



Saskatchewan Home-based Education

Policy Manual

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Prepared for the Ministry of Education by:

Sage Consulting
Wanda Biffart, B. Ed., M. Ed
Medicine Hat, Alberta

Saskatchewan Home-based Education

Policy Manual

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INTRODUCTION

In Saskatchewan parents have a range of choices for their children's education, including the option of home-based education.

The Education Act, 1995 makes provisions for the registration of home-based education programs in Saskatchewan. *The Home-based Education Program Regulations* and the *Saskatchewan Home-based Education Policy Manual* provides the legal framework for the home-based education program. The *Saskatchewan Home-based Education Policy Manual* is a resource for school authorities, parents or guardians, and other interested parties outlining the policies and procedures for the operation of a home-based education program.

The Home-based Education Program Regulations support government's priorities of higher student achievement and strong system-wide accountability and governance. Home-based education legislation recognizes that parents have both the responsibility to provide for the education of their children and the right to direct their children's education from their home. But with these rights come responsibilities, and the *Saskatchewan Home-based Education Policy Manual* will assist in providing understanding of these responsibilities.

A child's education program requires careful planning. Parents need to consider several factors including but not limited to, the child's interests and learning styles, the family's beliefs and values, available program options, time available to support a child's education, and legislative requirements. It is important to have positive and ongoing communication and cooperation between the parent directing the home-based education program and the registering authority.

Policy A.1

Establishing and Accessing Policies and Procedures

Authority

The Education Act, 1995

4(1) The minister may:

- (r) subject to the regulations, establish policies relating to the administration of registered home-based education programs by boards of education and the conseil scolaire;

The Home-based Education Program Regulations, 2013

3 Subject to these regulations and consistent with the policies established by the minister, every board of education and the conseil scolaire shall establish policies and procedures for:

- (a) the registration of home-based education programs;
- (b) the renewal of the registration of home-based education programs;
- (c) the monitoring of registered home-based education programs;
- (d) the cancellation of the registration of home-based education programs; and,
- (e) the provision of services for home-based learners.

6(1) Every board of education and the conseil scolaire shall make the following services available to every home-based learner registered with it:

- (a) home-based learner assessments; and,
- (b) education and training in the operation of motor vehicles pursuant to section 189 of the Act.

(2) Every board of education and the conseil scolaire shall develop policies with respect to those services that the board of education or the conseil scolaire is prepared to make available to home-based learners, including:

- (a) participation in cultural and athletic activities, youth travel, outdoor education and similar activities pursuant to section 179 of the Act;
- (b) participation in programs of athletic and amateur sport pursuant to section 188 of the Act;
- (c) guidance and counseling services pursuant to section 191 of the Act;
- (d) services for pupils with intensive needs pursuant to section 178 of the Act;
and
- (e) enrolment in distance-education opportunities.

9 On the request of any person, a board of education, the conseil scolaire or the ministry, as the case may be, shall provide the person with a copy of the following, free of charge:

- (a) any policy or procedure that it has established with respect to home-based education;
- (b) any additional information that it has with respect to home-based education.

Intent

- Within the provincial legal framework, it is intended that boards of education and the conseil scolaire develop their own policies and procedures in areas of their responsibility.
- The intent of providing home-based educators with access to existing services, from among the services provided to other students in the school division, is to enhance or to enrich the educational experience of the pupils receiving instruction in home-based education programs.
- Providing home-based educators with consultative services related to home-based education ensures that home-based educators have the assistance and support they need.
- Boards of education/conseil scolaire shall develop policies related to home-based education in order to foster mutual respect and promote harmonious relationships between home-based educators and the registering authority.

Policy Statements

- Boards of education and the conseil scolaire shall establish policies and procedures pursuant to Regulations 3 and 6 and also provide consultative services to the home-based educator.
- The policies and procedures shall ensure the privacy and confidentiality of home-based educators.
- Home-based educators have the responsibility to initiate communication regarding the policies and procedures established by the board of education/conseil scolaire.

Policy A.2.1

Registration of Home-based Education Programs: Registration Criteria

Authority

The Education Act, 1995

4(1) The minister may:

- (p) make provision for the registration of home-based education programs;
- (r) subject to the regulations, establish policies relating to the administration of registered home-based education programs by boards of education and the conseil scolaire;

157(1) A pupil may be exempted from attendance at a school, and no parent, guardian or other person is liable to conviction for an offence pursuant to section 156 where:

- (c) the pupil is receiving instruction in a registered home-based education program;

The Home-based Education Program Regulations, 2013

3 Subject to these regulations and consistent with the policies established by the minister, every board of education and the conseil scolaire shall establish policies and procedures for:

- (a) the registration of home-based education programs;

4(1) A parent who wishes to become a home-based educator shall give notice of his or her intention to register a proposed home-based education program to, as the case requires:

- (a) the board of education of the school division in which the pupil who is to be the home-based learner in the proposed home-based education program is entitled to attend school in accordance with the Act; or,
- (b) the conseil scolaire.

(2) The notice mentioned in subsection (1) shall be made in accordance with:

(a) any policies established by the minister; and,

(b) any policies and procedures established by the board of education or the conseil scolaire, as the case may be.

(3) At the time notice is given pursuant to subsection (1), the parent shall give the registering authority a written education plan that is consistent with the policies established by the minister.

5 A board of education or the conseil scolaire, as the registering authority, shall register a home-based education program if it determines that the notice of intent mentioned in section 4 is in compliance with the Act, these regulations and the policies mentioned in that section.

10 Subject to sections 14 and 19, the registration of the home-based education program pursuant to section 5 or 22 is valid until the end of the school year for which the registration is granted.

Intent

- Each registered home-based education program should meet certain requirements with the intent of providing the home-based learner in the program with an exemption from compulsory attendance at a public school.
- The registration criteria relate to the generic structure and operation of a registered home-based education program.
- School-based instruction in the home, initiated by and under the direction of a public or independent school – for health, disability, or locational reasons – does not represent a home-based education program.
- Parents/home-based educators must personally be intending to direct the home-based education program for their children. For home-based educators to be directing a home-based education program, they must be responsible for and involved in the education of their home-based learners.
- While the home-based educators will be directing a home-based education program, the registering authority will be monitoring the program. The registering authority is not liable for anything done, or omitted, in good faith when registering, monitoring, or otherwise administering a home-based education program according to the regulations.

- No aspect of the notice of intent is intended to diminish or infringe on parents’ “right to direct their children’s education at and from their home in accordance with their conscientious beliefs, subject only to such reasonable limits prescribed by law that can be demonstrably justified in a free and democratic society”¹. Conscientious beliefs mean sincerely held religious or philosophical beliefs.
- Parents are required to meet the requirements for a registered independent school and to register with the Ministry of Education as a registered independent school if:
 - Parents establish a school in their home for their own children as well as for children from other families; or,
 - A group of parents hire a teacher to teach their children in one of the families’ homes.

Policy Statements

- Parents who elect to provide home-based education programs for their own children of compulsory school age (age 7 to 15 inclusive) are required:
 - to meet the registration criteria that are contained in the regulations; and,
 - to notify the appropriate registering authority before commencing their program(s) in order to have their program(s) registered (refer to Policy B.1 Notice of Intent).
- The registration criteria that are contained in the regulations are the maximum requirements with which parents must comply in order to have their program registered. A registering authority may not impose additional requirements, not contained in the regulations, before registering a home-based education program.
- Parents who elect to provide home-based education programs for their own children aged 6, 16, or 17 (i.e. not of compulsory school age), and who meet the registration criteria contained in the regulations, are entitled to have their programs registered with a registering authority.

¹ Saskatchewan Education, *Advisory Committee on Home-based Education, Final Report to the Deputy Minister of Education*, Volume I, Oct 1992, p. 34.

- The registration of a home-based education program does not, in and of itself:
 - award eligibility of the home-based learner for secondary level credits or secondary level standing; or,
 - establish the grade, level, or year in which the home-based learner is entitled to be enrolled in a public or independent school.
- When registering students less than 7 years of age, boards of education shall have the option to follow their established practices for enrolling pupils in Grade 1.

Policy A.2.2

Registration of Home-based Education Programs: Registration Process

Authority

The Education Act, 1995

4(1) The minister may:

- (p) make provision for the registration of home-based education programs;
- (r) subject to the regulations, establish policies relating to the administration of registered home-based education programs by boards of education and the conseil scolaire;

The Home-based Education Program Regulations, 2013

3 Subject to these regulations and consistent with the policies established by the minister, every board of education and the conseil scolaire shall establish policies and procedures for:

- (a) the registration of home-based education programs;

5 A board of education or the conseil scolaire, as the registering authority, shall register a home-based education program if it determines that the notice of intent mentioned in section 4 is in compliance with the Act, these regulations and the policies mentioned in that section.

8(1) In this section, “**official**” means an individual:

- (a) who is employed by a board of education or the conseil scolaire; and,
- (b) who is not engaged as a teacher, vice-principal or principal in a school.

(2) No board of education nor the conseil scolaire shall delegate to any official any powers granted to or responsibilities imposed on the board of education or the conseil scolaire pursuant to these regulations unless the official holds a valid teacher’s certificate issued pursuant to *The Teacher Certification and Classification Regulations, 2002*.

(3) The exercise of the powers or the fulfilment of the responsibilities by the official to whom the powers or responsibilities are delegated in accordance with subsection (2) is deemed to be the exercise of those powers or the fulfilment of those responsibilities by the board of education or the conseil scolaire, as the case may be.

10 Subject to sections 14 and 19, the registration of the home-based education program pursuant to section 5 or 22 is valid until the end of the school year for which the registration is granted.

Intent

- The registration of a home-based education program represents a determination by the registering authority that the parents have complied with the registration criteria for a home-based education program. It does not represent approval by the registering authority of the home-based education program.
- In order to ensure consistency throughout its jurisdiction, each registering authority shall designate one official to be responsible for the registration and monitoring of home-based education programs.
- A registering authority is responsible to ensure the compelling interest of the state is met in the education of home-based learners who are registered in home-based education programs, according to *The Education Act, 1995*, *The Home-based Education Program Regulations* and Policies.

Policy Statements

- Each registering authority shall designate one official to be responsible for the registration and the monitoring of home-based education programs within its jurisdiction. This person may not be assigned responsibility for home-based education as part of their duties as a principal, vice-principal or teacher.
- The registering official shall follow the registering procedures as outlined. The home-based education program is registered when the registering official signs and provides a written response, to the parent who provided the Notice of Intent, indicating the home-based education program is registered (See Policy B1).
- The registering official shall consider each Notice of Intent from a parent concerning a home-based education program according to the principles of:
 - freedom of conscience and religion in education; and,
 - fundamental justice.

