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STATE OF IOWA • DEPARTMENT OF PUBLIC INSTRUCTION

GRIMES STATE OFFICE BUILDING • DES MOINES, IOWA 50319

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DECLARATORY RULING #35

(Cite as 1 D.P.I. Dec. Rul. 97)

November 5, 1984

Mr. Dale Whiting, Chairman
School Board
Grandview Park Baptist Church
1701 East 33rd Street
Des Moines, Iowa 50317-8699

Dear Mr. Whiting:

On September 26, 1984, you filed a "Petition for Declaratory Ruling" on behalf of the Grandview Park Baptist School. In the Petition you describe a new educational program now being offered by the School. Grandview Park Baptist School is a state approved school as provided in The Iowa Code section 257.25, 1983.

In order to meet the needs and desires of a number of parents to play a greater role in the education of their children, Grandview Park Baptist School is now providing a home-education service to fifteen families. The program currently involves twenty-two children in grades one through five.

You describe the privileges and responsibilities which the new school program provides to the families engaged in the program as follows:

1. Completing the same enrollment application which is required of students who request admission into the traditional classroom programs;
2. Paying tuition commensurate with the services received;
3. Using textbooks and materials which are identical or similar to those found in the traditional classrooms, thereby fulfilling the conditions of 257.25, paragraphs 3 and 4, of the Iowa Educational Code;

4. Receiving regular instruction by a certified teacher in the home to meet the qualifications found in 299.1 of the Iowa Educational Code;
5. Attending all-day classes once each month in the facilities of the Grandview Park Baptist Church and School;
6. Having all permanent school records kept by the Grandview Park Baptist Church and School;
7. Transferring into and out of the traditional classroom setting without penalty; [Within the Grandview Park Baptist School]
8. Having all creditable academic achievements apply toward promotions into advanced academic grades or subjects; [Within the Grandview Park Baptist School]
9. And, being tested regularly through the use of standardized instruments thereby providing a means of comparing student scores with nationally-established academic norms.

The question you present for ruling based on the facts outlined above is as follows:

Is a parent who enrolls a child between the ages of seven and sixteen in the Grandview Park Baptist Church and School's home-education program, as outlined above, in compliance with the Iowa compulsory attendance laws?

The answer to your question is in the affirmative. Whether the issue is analyzed from the prospective of the home-schooling program being a part of an approved school program or whether the analysis involves a review of the "private instruction" provisions of Chapter 299, the result is the same.

Iowa statutes have long recognized the appropriateness of home or "private instruction" as an alternative to meeting the compulsory attendance requirements contained in Chapter 299. Section 299.1 requires that children between the ages of seven and sixteen attend a public school or "equivalent instruction by a certified teacher elsewhere." Section 299.4 clearly establishes that one of the alternatives to public education is "private instruction, not in a regularly conducted school." This Section is frequently used as the authority for instruction provided in the child's home. See *In re Lisa Ann Edgerton*, 1 D.P.I. App. Dec. 163.

The State Board of Public Instruction has previously been involved in a series of appeals and rulings on the issue. A review of those decisions and rulings would not be of significant value here. What they serve to show primarily is an evolution in understanding of the application of compulsory attendance requirements to parents involved in home-education activities. The changes, while perhaps not yet definitive, were brought about largely through court interpretations.

The primary existing court interpretation is found in State v. Moorhead, 308 N.W.2d 60, (Ia. 1981). That decision involved a family which was engaged in the instruction of their children at home. Part of the Court's analysis of the parents' legal responsibility under the compulsory education statutes revolved around the meaning of "equivalent instruction." In defining the phrase the Court directed its attention to the curriculum requirements of public schools. The Court said as follows at page 64:

A fair reading of section 299.1 indicates that the term "equivalent instruction" refers back to the use of "public school" in paragraph one. Thus, "equivalent instruction" is instruction which is equal in kind and amount to that provided in the public schools.

Section 257.25, The Code, establishes detailed curriculum requirements for public and nonpublic schools. This provision establishes reasonable guidelines for determining the meaning of "equivalent instruction."

This view was followed in a district court decision in Floyd County which involved "equivalent instruction" requirements for parents enrolling their children in a nonpublic, nonapproved school. Johnson v. Charles City Com. Schs., No. 22981 (March 16, 1983). That decision is currently on appeal to the Iowa Supreme Court.

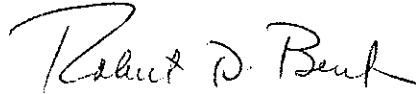
While the Courts have determined that the curriculum requirements of "equivalent instruction" are contained in Section 257.25(3) and (4), the difficulty at this point is that no court decision has established any guidance as to the amount of time which instruction is required to be provided directly by a certificated teacher. It was concluded in In re Robert and Linda Sessions, 3 D.P.I. App. Dec. 131, that the law, as currently interpreted, does not set specific time requirements that a certificated teacher must spend teaching students of compulsory attendance age. Apparently the law presumes that a certificated teacher will carry out the teaching duties in a manner judged by the teaching profession to be appropriate to meet the needs of the individual children involved.

While no appellate court decisions have yet provided guidance as to the amount of time a certificated teacher must spend teaching students in "private instruction," a Muscatine County Court decision does provide some guidance. The state argued in State v. Shuler, No. 53787 (Aug. 16, 1983), that the "equivalent instruction" requirement of Section 299.1 meant that the certificated teachers had to provide direct instruction for the same number of hours per week that a public school teacher spends with students in public schools. On the facts in the case, that meant that a teacher spending one hour with parents and three hours with students in a week was not "equivalent instruction." Without expressly rejecting the argument, the Court noted that teaching the three students involved in the case was different than teaching an average size class of elementary students and concluded that the evidence had not established beyond a reasonable doubt that the children involved in the "private instruction" were not receiving an "equivalent instruction." The parents were acquitted of the charges against them.

Applying the law, as we now know it, to the facts you present for ruling, I cannot conclude that the instruction is not equivalent. The children will be involved in "all-day classes once each month" and will receive "regular instruction by a certificated teacher in the home." While the time for instruction encompassed in the program may not be "equivalent" for some children, I cannot say that it is not "equivalent" for most of the children. While the needs of individual children may dictate a program with more contact with a certificated teacher, the program generally appears to meet the legal requirements of compulsory attendance statutes.

The fact that the program is offered by an "approved" school merely adds weight to my conclusion that parents enrolling children in the described program are in compliance with the state's compulsory attendance laws. When a nonpublic school decides to voluntarily comply with statutory and rule requirements of an approved school, it assures that the curriculum taught will be at least the minimum curriculum required of the public schools by Section 257.25 and that the curriculum will be taught by certificated teachers. Parents enrolling their children in educational programs provided by an approved school are in compliance with the compulsory education laws of the state.

Sincerely yours,

A handwritten signature in cursive script that reads "Robert D. Benton".

Robert D. Benton, Ed.D.
State Superintendent of Public Instruction

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