy of proving eligibility as a prerequisite to partaking in auxiliary services is not so unduly burdensome so as to

116. Naval Research Advisory Committee, *Quality of Life*, at http://nrac.onr.navy.mil/webpace/exec_sum/01qol.html (last visited Mar. 25, 2003).

117. Home Schooling Memo, Nov. 2002, *supra* note 13.

erode upon the authority and rights of parents in the education of their children.¹¹⁸ Such data enables the command and DODEA to keep records of the number of home schooled dependents within the command, or area, enabling accurate resource projections.¹¹⁹

118. Exec. Order No. 12,606, 52 Fed. Reg. 34,188 (Sept. 9, 1987).

119. 20 U.S.C.S. § 926(d) (LEXIS 2003).