- A registering authority may not refuse to register a home-based education program on the grounds that a parent failed to comply with the timelines and the parent made a reasonable attempt to comply.
- Failure of the parent to schedule or attend a conference shall not be grounds to deny the registration of a home-based education program.
- If a registering authority has registered a home-based education program the registration is valid until the end of the school year for which the registration was granted and is renewable annually.
- If the registering authority does not register the home-based education program, the parent who provided the Notice of Intent has the right to access the dispute resolution process according to Policy C.1.

Procedures

- Before registering the home-based education program, the registering official may request a conference with the parent who provided the Notice of Intent to discuss matters related to the notice and the home-based education program.
- Within 30 days, of receiving the Notice of Intent, the registering authority shall:
 - Review the Notice of Intent and determine that the notification complies with the Act, the regulations and the policies;
 - register the home-based education program; and,
 - notify, in writing, the parent who provided the Notice of Intent that the home-based education program has been registered.
- If the registering authority determines that the Notice of Intent is not in compliance with the Act, the regulations or the policies, the registering authority shall, within 30 days, give the parent who provided the Notice of Intent, a written response and details of the non-compliance.
- Within 15 days of receiving the written response of non-compliance from the registering authority, the parent may either:
 - supply additional information in writing or otherwise rectify the non-compliance; or,
 - arrange a conference to discuss the matter where either the additional information may be supplied or the matter may otherwise be resolved.

- If the parent does not supply the additional information or otherwise rectify the non-compliance, or if the registering authority determines that the notice is still not in compliance with the Act, the regulations and the policies, the registering authority shall:
 - provide written notification to the parent that it intends not to register the program with reasons why the program cannot be registered; and,
 - inform the parent of the dispute resolution process (see Policy C.1).

Policy A.3.1

Compulsory Services: Home-based Learner Assessments

Authority

The Home-based Education Program Regulations, 2013

6(1) Every board of education and the conseil scolaire shall make the following services available to every home-based learner registered with it:

- (a) home-based learner assessments;

Intent

- Home-based education programs are philosophically and structurally diverse. Some support regular testing of a home-based learner's educational progress and others do not. It is intended that home-based learner assessments, including standardized testing, should be regarded primarily as a service boards of education/conseil scolaire provide home-based educators, at the request of home-based educators.
- Home-based assessments, including standardized tests, can provide useful information to home-based educators in making instructional adjustments to a home-based learner's educational program, and should be used appropriately.
- Home-based educators are qualified to provide instruction to their children. Since assessment is part of the instructional process, home-based educators are also qualified to choose and use assessment techniques, including standardized tests. There are a variety of standardized tests, some of which specify strict qualification requirements and conditions for the administration and others do not. By ensuring that home-based educators meet the qualifications (according to the instructions of the test) to administer, determine and interpret the results of the test, the integrity of the individual standardized tests will be protected.
- In view of the compelling interest of the state in the education of all children, registering authorities should be able to initiate and administer assessments under certain circumstances as outlined in policy.
- A board of education/conseil scolaire is not expected to purchase test batteries it does not normally administer in its school division. For home-based learners, boards of education/conseil scolaire should use assessments that are normed on individual situations, as opposed to group or classroom situations.

- As with all pupils, upon entry and re-entry into the public education system, public school principals shall place in-coming home-based learners at the appropriate grade level in a fair and equitable manner.
- Any interpretation and use of standardized test results should be appropriate to the nature of the particular test in the context of a home-based learner assessment.

Policy Statements

- At the request of the home-based educator who is directing a home-based education program, each board of education/conseil scolaire shall provide one standardized achievement test for each home-based learner in each school year.
- A board of education/conseil scolaire shall determine, at its discretion, whether additional home-based learner assessments will be provided if requested by the home-based educator.
- The board of education/conseil scolaire shall accept home-based assessments, including standardized tests, that are administered and interpreted (according to the regulations and policies) by a home-based educator, or another person, at the expense of the home-based educator, provided that:
 - the home-based educator, or other person, meets the qualifications required by the specific assessment tool; and,
 - the home-based educator provides the registering authority evidence of the qualifications of the person administering and interpreting the assessment tool.
- A board of education/conseil scolaire shall not administer a particular standardized test if:
 - it has not previously administered the particular test in its school division to pupils enrolled in schools;
 - the registering authority has not indicated to the home-based educator, prior to the test, the purpose of the test, including the potential use of the results of the test;
 - the population norm of the particular test does not account for the social or cultural background of the home-based learner; or,
 - the particular test conflicts with the conscientious beliefs of the home-based educator as expressed in the written education plan, unless the test is included in policies established by the board according to Regulation 6.

- If administered and interpreted by the board of education/conseil scolaire, the registering authority shall provide the home-based educator with the results of the test and an interpretation of the results after the testing has occurred.
- The registering official shall have the option to initiate a home-based learner assessment, which may include standardized tests:
 - as part of an improvement plan (See Policy A.7);
 - at the entry or re-entry of a home-based learner into a public school in order to assist with the placement of the home-based learner in the appropriate grade; or,
 - as part of an assessment for a home-based learner who may have intensive needs (see Policy A.5).
- The home-based learner assessment shall be taken at a location that:
 - is chosen by the home-based educator and is acceptable to the registering authority; and,
 - meets the standards for the administration of the home-based learning assessment.
- At the time of initial registration of a home-based education program, a board of education/conseil scolaire shall not require the administration of home-based learner assessment as a condition of initial registration.

Policy A.3.2

Compulsory Service: Driver Education

Authority

The Education Act, 1995

189 Subject to the regulations, every school division and the conseil scolaire shall make provision for education and training in the elements of safety and competence in the operation of motor vehicles, for pupils who are eligible.

The Education Regulations, 1986

54(1) For the purposes of section 189 of the Act, a board of education and the conseil scolaire shall only offer a driver education and training program that is approved by the person designated as administrator pursuant to *The Traffic Safety Act*.

(2) Every board of education and the conseil scolaire shall retain an official record of pupil participation in the driver education and training program offered in its schools.

(3) Every board of education and the conseil scolaire shall submit to the minister at least once each year, in the form required by the minister, a record of every pupil who participates in the driver education and training program offered in its schools.

The Home-based Education Program Regulations, 2013

3 Subject to these regulations and consistent with the policies established by the minister, every board of education and the conseil scolaire shall establish policies and procedures for:

(e) the provision of services for home-based learners.

6(1) Every board of education and the conseil scolaire shall make the following services available to every home-based learner registered with it:

(b) education and training in the operation of motor vehicles pursuant to section 189 of the Act.

Intent

- Driver education is a requirement by Saskatchewan Government Insurance (SGI) and is currently funded provincially. Consistent access to driver education for all pupils in the province who are eligible is equitable.

Policy Statements

- Home-based educators are responsible to initiate communication with the board of education or the conseil scolaire regarding driver education:
 - by indicating on their Notice of Intent that they are requesting this service from the services provided by the school division or the conseil scolaire; or,
 - according to any policy or procedure established by the board of education or the conseil scolaire according to *The Home-based Education Program Regulation 3 (e)* and Policy A.1.
- The boards of education/conseil scolaire shall provide driver education to home-based students in the manner offered to school-based students, or in the manner proposed by the home-based educator and acceptable to the board/conseil scolaire.

Policy A.4.1

Optional Services: Learning Resource Materials

Authority

The Home-based Education Program Regulations, 2013

6(2) Every board of education and the conseil scolaire shall develop policies with respect to those services that the board of education or the conseil scolaire is prepared to make available to home-based learners, including:

- (a) participation in cultural and athletic activities, youth travel, outdoor education and similar activities pursuant to section 179 of the Act;
- (b) participation in programs of athletic and amateur sport pursuant to section 188 of the Act;
- (c) guidance and counselling services pursuant to section 191 of the Act;
- (d) services for pupils with intensive needs pursuant to section 178 of the Act;
and
- (e) enrolment in distance-education opportunities.

15 A home-based educator:

- (b) is responsible for the education of the home-based learner in accordance with the written education plan or improvement plan, as the case may be.

Intent

- Home-based educators are responsible for the education of the home-based learner, which includes selecting programs and learning resources.
- Boards of education/conseil scolaire may provide learning resource materials for the purpose of enhancing the home-based education program.

Policy Statements

- The registering authority is not responsible for the hiring of tutors or for the selection of programs, courses, textbooks and other learning resource materials for the registered home-based education program or home-based learner.

- The registering authority may, if requested by a home-based educator, provide courses, textbooks, other learning resource materials and information to a home-based educator.
- For accessing potential learning resource materials, home-based educators shall follow the policies and procedures developed by the registering authority in accordance with *The Home-based Education Program Regulation* 6(2).

Policy A.4.2

Optional Services: Supporting Secondary Credits

Authority

The Home-based Education Program Regulations, 2013

6(2) Every board of education and the conseil scolaire shall develop policies with respect to those services that the board of education or the conseil scolaire is prepared to make available to home-based learners, including:

- (a) participation in cultural and athletic activities, youth travel, outdoor education and similar activities pursuant to section 179 of the Act;
- (b) participation in programs of athletic and amateur sport pursuant to section 188 of the Act;
- (c) guidance and counselling services pursuant to section 191 of the Act;
- (d) services for pupils with intensive needs pursuant to section 178 of the Act;
and
- (e) enrolment in distance-education opportunities.

Intent

- The Ministry of Education does not recognize home-based education programs as courses towards the credit requirements for secondary level completion. However, registering authorities may support home-based learners in earning secondary level credits.

Policy Statements

- Registering authorities may provide services to home-based educators related to home-based learners acquiring secondary credits including any of the following:
 - sending a letter of request to the Office of the Registrar requesting permission for a home-based learner to challenge departmental exams at an earlier age (minimum 15 years of age). The letter of request acknowledges the home-based learner has covered the course material;

- granting permission for home-based learners to take courses at a secondary school in the school division/conseil scolaire; or,
- evaluating, usually through school staff, the home-based learner's knowledge and skills based on a course the home-based learner has taken:
 - from an educational institution outside of Saskatchewan that is not recognized by its provincial or state officials; or,
 - as part of the home-based education program.

Other Supporting Documents:

- Refer to the document “Home-based Education: How Can Students Earn Secondary Level Credits” which can be found on the website of the Ministry of Education at: www.education.gov.sk.ca/home-based.
- To graduate from secondary school (grades 10 through 12), a student must register in and complete 24 credits from programs recognized by the Ministry of Education. There are specific required courses and elective courses. For more information see www.curriculum.gov.sk.ca.
- Adults can complete a high school standing under the Adult 12 policy which allows adult students (18 years of age and out of school for at least one year) to complete with seven credits (5 must be at the 30 level; the math and science requirement may be at the 20 or 30 level). An Adult Grade 12 is considered equivalent to a regular Grade 12 standing and is recognized by colleges and universities for admission. See Credit Requirements for Secondary Level Completion for specific requirements for an Adult 12 program.
- Adult students (18 years of age and out of school for one year) are allowed to earn credits by challenging Grade 12 departmental exams for 100 percent of the final mark. (See Adult Secondary Completion [Adult 12] Policy at www.aeel.gov.sk.ca.) Home-based learners challenge departmental examinations under this policy.
- In exceptional circumstances, permission may be granted to home-based students to challenge departmental exams at an earlier age (minimum 15 years of age). An official from the school division in which the home-based student is registered must send a letter of request to the Office of the Registrar. The letter of request acknowledges the student has covered the course material. Credit will be granted pursuant to the Adult Secondary Completion (Adult 12) Policy.

- Adults wishing to complete courses under the Adult 12 policy can also go to a number of post-secondary locations that include four SIAST campuses, nine regional colleges, the Dumont Technical Institute (DTI) and the Saskatchewan Indian Institute of Technology (SIIT).
- Although the individual GED tests are not recognized towards Saskatchewan secondary level credits, Saskatchewan does provide a Grade 12 High School Equivalency Diploma for adults who have successfully completed the GED tests (reading, writing, social studies, mathematics and science). To write the required tests, a person must be 18 years of age and a resident of Saskatchewan. SIAST campuses, regional colleges and some community based organizations (CBO's) offer courses to help students prepare for the GED tests. Individuals can also prepare at home by using a self study guide available in most book stores and public libraries.
- The GED diploma is accepted by most employers and some post-secondary institutions (e.g. SIAST recognizes GED for many courses). Saskatchewan universities do not recognize the GED as meeting the required prerequisites for direct admission; however, it is considered as part of the criteria for the mature admissions policy.
- For courses completed through a school that is approved and recognized by its provincial or state ministry of education, the Ministry of Education will evaluate the program based on the official transcript and the student may receive credit (standing granted).
- Students who have completed courses through schools outside of Saskatchewan that are not recognized by their provincial or state ministry of education, or course work as part of their home-based program, can register in the course in a Saskatchewan high school, have their knowledge and skills evaluated based on the learning objectives of Saskatchewan's curriculum and assigned a mark by the school. This can be arranged through the Office of the Registrar, Ministry of Education and in consultation with the school principal.

Policy A.4.3

Optional Services: Distance Education

Authority

The Education Act, 1995

4(1) The minister may:

- (r) subject to the regulations, establish policies relating to the administration of registered home-based education programs by boards of education and the conseil scolaire;

The Home-based Education Program Regulations, 2013

3 Subject to these regulations and consistent with the policies established by the minister, every board of education and the conseil scolaire shall establish policies and procedures for:

- (e) the provision of services for home-based learners.

6(2) Every board of education and the conseil scolaire shall develop policies with respect to those services that the board of education or the conseil scolaire is prepared to make available to home-based learners, including:

- (e) enrolment in distance-education opportunities.

Intent

- Access to provincial distance learning opportunities may enhance a home-based education program.
- Providing comparable access to distance education learning to home-based learners will provide consistency and equity throughout the school division/conseil scolaire.

Policy Statements

- If a board of education/conseil scolaire provides distance education to students enrolled in their schools, home-based educators shall have access, on behalf of their home-based learners, to distance education in the same manner as students registered in their schools.

- Home-based educators shall contact the registering official regarding the policies and procedures established by the board of education/conseil scolaire related to accessing distance education.
- Home-based educators shall register their home-based learners for distance education through the board of education/conseil scolaire in which they are registered.
- Home-based learners that are registered with the Ministry of Education shall have access to distance learning opportunities provided within the province at the expense of the home-based educator.

Policy A.5

Home-based Learners with Intensive Needs

Authority

The Home-based Education Program Regulations, 2013

6(1) Every board of education and the conseil scolaire shall make the following services available to every home-based learner registered with it:

(a) home-based learner assessments;

(2) Every board of education and the conseil scolaire shall develop policies with respect to those services that the board of education or the conseil scolaire is prepared to make available to home-based learners, including:

(d) services for pupils with intensive needs pursuant to section 178 of the Act;

Intent

- Parents choose home-based education programs for their children in order to achieve philosophical or religious objectives that they may not or cannot achieve within the regular school system. However, home-based learners with intensive needs may require intensive educational services that home-based educators cannot be expected to provide without support from the board of education/conseil scolaire.
- Because pupils with intensive needs are unique, the obligations which the regulations and provincial policies place on boards of education/conseil scolaire should also be unique. The intent is that the assessment of pupils with intensive needs should be the responsibility of public authorities, whether pupils are receiving their education at school or at home.
- An intensive needs assessment is intended to be helpful to the home-based educator who has home-based learners with intensive needs. The assessment may determine the pattern of strengths that the home-based learner possesses that could be used as the basis for appropriate adjustments to the learner's home-based education program.
- In order to meet the compelling interest of the state in the education of all children, under certain circumstances public authorities should also be able to initiate and administer home-based learner assessments to determine intensive needs.

- It is intended that home-based learners who have intensive needs be eligible for inclusion in the board of education/conseil scolaire's prevalence rates for Supports for Learning funding according to *The Education Act, 1995* and the regulations. As with all pupils with intensive needs, unless qualified people are involved in the intensive needs assessment, the pupils will not be included in the board of education/conseil scolaire's prevalence rates for Supports for Learning funding.
- When an intensive needs assessment has been conducted, the intent is that the home-based educator remain responsible for making appropriate instructional adjustments, if any, to the home-based learner's program during the school year or when renewing the registration of the program. However, if the home-based educator does not make such appropriate adjustments, the registration of the program may potentially not be renewed, or may be cancelled.

Policy Statements

- Each board of education/conseil scolaire shall provide or arrange for an assessment of a home-based learner where the home-based educator can demonstrate the need for the intensive needs assessment.
- A board of education/conseil scolaire shall have the option to initiate an intensive needs assessment of a home-based learner:
 - as part of an improvement plan; or,
 - if the board/conseil scolaire reasonably believes that:
 - the home-based learner has a capacity to learn that is compromised by a cognitive, social-emotional, behavioural or physical condition; or,
 - the home-based educator is not already taking appropriate measures to provide an educational program appropriate for the age and ability of the home-based learner.
- Prior to the assessment, the board/conseil scolaire shall indicate to the home-based educator the purpose of the assessment, including the potential use of the results of the assessment.
- An intensive needs assessment shall occur at a location that:
 - is chosen by the home-based educator and is acceptable to the board/conseil scolaire; and,
 - meets the standards for the administration of the assessment.
- The home-based educator shall be responsible for any transportation and

accommodation costs of a home-based learner and escort that may be associated with the intensive needs assessment.

- After an intensive needs assessment has been conducted, the appropriate board/conseil scolaire personnel shall:
 - provide the home-based educator with the results and an interpretation of the results of the assessment; and,
 - discuss with the home-based educator what instructional adjustments, if any, the home-based educator should make to the educational program of the home-based learner.
- Each board of education/conseil scolaire shall develop policies with respect to:
 - which services it is prepared to make available to home-based learners with intensive needs from among the services that the board already provides to other students with intensive needs in the school division/conseil scolaire; and,
 - how home-based educators can access, on behalf of their home-based learner with intensive needs, the services that the board or conseil scolaire is prepared to make available.
- The board of education/conseil scolaire officials shall have the option of providing support services to the parents in developing a personal program plan or to access other appropriate intensive needs services in the school division/conseil scolaire.
- Early entrance for home-based education programs shall be provided according to the board of education/conseil scolaire's policies related to services for pupils with intensive needs.
- The home-based educator shall have the option, within 15 days after being notified of the decision of the board/conseil scolaire to initiate an intensive needs assessment for a home-based learner, to refer the matter to the dispute resolution process by giving written notice to the board/conseil scolaire.
- Personnel conducting intensive needs assessments shall meet the requirements according to *The Education Act, 1995* and the regulations.

Policy A.6

Monitoring Home-based Education Programs

Authority

The Education Act, 1995

4(1) The minister may:

- (q) make provision for the monitoring of registered home-based education programs;

The Home-based Education Program Regulations, 2013

12(1) Every registering authority shall monitor all registered home-based education programs registered with it:

- (a) to assess compliance with the Act, these regulations and the policies and procedures mentioned in subclauses 15(a)(ii) and (iii); and
- (b) to assess the progress of the home-based learner in relation to:
 - (i) the written education plan; and
 - (ii) the home-based learner's age and ability.

(2) If the registering authority determines that a home-based educator is not in compliance with the Act, these regulations or the policies and procedures mentioned in subclauses 15(a)(ii) and (iii), the registering authority shall contact the home-based educator to discuss the steps to be taken by the home-based educator to ensure compliance.

(3) If the registering authority determines that a home-based learner is not making satisfactory educational progress in relation to the written education plan, the registering authority shall:

- (a) provide evidence to the home-based educator of the lack of satisfactory progress; and
- (b) contact the home-based educator to discuss establishing an improvement plan.

15 A home-based educator:

(a) shall comply with:

- (i) the Act and these regulations;
- (ii) any policies established by the minister; and
- (iii) if the home-based education program is registered with a board of education or the conseil scolaire, the policies and procedures established by the board of education or the conseil scolaire; and

(b) is responsible for the education of the home-based learner in accordance with the written education plan or improvement plan, as the case may be.

Intent

- The monitoring of registered home-based education programs by board of education/conseil scolaire officials represents the major way in which the state is protecting its compelling interest in the education of the children who are receiving instruction in home-based education programs.
- In the case of an alleged failure of home-based educators to provide an adequate education for their home-based learners, the burden of proof resides with the public authority. Therefore, the board of education/conseil scolaire official must have access, at reasonable times, to information about the progress of the home-based learner in order to substantiate a concern that a particular program might not be appropriate for the age and ability of a particular learner.
- The monitoring of home-based education programs must recognize:
 - the philosophical and structural diversity of home-based education programs; and,
 - the distinct philosophical approach and the written education plan of each home-based education program.
- Because home-based education programs are philosophically and structurally diverse, the intent is that monitoring shall focus on educational outcomes rather than on educational processes.
- The definition and the practice of monitoring must be consistent with the *Charter of Rights and Freedoms, 1982*, as interpreted by the courts, as well as other legal principles and provisions.

- Regulations and policies with respect to monitoring should balance the respective rights and interests of home-based learners, their parents, and the state in the education of all children.
- The intent of the regulations and policies is to prescribe the maximum legal responsibilities of boards of education/conseil scolaire and the maximum legal requirements of home-based educators. Beyond these maximums, boards of education/conseil scolaire and home-based educators retain the freedom to enter into mutually agreeable arrangements, including conferences and home visits, that will enhance the education of learners on home-based education programs.
- The intent of the policy is to provide clarification to board of education/conseil scolaire officials who have the authority to enter the home of a pupil.
 - In the case of a registered home-based education program, board of education/conseil scolaire officials, in their capacity as public administrators of the home-based education regulations and policies, have no authority under *The Education Act, 1995* to enter the dwelling of a home-based educator, without the consent of the home-based educator.
 - In the case of a parent who is educating their child at home and is not registered with a board of education/conseil scolaire, a local attendance counselor does have the authority to enter the dwelling of the parents. The attendance counselor must obtain a warrant to this effect from a magistrate or justice of the peace.

Policy Statements

- Monitoring shall respect the written education plan of each home-based education program.
- Without the consent of the home-based educator, officials shall not supervise a home-based education program on-site.
- For each home-based learner on their program, all home-based educators shall:
 - maintain a portfolio of work (Policy B.5); and,
 - send an annual progress report to their board of education/conseil scolaire (Policy B.6).
- When monitoring registered home-based education programs, the responsible board of education/conseil scolaire official shall assume that the home-based learners are making satisfactory educational progress unless there is evidence to the contrary.

- If the registering authority determines that the home-based educator has failed to provide, in the annual progress report, information agreed to in the written education plan, the registering authority shall give the home-based educator written notice and the details of the non-compliance.
- If the registering authority gives the home-based educator notice and details of non-compliance related to the annual progress report, the home-based educator must provide the information or otherwise rectify the non-compliance within 15 days of receiving the written notice.
- If the home-based educator does not supply the additional information or otherwise rectify the non-compliance after notice according to this policy, or if the registering official determines that the additional information still does not comply with what was agreed to in the written education plan, the registering authority shall, within 15 days:
 - notify the home-based educator in writing that the board of education/conseil scolaire intends to cancel the home-based education program,
 - provide reasons why the program will be cancelled; and,
 - inform the home-based educator of the dispute resolution process according to the regulations and policies (Policy A.8 and the all policies in Section C).
- If it is determined that a home-based learner is not making satisfactory educational progress on a home-based education program, the home-based educator and the home-based learner shall have the opportunity, by means of an improvement plan (see Policy A.7), to improve the home-based learner's educational progress before the program is cancelled.
- Boards of education shall review requests for amendments to a written education plan in accordance with policies and procedures for reviewing the original written education plan (Policy B.2).

Policy A.7

Improvement Plan

Authority

The Education Act, 1995

4(1) The minister may:

- (q) make provision for the monitoring of registered home-based education programs;

The Home-based Education Program Regulations, 2013

12(1) Every registering authority shall monitor all registered home-based education programs registered with it:

- (a) to assess compliance with the Act, these regulations and the policies and procedures mentioned in subclauses 15(a)(ii) and (iii); and
- (b) to assess the progress of the home-based learner in relation to:
 - (i) the written education plan; and
 - (ii) the home-based learner's age and ability.

(2) If the registering authority determines that a home-based educator is not in compliance with the Act, these regulations or the policies and procedures mentioned in subclauses 15(a)(ii) and (iii), the registering authority shall contact the home-based educator to discuss the steps to be taken by the home-based educator to ensure compliance.

(3) If the registering authority determines that a home-based learner is not making satisfactory educational progress in relation to the written education plan, the registering authority shall:

- (a) provide evidence to the home-based educator of the lack of satisfactory progress; and
- (b) contact the home-based educator to discuss establishing an improvement plan.

13(1) If the registering authority provides evidence that a home-based learner has not made satisfactory progress in relation to the written education plan, the registering authority shall notify the home-based educator, in writing, that it requires changes in the home-based learner's registered home-based education program.

(2) Subject to subsection (3), within 30 days after the date on which the home-based educator receives the written notice mentioned in subsection (1), the home-based educator shall provide the registering authority with an improvement plan that meets the requirements set out in the policies established by the minister.

(3) By giving written notice to the other party, the home-based educator or the registering authority may refer any of the following differences or conflicts to the dispute resolution process:

- (a) if the home-based educator does not agree that an improvement plan is necessary;
- (b) if the home-based educator and the registering authority are unable to agree on an improvement plan.

15 A home-based educator:

- (b) is responsible for the education of the home-based learner in accordance with the written education plan or improvement plan, as the case may be.

Intent

- Developing an improvement plan is within the monitoring process that represents the major way the state is protecting its compelling interest in the education of children who are receiving instruction in a home-based education program.
- The intent of the improvement plan is to improve the home-based learner's educational progress and outcomes.
- The process to develop an improvement plan respects the ability of the home-based educator to develop an improvement plan and provides support to the home-based educator in order that the home-based learner achieves satisfactory educational outcomes.

Policy Statements

- In initiating an improvement plan, the registering official shall be consistent with existing educational practice in the school division/conseil scolaire. The official may not require an improvement plan for a home-based learner who is achieving, on a nationally normed standardized achievement test, at a level above the level that the board/conseil scolaire would normally initiate support for a student enrolled in a public school in the school division/conseil scolaire.
- When the registering official has determined that the home-based learner has not made satisfactory progress in relation to the written education plan and appropriate with his or her age and ability, the registering authority shall, in writing, request that an improvement plan be developed in order for student outcomes to be achieved.
- The home-based educator shall provide the registering official an improvement plan within 30 days of receiving written notice.
- When a home-based learner is on an improvement plan, the responsible board of education/conseil scolaire official shall have the option to require more intensive monitoring of the home-based education program, including:
 - periodic standardized tests in accordance with Policy A.3.1;
 - reports of the home-based learner's progress at reasonable intervals during the school year; or,
 - additional communication with the home-based educator at reasonable intervals of time in order to review the progress of the home-based learner.
- When an improvement plan is established, the plan should include but not be limited to:
 - the particular outcomes that the improvement plan is intending to address;
 - how and when the home-based learner's progress will be assessed;
 - the reporting and communication plan with the registering official; and,
 - the time period of the improvement plan (determined by the home-based educator and acceptable to the registering authority).
- In order to develop an improvement plan, the board of education/conseil scolaire shall provide an opportunity for the home-based educator to partner with:

- the registering authority or other official; or,
- another person, determined by and at the expense of the home-based educator.
- If the improvement plan is not acceptable to the registering authority, the registering authority will indicate, in writing, his or her concern and provide other options to improve the home-based learner's program.
- If, at any time during a school year, a board of education/conseil scolaire official determines that the home-based learner has achieved the particular outcomes, the official may terminate the improvement plan.
- If the home-based educator does not agree that an improvement plan is necessary, or if the registering authority and the home-based educator are unable to agree on an improvement plan, either the home-based educator or the registering authority may refer the disagreement to the dispute resolution process.
- If the home-based educator does not agree that an improvement plan is necessary, or if the registering authority and the home-based educator are unable to agree on an improvement plan, the registering authority shall, in writing and within 15 days:
 - notify the home-based educator that the board of education/conseil scolaire intends to cancel the home-based education program;
 - provide reasons why the program will be cancelled; and,
 - inform the parent of the dispute resolution process. (See Policy A.8)
- Within 15 days after receiving notice, the home-based educator may refer the matter to the dispute resolution process by giving written notice to the registering authority.

Policy A.8

Cancellation of Home-based Education Program

Authority

The Education Act, 1995

148 Where a difference or conflict arises in the relationship of a pupil to the school, the parent or guardian, on behalf of that pupil, is entitled to immediate access to procedures established by the board of education or the conseil scolaire for the purposes of investigation and mediation of any differences or conflicts.

The Home-based Education Program Regulations, 2013

14(1) A registering authority may cancel the registration of a home-based education program in accordance with this section if the registering authority can substantiate all or any of the following:

- (a) that the home-based educator obtained the registration of the home-based education program through false or misleading information;
- (b) that the home-based educator is not complying with the Act, these regulations or the policies and procedures mentioned subclauses 15(a)(ii) and (iii);
- (c) that the home-based educator failed to create and implement an improvement plan when required to do so pursuant to section 13;
- (d) that the home-based learner is not making satisfactory progress in relation to:
 - (i) the written education plan or improvement plan; or
 - (ii) the home-based learner's age and ability.

(2) If a registering authority intends to cancel the registration of a home-based education program, the registering authority shall immediately:

- (a) notify the home-based educator, in writing, of:
 - (i) the registering authority's intention to cancel the registration; and
 - (ii) the reasons for the intended cancellation; and

- (b) meet with the home-based educator to attempt to resolve any differences or conflicts.
- (3) If a board of education or the conseil scolaire, as the registering authority, and the home-based educator fail to resolve the difference or conflict, the board of education or the conseil scolaire shall give the home-based educator written notice of:
- (a) the procedures established by the board of education or the conseil scolaire, as the case may be, pursuant to section 148 of the Act for resolving the difference or conflict; and
 - (b) the home-based educator's right to refer the difference or conflict to the dispute resolution process.
- (4) If the home-based educator decides not to use the procedures mentioned in clause (3)(a) or is dissatisfied with the decision resulting from using those procedures, the home-based educator may apply to refer the difference or conflict to the minister pursuant to subsection 21(2).
- (5) A home-based educator shall apply to refer a difference or conflict to the dispute resolution process within 30 days after the later of:
- (a) the date on which the home-based educator received the written notice mentioned in subsection (3); and
 - (b) the date of a decision using the procedures established pursuant to section 148 of the Act.
- (6) If the home-based educator does not apply to refer the difference or conflict to the dispute resolution process within the period mentioned in subsection (5) or if the basis for the cancellation is not remedied through the dispute resolution process, the board of education or conseil scolaire, as the registering authority, may cancel the registration of the home-based education program.
- (7) If the registering authority cancels the registration of a home-based education program in accordance with this section, it shall give the home-based educator, within 15 days after the cancellation:
- (a) written notice of the cancellation; and
 - (b) written reasons for the cancellation.
- (8) The cancellation of a home-based education program pursuant to subsection (7) is not referable to the dispute resolution process.

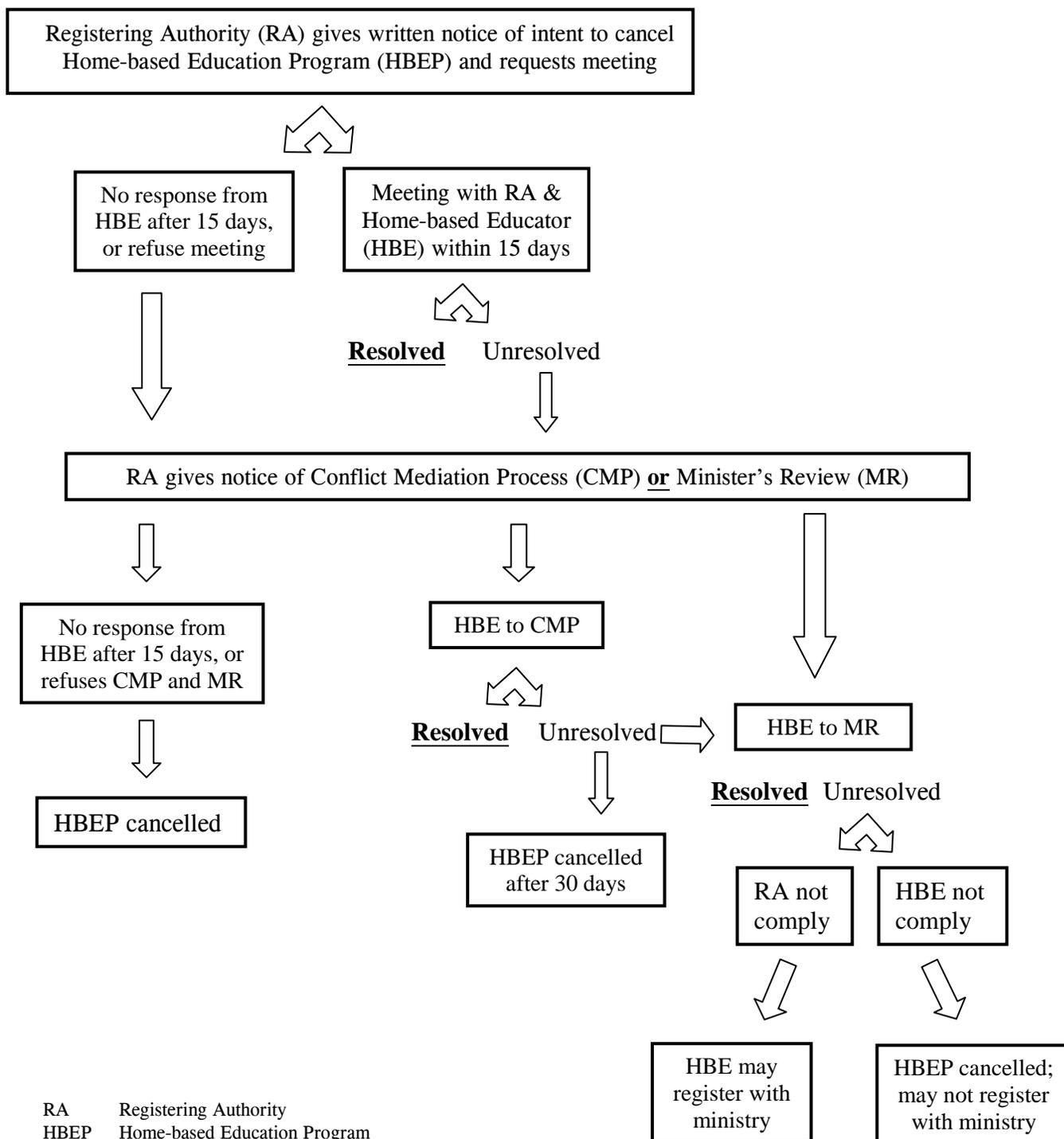
Intent

- The cancellation of a home-based education program shall be handled through a clearly defined process, that reflects the principles of fundamental justice and administrative fairness.

Policy Statements

- The registering authority shall provide the home-based educator with the opportunity to meet within 15 days of the date of notice of intent to cancel the registration. The meeting date, time and location shall be chosen by the home-based educator and be acceptable to the registering authority.
- If, after 15 days, the home-based educator does not communicate or respond to the written notice of intent to cancel the registration of the home-based education program, the registering authority shall give written notice according to Regulation 14(3).
- As provided in Regulation 14(1), the registering authority shall make no decision to cancel the registration of a home-based education program until he or she has considered any written and/or oral information provided by the home-based educator who is directing the home-based education program.
- Decisions to cancel the registration of a home-based education program shall be made in a fair and consistent manner, taking into account the interests of the home-based educator and the home-based learner on the program.
- If a home-based education program is cancelled according to Regulation 14, and if other home-based education programs are registered by the home-based educator, the home-based educator may continue to operate the home-based education programs for their other home-based learners.

Dispute Resolution Process in the Cancellation of a Home-based Education Program



RA Registering Authority
 HBEP Home-based Education Program
 HBE Home-based Educator
 CMP Conflict Mediation Process of the board of education/conseil scolaire
 (section 148 of *The Education Act, 1995*)
 MR Minister's Review

Policy A.9

Permanent Records

Authority

The Freedom of Information and Protection of Privacy Act, 1990-91

29(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

- (a) for the purpose for which the information was obtained or compiled by the local authority or for the use that is consistent with that purpose;

The Home-based Education Program Regulations, 2013

11(1) Every registering authority shall maintain a permanent record for each home-based learner registered with it.

(2) The permanent record mentioned in subsection (1) shall include:

- (a) all notices of intent received pursuant to section 4 or 22 with respect to the home-based learner;
- (b) the written education plan, including any amendments, received for each school year;
- (c) correspondence with the home-based educator with respect to the registration, monitoring and renewal of the registered home-based education program;
- (d) annual progress reports;
- (e) the results of any tests or home-based learner assessments administered pursuant to these regulations; and
- (f) documents relating to any difference or conflict that was dealt with in accordance with the dispute resolution process.

Intent

- Similar to the cumulative records maintained for students in schools, the home-based learner's permanent record is the compilation of information that the registering authority maintains for the learner. It contains factual, objective and professional information regarding a home-based learner's academic progress. The information is valuable for the monitoring of home-based education programs and responding to requests for services for the learner from year to year.
- To assist in the successful transition of a home-based learner to another registering authority or to an educational institution, the expectation is that the permanent record will follow the home-based learner. When the permanent record is transferred, responsibility for the record is also transferred.

Policy Statements

- Registering authorities are responsible for ensuring that, at all times, permanent records are kept in a safe, secure environment and are protected against accidental destruction or loss and unauthorized access.
- The information in permanent records is collected primarily for the purpose of monitoring home-based education programs and providing requested services to the learners.
- Access to permanent records shall generally be provided to those individuals:
 - involved in the monitoring of the home-based programs;
 - providing services that require specific information contained in the record; or,
 - involved in meeting the Ministry of Education's reporting requirements according to Regulation 7.
- Home-based educators and their home-based learners shall also have access to their permanent records and may consent to have other persons access their permanent records. In circumstances involving child custody arrangements, it is generally assumed that both parents have equal access unless a court order or separation agreement provides otherwise. A copy of the most recent order or agreement should be included in the permanent record.

- The transfer of a home-based learner's permanent record to a new registering authority or school shall be similar to the transfer of a student's cumulative record. Since the permanent record is necessary for the home-based learner's education and a transfer is consistent with the purpose for which the information is collected, a registering authority does not require permission from the parent/home-based educator or guardian to release the permanent record to another registering authority.
- If a home-based learner transfers to another province or country, the home-based educator may be given a copy of the home-based learner's permanent record. The home-based educator is then responsible to provide the information to the new jurisdiction. A copy of the permanent record may be sent directly to educational institutions in other jurisdictions as long as the original record is retained and the registering authority ensures that privacy issues will be adequately addressed in the receiving jurisdiction.

Other Supporting Documents

- Guidelines for the permanent records of home-based learners are similar to those developed for *The Student Cumulative Record Guidelines, 2012*.
- Guidelines to determine who has access to the permanent record of the home-based learner are provided by *The Freedom of Information and Privacy Act 29(2)(a)*.

Guidelines

- In order to transfer and receive personal records successfully, the following procedures may be followed:
 - The registering authority or school that receives a new student/home-based learner is responsible for requesting, in writing, the personal record as soon as possible after the home-based learner's arrival.
 - The written request for the personal record may be similar to the request for the transfer of a cumulative record.
 - The registering authority receiving the request would send the permanent record by registered mail. The request form would accompany the record.
 - Upon receiving the permanent record, the school or registering authority would update the Student Data System with the Ministry of Education.

- If the registering authority does not receive a request for the home-based learner's permanent record, the following procedures may be followed:
 - The registering official should run a Not Re-enrolled Report through the Student Data System (SDS) to determine whether the student has re-enrolled in another school or the parent has given Notice of Intent to register a home-based education program.
 - If the learner appears as “not re-enrolled” and is of compulsory school age, steps should be taken to determine the location of the student.
 - If the learner does not appear on the Not Re-enrolled Report, the learner may have registered in another school or with a registering authority, left the province, passed the school-leaving age of 16, or is deceased.
 - If the learner's name does appear on the Not Re-enrolled Report, the learner has not registered in a school or the home-based education program is not registered with a registering authority in Saskatchewan. It is expected that the school division/conseil scolaire will continue making efforts to re-engage the learner.
 - The sending registering authority should retain the permanent record.

Policy B.1

Notice of Intent

Authority

The Education Act, 1995

4(1) The minister may:

- (p) make provision for the registration of home-based education programs;
- (r) subject to the regulations, establish policies relating to the administration of registered home-based education programs by boards of education and the conseil scolaire;

156(1) Except as otherwise provided in this Act, every parent, guardian or other person having charge of a pupil who is of compulsory school age shall take all steps that are necessary to ensure regular attendance of that pupil:

- (a) at the school determined or authorized by the board of education of the school division in which the pupil resides and for the period during which the school is in operation in each year; or
- (b) at the francsaskois school determined or authorized by the conseil scolaire in the francophone education area in which the parent or guardian resides and for the period during which the francsaskois school is in operation each year.

157(1) A pupil may be exempted from attendance at a school, and no parent, guardian or other person is liable to conviction for an offence pursuant to section 156 where:

- (c) the pupil is receiving instruction in a registered home-based education program;

The Home-based Education Program Regulations, 2013

3 Subject to these regulations and consistent with the policies established by the minister, every board of education and the conseil scolaire shall establish policies and procedures for:

- (a) the registration of home-based education programs;

4(1) A parent who wishes to become a home-based educator shall give notice of his or her intention to register a proposed home-based education program to, as the case requires:

(a) the board of education of the school division in which the pupil who is to be the home-based learner in the proposed home-based education program is entitled to attend school in accordance with the Act; or

(b) the conseil scolaire.

(2) The notice mentioned in subsection (1) shall be made in accordance with:

(a) any policies established by the minister; and

(b) any policies and procedures established by the board of education or the conseil scolaire, as the case may be.

(3) At the time notice is given pursuant to subsection (1), the parent shall give the registering authority a written education plan that is consistent with the policies established by the minister.

5 A board of education or the conseil scolaire, as the registering authority, shall register a home-based education program if it determines that the notice of intent mentioned in section 4 is in compliance with the Act, these regulations and the policies mentioned in that section.

10 Subject to sections 14 and 19, the registration of the home-based education program pursuant to section 5 or 22 is valid until the end of the school year for which the registration is granted.

Intent

- A registering authority is responsible to ensure that the compelling interest of the state is met in the education of pupils who are registered in home-based education programs according to the legal framework represented by the *Home-based Education Program Regulations 2013* and Home-based Education Program Policies.
- To ensure consistency throughout the province, parents shall notify the registering authority on the “Notice of Intent and Registration of a Home-based Education Program form” (Appendix B) prescribed by the Ministry of Education.
- Before starting their program, parents are expected to have positive reasons for initiating a home-based education program and to have planned the home-based education program, including the services they are requesting from the services provided by the school division.

Policy Statements

- Parents who elect to provide home-based education programs for their own children of compulsory school age (age 7 to 15 inclusive) are required to:
 - notify the registering authority **before** commencing their programs; and,
 - attach their written education plan.
- A parent shall provide written notice on the “Notice of Intent and Registration of a Home-based Education Program form” that is prescribed by the minister (Appendix B) and shall include:
 - the name of the parent who is initiating and who is responsible for directing the home-based education program;
 - the address and telephone number of the home at and from which the home-based education program will be provided;
 - the name, gender and date of birth of the student on the program;
 - the starting date of the home-based education program;
 - if applicable, the name of the last school, registered independent school or other educational institution in which the student was enrolled;
 - the last grade completed by the student at that school, registered independent school or other educational institution;
 - the written education plan for the student in the home-based education program;
 - the services selected by the parent from the services provided by the school division/conseil scolaire; and,
 - a declaration signed by the parent affirming:
 - that the information supplied is correct;
 - that the parent is directing the home-based education program; and,
 - that the parent is accepting responsibility for the education of the pupil in the home-based education program.

- The Notice of Intent and the written education plan prescribed in subsection (4) shall be received by the registering authority within the following timelines:
 - where the registering authority had registered a home-based education program for the student for the previous school year, by August 15 before the start of instruction for the school year for which the notification is given;
 - at least 30 days before the start of instruction for a school year in September of a year, and in any event by August 15 of that year;
 - at least 30 days before a student of compulsory school age would be legally required to attend school in accordance with the Act;
 - within 30 days after a student becomes entitled to attend school in a new school division; or,
 - at least 30 days before the date the parent intends to withdraw a pupil of compulsory school age from a school, registered independent school or other educational institution.
- The Notice of Intent and Registration of a Home-based Education Program form may include and apply to more than one pupil from the same family.
- The home-based education program is registered when the registering official signs and provides a written response to the Notice of Intent and Registration of a Home-based Education Program form.
- Where the parents reside within the geographical boundaries of both a public and a separate school division, members of the minority faith (i.e. Roman Catholic) are deemed to reside in the separate school division, while all other parents are deemed to reside in the public school division and are required to register with the public board of education.
- Parents who have rights to official minority language instruction under section 23 of the *Charter of Rights and Freedoms, 1982* and who intend to use French as the principal language of instruction of the home-based education program, have the option to notify the conseil scolaire of their intent.
- Where the parents regularly move from one school division to another during the course of a school year (such as living in the city in the winter and on the farm in the summer), parents shall officially register with only one of the two school divisions, while informing the other school division of their choice. If parents have more than one residence in the province, they may choose one to be their legal residence for the purpose of registering their home-based education program.

- In the case of guardianship, separation, or divorce, the registering official shall confirm any relevant orders or provisions that relate to the charge and custody of the children on the home-based education program.
- In the case of joint custody both parents must agree to the home-based education program for the child. Where two parents have joint custody of a home-based learner and live in two different school divisions, they shall officially register with only one of the two school divisions, while informing the other school division of their choice.
- While a home-based learner is not exempted from compulsory attendance at a public school according to clause 156 of *The Education Act, 1995* until the program is registered, parents who have notified their intent to provide a home-based education program with the registering authority according to the regulations and policies, are not liable to prosecution under clause 155 of *The Education Act, 1995* during the period of time that the registering authority is processing their Notice of Intent and Registration of a Home-based Education Program form.
- Parents are required to give at least 30 days notice before commencing a new home-based education program, whether at the beginning or the middle of a school year.
- A registering authority shall not refuse to register a home-based education program on the grounds that a parent failed to comply with the timelines where a reasonable attempt to comply was made.

Policy B.2

Written Education Plan

Authority

The Home-based Education Program Regulations, 2013

4(3) At the time notice is given pursuant to subsection (1), the parent shall give the registering authority a written education plan that is consistent with the policies established by the minister.

6(1) Every board of education and the conseil scolaire shall make the following services available to every home-based learner registered with it:

- (a) home-based learner assessments;
- (b) education and training in the operation of motor vehicles pursuant to section 189 of the Act.

6(2) Every board of education and the conseil scolaire shall develop policies with respect to those services that the board of education or the conseil scolaire is prepared to make available to home-based learners, including:

- (a) participation in cultural and athletic activities, youth travel, outdoor education and similar activities pursuant to section 179 of the Act;
- (b) participation in programs of athletic and amateur sport pursuant to section 188 of the Act;
- (c) guidance and counselling services pursuant to section 191 of the Act;
- (d) services for pupils with intensive needs pursuant to section 178 of the Act;
and
- (e) enrolment in distance-education opportunities.

Intent

- A common set of educational goals is needed in order to provide a common sense of direction for our society, while providing sufficient latitude to accommodate the educational aspirations of all parents for their children.

- Home-based learners should be able to enter or re-enter public or independent schools with a minimum of difficulty. Therefore, each written education plan should not be inconsistent with the *Goals of Education for Saskatchewan*, or inappropriate for the age and ability of the home-based learner in the program.
- As parents' rights to educate their children at home are based upon sincerely held religious or philosophical beliefs, the written education plan should contain the philosophical approach of the home-based education program. The philosophical approach provides the foundation for the program that will influence all other aspects of the program.
- The intent of a written education plan is for a parent to demonstrate that there is a positive and constructive approach to the education of the pupil in the home-based education program. The written education plan and the home-based educator's educational practice should reflect a genuine commitment to the philosophical approach of their home-based education program.
- In preparing a written education plan, parents are not expected to be accomplished professional curriculum writers. They may receive assistance from a home-based education support group, or from a supplier of home-based education curricula such as a correspondence school or an extension school. In such cases, however, the program is still expected to be the home-based educator's program. They should be able to articulate the reasons why they have chosen this particular educational program and to demonstrate their determination to carry it out.
- Boards of education/conseil scolaire establish policies and procedures regarding the provision of services for home-based learners. The written education plan provides parents with the opportunity to indicate their intent to access those services.
- *The Goals of Education for Saskatchewan*:
 - are intended to be inclusive - not exclusive – to encompass all legitimate perspectives in our pluralistic and multicultural society. They are intended to provide sufficient latitude to accommodate the aspirations of all parents for their children;
 - embody a commitment to fundamental democratic values in our society, such as a concern for liberty (freedom) and a respect for the person (equality), as well as recognition of the creative tension between freedom and equality;
 - embody a commitment to tolerance based upon the affirmed worth of each individual and the recognition that people differ in their values, behaviours, and life styles;

- embody a commitment to rationality and truth, and to rational enquiry in the pursuit of truth and knowledge;
 - do not sanction the concept of moral relativism -- a belief that when dealing with moral issues, any decision is as good as any other. For many people, truth is not simply something determined by a majority, created by a class, or the product of a historical age; and,
 - encourage the development of fundamental moral virtues such as honesty, integrity, compassion, fairness, and justice.
- An amendment to a written education plan is intended to represent a significant change, such as changing:
 - the philosophical approach of the home-based education program;
 - any of the broad annual goals in the plan; or,
 - the means of assessing and recording educational progress.

Policy Statements

- A written education plan shall:
 - not be inconsistent with the *Goals of Education for Saskatchewan* (Appendix D); and,
 - not be inappropriate for the age and ability of the home-based learner for whom the program is intended.
- Although a home-based educator has the freedom to structure his or her written education plan in accordance with the philosophical approach of the program, the plan must contain a statement or a description of:
 - the reason for and the philosophical approach of the proposed home-based education program;
 - a minimum of three broad annual goals in each of the four areas of study for each home-based learner – language arts, science, social studies and mathematics;
 - the means of assessing and recording the educational progress of the home-based learner in the program pursuant to the Annual Progress Report (see Policy B.6); and

- the services that the home-based educator intends to access from the services provided to home-based learners by the board of education/conseil scolaire according to the regulations and policies.
- The home-based educator shall have the option to, but is not compelled to, provide broad annual goals in other subjects, including health education, arts education and physical education.
- Home-based educators may choose to have only one written education plan for their home-based education programs when two or more home-based learners are receiving instruction on home-based education programs. Although the philosophical approach of the home-based education programs will generally be common to all home-based learners on the programs, with due allowance for younger home-based learners on home-based education programs, the three broad annual goals in each area of study and the means of assessing and recording the educational progress shall be specific to each home-based learner on their program.
- Although the *Goals of Education for Saskatchewan* are intended to accommodate both the aspirations of all parents for their children and the needs and abilities of all students enrolled in schools, a home-based education program:
 - is not required or expected to provide broad goals to achieve all the *Goals of Education for Saskatchewan*; and,
 - may be focused on the achievement of a select number of the *Goals of Education for Saskatchewan*.
- In the case of a home-based learner who has been identified as a learner requiring intensive supports, the broad annual goals of the registered home-based education program shall take into account the abilities of and intensive supports required for the home-based learner.
- Written education plans shall provide sufficient information for the registering authority to determine that the plan is not inconsistent with the *Goals of Education for Saskatchewan* and not inappropriate for the age and ability of the home-based learner on the program.
- When a registering authority receives a written education plan as part of a Notice of Intent, the registering authority shall review the plan in order to determine if the plan complies with the requirements contained in the regulations and policies. A registering authority is not expected to approve or to agree with a written education plan before registering a home-based education program.

- If a registering authority refuses to register a home-based education program on the grounds that the written education plan does not meet the requirements of the regulations, the registering authority must demonstrate why the written education plan does not meet the requirements of the regulations.
- A home-based educator may make amendments to the written education plan during a school year, if the amendments are requested in writing and are acceptable to the registering authority.

Policy B.3

Operation of a Registered Home-based Education Program

Authority

The Home-based Education Program Regulations, 2013

15 A home-based educator:

- (a) shall comply with:
 - (i) the Act and these regulations;
 - (ii) any policies established by the minister; and
 - (iii) if the home-based education program is registered with a board of education or the conseil scolaire, the policies and procedures established by the board of education or the conseil scolaire; and
- (b) is responsible for the education of the home-based learner in accordance with the written education plan or improvement plan, as the case may be.

Intent

- Home-based education programs may have different structures and the monitoring of home-based education programs focuses on educational outcomes rather than on instructional processes. Therefore, home-based learners are not required to "be in school" the same number of days or during the same hours each day as students attending public schools.
- While home-based educators have the responsibility for the education of learners on home-based education programs, the minister views regular instruction as an important component of a child's education within the flexibility which home-based education provides.
- Since parents' rights to educate their children at home are based on sincerely held religious or philosophical convictions, the minister can expect the educational practice of the home-based educator to reflect a genuine commitment to the religious or philosophical approach of their home-based education program.

Policy Statements

- Home-based educators shall personally provide and direct the home-based education program for their home-based learners. They shall be responsible for and actively involved in the education of their home-based learners.
- Home-based educators shall provide instruction at or from the home of the home-based learner.
- Parents shall only register their own children in the home-based education program. This does not prevent:
 - home-based educators from hiring one or more tutors to assist with the academic instruction of their home-based learners;
 - a group of home-based educators from organizing, from time to time, shared educational activities and field trips;
 - home-based educators from enrolling their home-based learners in distance learning; or,
 - the home-based learners from taking a course or program in a public or independent school.
- Home-based educators are expected to provide instruction to the home-based learners on their program throughout the course of the school year for which the program is registered.
- Home-based educators are not expected to complete a daily attendance register or to provide instruction in their home-based education program for the same hours each day that public schools operate. However, they shall maintain a periodic log in accordance with Policy B.5.
- Home-based educators shall provide instruction and resources so that each home-based learner is able to reach the broad annual goals in the written education plan, appropriate for his or her age and ability.
- The home-based educator's educational practice shall reflect a commitment to their written education plan and to the philosophical approach of the home-based education program.

- Home-based educators shall have the option to make curricular and instructional adjustments to their home-based education program during a school year in accordance with the needs and progress of their home-based learners, if these adjustments are consistent with the written education plan submitted to the registering authority.
- Home-based educators shall have the option to make amendments to their written education plan if the amendments are requested in writing and are acceptable to the registering authority (refer to Policy B.2).

Policy B.4

Compliance with Act, Regulations, Provincial Policies and Local Policies

Authority

The Education Act, 1995

157(1) A pupil may be exempted from attendance at a school, and no parent, guardian or other person is liable to conviction for an offence pursuant to section 156 where:

- (c) the pupil is receiving instruction in a registered home-based education program;

The Home-based Education Program Regulations, 2013

15 A home-based educator:

- (a) shall comply with:
 - (i) the Act and these regulations;
 - (ii) any policies established by the minister; and
 - (iii) if the home-based education program is registered with a board of education or the conseil scolaire, the policies and procedures established by the board of education or the conseil scolaire; and
- (b) is responsible for the education of the home-based learner in accordance with the written education plan or improvement plan, as the case may be.

Intent

- The Minister of Education has a compelling interest in the education of all Saskatchewan children. Therefore, the minister requires parents who intend to provide their children of compulsory school age with an exemption from attendance at a public school, according to *The Education Act, 1995* section 157(1)(c) to register their home-based education programs in accordance with the regulations and the policies.

Policy Statements

- Parents who intend to provide their children of compulsory school age with an exemption from attendance at a public school shall register their home-based education programs according to the regulations and policies.
- Only parents who have registered their home-based education programs according to the regulations and policies may refer to their program as a registered home-based education program.
- Parents who choose to provide home-based education programs for their children shall:
 - inform themselves of the requirements to register their programs;
 - meet the criteria for registration; and,
 - meet these criteria before registration.
- Parents who intend to provide their children of compulsory school age with an exemption from attendance at a public school but have not registered their home-based education program in accordance with the regulations and the policies are in violation of the regulations and subject to prosecution under *The Education Act, 1995*.
- Boards of education/conseil scolaire shall be responsible for ensuring that the attendance provisions of *The Education Act, 1995*, the regulations and the policies are being met by all learners on home-based education programs registered with the board of education/conseil scolaire.

Policy B.5

Portfolio of Work

Authority

The Home-based Education Program Regulations, 2013

16 For each home-based learner, a home-based educator shall:

- (a) maintain a portfolio of work that contains the information required by the minister pursuant to the policies established by the minister; and
- (b) preserve the portfolio of work for at least two calendar years after the end of the calendar year in which the work was created.

Intent

- Since a registered home-based education program provides the home-based learner on the program with an exemption from attendance at a public school, the intent is that a home-based educator should maintain home-based learner records in a manner and form consistent with public schools in Saskatchewan.
- Since home-based education programs are philosophically and structurally diverse, home-based educators should have flexibility in choosing the means of recording each learner's progress, within some broad guidelines established by the regulations and policies, and consistent with the written education plan for the home-based education program.
- If a home-based educator has enrolled the home-based learner in a distance education course, the teacher will generally provide the service of maintaining the summative record for each student in the course.
- In the best interests of each home-based learner, a summary of his/her academic achievement should be submitted to a public authority at the time that a home-based education program is terminated or cancelled.

Policy Statements

- Home-based educators shall maintain a portfolio of work for each home-based learner on his/her program in accordance with the regulations and policies, regardless which of the options they choose for their annual progress report (Policy B.6).

- A portfolio of work indicates the home-based learner’s progress and consists of:
 - a periodic log; and,
 - one of the following for each of the broad annual goals:
 - a detailed summative record;
 - sufficient samples of work; or,
 - a summative record and samples of work.
- Home-based educators are not required to provide the portfolio of work to their registering official unless they have chosen this option for their annual progress report.
- If a disagreement arises between the registering official and a home-based educator that leads to the dispute resolution process according to Regulation 21, the home-based educator may be required to provide the portfolio of work.
- When a home-based education program is terminated or cancelled, the home-based educator shall provide the home-based learner’s portfolio of work for the partial school year to:
 - the public school, registered independent school, or other educational institution in which their child enrolls; or,
 - to their resident board of education or conseil scolaire, if the child does not attend school.

Policy B.6

Annual Progress Report

Authority

The Home-based Education Program Regulations, 2013

17 Every home-based educator shall submit to the appropriate registering authority, in the form and within the period required by the minister, an annual progress report with respect to the home-based learner in the registered home-based education program.

Intent

- Since the monitoring of home-based education programs focuses on the educational outcomes of the home-based learner rather than on instructional processes, home-based educators are responsible to submit an annual progress report to their registering authority for each home-based learner.
- Since home-based education programs are philosophically and structurally diverse, home-based educators should have options with respect to the nature and format of their annual progress report(s).
- Registering authorities, home-based educators and other persons should administer achievement tests to home-based learners that are normed on individual situations, as opposed to group or classroom situations.

Policy Statements

- Home-based educators shall send an annual progress report for each home-based learner on their home-based education program to the registering official. The annual progress report shall be sent once near the end of the school year, at a time determined by the home-based educator and acceptable to the registering official.
- Home-based educators shall choose one of the following options for the format of each annual progress report:
 - the portfolio of work according to Policy B.5 and with sufficient detail for the registering authority to assess the educational progress of the home-based learner;
 - test results of the home-based learner who has taken a nationally normed standardized achievement test administered in accordance with Policy A.3.1; or,

- test results of the home-based learner who has taken a nationally normed standardized achievement test administered by the home-based educator, or another person at the expense of the home-based educator provided that:
 - the home-based educator, or the other person, meets the qualifications required by the specific test;
 - the home-based educator provides the registering authority evidence of the qualifications of the person administering and interpreting the test; and,
 - the person administering the test provides the registering official with the results of the test and an interpretation of the results.
- According to Policy B.2, home-based educators state in their written education plan how they intend to assess and record the progress of each home-based learner on his/her home-based education program. Since the written education plan is deemed acceptable to the registering authority when the program is registered, details regarding the annual progress report shall be clarified before the registration of the home-based education program.

Policy B.7

Language of Instruction

Authority

The Home-based Education Program Regulations, 2013

18(1) Subject to subsection (2), the language of instruction in a registered home-based education program must be English or French.

(2) With the approval of the registering authority, a home-based educator may use a language other than English or French as a language of instruction to a maximum of 50% of the instructional time.

(3) If the language of instruction is other than English, the home-based educator shall provide instruction in English language arts, commencing not later than the date on which the home-based learner turns eight years of age.

Intent

- English and French are the official languages of Canada, and as such, become the options for the language of instruction in home-based education programs.

Policy Statements

- The parent shall make the request to use a language of instruction other than English or French, according to section 18(2), at the time of submitting their Notice of Intent to Register a Home-based Education Program.
- If a home-based educator chooses to request a change to the language of instruction during the school year, the home-based educator shall make the amendments according to Policy B.2.

Policy B.8

Notice of Intent to Renew a Home-based Education Program

Authority

The Home-based Education Program Regulations, 2013

3 Subject to these regulations and consistent with the policies established by the minister, every board of education and the conseil scolaire shall establish policies and procedures for:

- (b) the renewal of the registration of home-based education programs;

Intent

- Since the registration of a home-based education program is valid only until the end of each school year (June 30), home-based educators shall renew the registration of their home-based education program(s) annually.
- Registering authorities develop policies that are appropriate for their school division/conseil scolaire, so home-based educators who relocate to a different school division must follow the policies of the new registering authority.

Policy Statements

- Home-based educators who elect to continue their home-based education program(s) for another school year shall notify their intent to the registering authority by August 15 of each year on the “Notice of Intent and Registration of a Home-based Education Program form” (Appendix B).
- When renewing the registration of their home-based education program(s), home-based educators shall update the written education plan and the other information provided for the previous year’s registration, in particular:
 - the home-based learners on the home-based education programs for the coming school year;
 - the broad annual goals in each of the four areas of study for each home-based learner (Policy B.2);
 - the annual progress report (Policy B.6); and,

- the services selected by the home-based educator from the services provided by the school division/conseil scolaire.
- Registrations are not transferable from one board of education/conseil scolaire to another. Home-based educators who were operating a registered home-based education program in one school division/conseil scolaire must re-register, not simply renew their program, when moving to a different school division/conseil scolaire.
- The registering official shall renew the home-based education program if the home-based educator has updated their notice of intent and:
 - the annual progress report for the home-based learner has demonstrated satisfactory educational progress during the previous year of the program; or,
 - the registering official and the home-based educator have agreed upon an improvement plan according to Policy A.7.
- With any necessary modifications, the notice of intent to renew and the renewal of the registration process shall be similar to Policy A.2.1 and Policy A.2.2.
- If the home-based educator changes any of the major factors in the home-based education program, such as the philosophical approach of the program, the registering official shall treat the notice of intent as a new home-based education program.

Policy B.9

Termination of Home-based Education Program

Authority

The Home-based Education Program Regulations, 2013

19(1) If a home-based educator wishes to terminate a registered home-based education program during the year in which it is registered, the home-based educator shall notify the registering authority, in writing, in accordance with the policies established by the minister.

(2) On receipt of a notice pursuant to subsection (1), the registering authority shall cancel the registration of the home-based education program, effective on the date of termination specified in the notice.

(3) If the registration of a home-based education program is terminated at the request of a home-based educator pursuant to this section, the home-based educator is not entitled to register a home-based education program for that pupil until the school year following the school year in which the registered home-based education program is terminated.

Intent

- When a home-based educator chooses to terminate a home-based education program in the middle of the school year, the home-based educator should follow the appropriate provincial and local policies and consult with the appropriate officials of the registering authority with respect to the continuing education of his/her child.
- The termination of a home-based education program is at the initiative of the home-based educator who is directing the home-based education program. The cancellation of a home-based education program is at the initiative of the registering authority.
- The termination of a home-based education program refers to termination that occurs during the school year. If a home-based educator chooses to discontinue his/her program at the end of the school year, he/she will simply choose not to renew the home-based education program for another school year.

- Since the termination is occurring at the initiative of the home-based educator, there are no process requirements that boards of education/conseil scolaire are required to follow. In the case of cancellation, the board of education/conseil scolaire is required to provide the home-based educator an opportunity to be heard before canceling the program.

Policy Statements

- Home-based educators shall have the option to terminate their home-based education program according to the regulations at any time during a school year.
- The written notice to terminate a home-based education program shall include:
 - The name of the home-based educator who is responsible for directing the home-based education program;
 - The address and telephone number of the home at and from which the home-based education program is being provided;
 - the name, gender and date of birth of the home-based learner(s);
 - the date of termination of the home-based education program; and,
 - the plans for the home-based learner's continuing education, if the home-based learner is of compulsory school age.
- Parents shall consult with the registering authority with respect to the continuing education of the home-based learner.
- Within 15 days of receiving the home-based educator's written notice of termination, the registering authority shall respond with a written notification that the home-based education program has been cancelled.
- If home-based educators choose not to renew their program for another school year, they shall nonetheless, supply the appropriate records to the school in which their children enroll or to their resident board of education/conseil scolaire according to Policy B.5 and B.6.
- If a home-based educator or home-based learner relocates to another school division during the school year, the parent is entitled to register his/her home-based education program with the new school division even though the home-based education program was terminated in the old school division. (See Policy A.9 for the transfer of records.)

Policy C.1

Accessing the Registering Authority's Mediation Process

Authority

The Education Act, 1995

148 Where a difference or conflict arises in the relationship of a pupil to the school, the parent or guardian, on behalf of that pupil, is entitled to immediate access to procedures established by the board of education or the conseil scolaire for the purposes of investigation and mediation of any differences or conflicts.

The Home-based Education Program Regulations, 2013

21(1) If a difference or conflict arises between a home-based educator and a board of education or the conseil scolaire with respect to a registered home-based education program or the registering of a home-based education program, the home-based educator is entitled to use the procedures established by the board of education or the conseil scolaire in accordance with section 148 of the Act for the purposes of investigation and mediation of the difference or conflict.

Intent

- Parents of pupils, including home-based educators, should have immediate access to procedures according to section 148 of *The Education Act, 1995*, to investigate and mediate any differences or conflicts with officials of the board of education/conseil scolaire.
- When disputes and conflicts occur, the resolution of these disputes shall reflect the principles of fundamental justice and administrative fairness.
- The procedures to investigate and mediate any differences or conflicts should be designed to bring parties together and are expected to be informal and as non-confrontational as possible.

Policy Statements

- A home-based educator shall have the option to access the board of education/conseil scolaire's procedures according to section 148 of *The Education Act, 1995*, for the purpose of investigating and mediating any differences or conflicts regarding any aspect of the home-based education program.

- Home-based educators shall access policies developed by the board of education/conseil scolaire related to section 148 of *The Education Act, 1995*, in order to submit a complaint, or request an investigation and mediation process.
- Instead of accessing the board of education/conseil scolaire's procedures developed according to section 148 of *The Education Act, 1995*, home-based educators also have the option to apply to the minister for a review according to Regulation 21(2) and Policy C.2.

Policy C.2

Accessing a Minister's Review to Resolve a Dispute

Authority

The Home-based Education Program Regulations, 2013

20 In this Part, “**home-based educator**” includes, as the case requires, the parent or parents of a pupil who are seeking to register a home-based education program for the pupil.

21(2) If the difference or conflict mentioned in subsection (1) arises from an action or decision of the board of education or the conseil scolaire concerning any of the matters mentioned in subsection (3), the home-based educator may apply to the minister for a review of the action or decision;

(a) if the home-based educator has decided not to use the procedures for resolving a difference or conflict that the board of education or conseil scolaire has established pursuant to section 148 of the Act; or

(b) if the home-based educator is dissatisfied with any action or decision made following the procedures established pursuant to section 148 of the Act.

(3) An application may be made to the minister pursuant to subsection (2) with respect to an action or decision of the board of education or the conseil scolaire concerning any of the following matters:

(a) the development or content of a written education plan pursuant to subsection 4(3);

(b) the monitoring of the registered home-based education program by the registering authority pursuant to section 12;

(c) the development or content of an improvement plan pursuant to section 13;

(d) subject to subsection 14(5), the intent to cancel a registered home-based education program pursuant to section 14;

(e) any home-based learner assessment undertaken or to be undertaken by the registering authority with respect to the home-based learner.

(4) An application pursuant to subsection (2) must be received by the minister within 30 days after the date of the written notice of the registering authority respecting the action or decision that has given rise to the difference or conflict.

(5) On receipt of an application pursuant to subsection (2), the minister may appoint a person:

(a) to review the difference or conflict; and

(b) to provide recommendations to the registering authority and the home-based educator to resolve the difference or conflict.

Intent

- If there is a difference or conflict between a home-based educator and the registering authority, the issues are best resolved by those involved and before the conflict escalates. The minister strongly encourages both parties to resolve the dispute at the local level. A formal or informal mediation process may be used. The process may also include the Director of Independent Schools and Home-based Education in the Ministry of Education.

Policy Statements

- If a registering official is aware that an action or decision may result in a difference or conflict with the home-based educator, the registering official shall provide the home-based educator with written information regarding Regulation 21 and the board of education/conseil scolaire's policies related to section 148 of *The Education Act, 1995*.
- A home-based educator has the option to make a written request, according to Regulation 21(2) and (3), for a minister's review to the minister or to the minister through the board of education/conseil scolaire.
- If a home-based educator requests a minister's review, the written request shall indicate:
 - the area of difference or conflict pursuant to Regulation 21(3);
 - the action or decision of the board of education/conseil scolaire that the parent wishes the minister to review; and,
 - the date of the board of education/conseil scolaire's action or decision.

- If a board of education/conseil scolaire receives a written request for a minister's review, the board of education/conseil scolaire shall, within 30 days, make a written request to the Ministry of Education to establish a minister's review according to Regulation 21. The written letter of request from the home-based educator shall also be attached.

Policy C.3

Minister's Review and Recommendations

Authority

The Home-based Education Program Regulations, 2013

20 In this Part, “**home-based educator**” includes, as the case requires, the parent or parents of a pupil who are seeking to register a home-based education program for the pupil.

21(2) If the difference or conflict mentioned in subsection (1) arises from an action or decision of the board of education or the conseil scolaire concerning any of the matters mentioned in subsection (3), the home-based educator may apply to the minister for a review of the action or decision:

- (a) if the home-based educator has decided not to use the procedures for resolving a difference or conflict that the board of education or conseil scolaire has established pursuant to section 148 of the Act; or
- (b) if the home-based educator is dissatisfied with any action or decision made following the procedures established pursuant to section 148 of the Act.

(3) An application may be made to the minister pursuant to subsection (2) with respect to an action or decision of the board of education or the conseil scolaire concerning any of the following matters:

- (a) the development or content of a written education plan pursuant to subsection 4(3);
- (b) the monitoring of the registered home-based education program by the registering authority pursuant to section 12;
- (c) the development or content of an improvement plan pursuant to section 13;
- (d) subject to subsection 14(5), the intention to cancel a registered home-based education program pursuant to section 14;
- (e) any home-based learner assessment undertaken or to be undertaken by the registering authority with respect to the home-based learner.

(4) An application pursuant to subsection (2) must be received by the minister within 30 days after the date of the written notice of the registering authority respecting the action or decision that has given rise to the difference or conflict.

(5) On receipt of an application pursuant to subsection (2), the minister may appoint a person:

(a) to review the difference or conflict; and

(b) to provide recommendations to the registering authority and the home-based educator to resolve the difference or conflict.

Intent

- When a difference or conflict cannot be mediated in areas critical to home-based education programs, home-based educators should have timely access to a neutral third party through a minister's review.

Policy Statements

- A minister's review of a difference or conflict between a home-based educator and a board of education/conseil scolaire shall reflect the principles of fundamental justice and administrative fairness.
- The legal and technical rules of evidence and procedure shall not apply to a dispute resolution process.
- Upon receiving a written request for a review, the Ministry of Education shall appoint a reviewer in a timely manner.
- The reviewer shall initiate the review in a timely manner, that may include but not be limited to:
 - reviewing the details of the action or decision made by the board of education/conseil scolaire;
 - determining the perspectives of the home-based educator and the board of education/conseil scolaire;
 - consulting with others; and,
 - making recommendations to the board of education/conseil scolaire and/or home-based educator to resolve the difference or conflict.

- After the review concludes, the reviewer shall:
 - provide a copy of the review to the minister; and,
 - present his or her written recommendations to the home-based educator and the board of education/conseil scolaire.
- After receiving and considering the recommendation(s), the board of education/conseil scolaire shall make a decision regarding the recommendation(s). The board of education/conseil scolaire shall notify, in writing, the home-based educator and the minister of their decision. If the board of education/conseil scolaire decides not to follow the recommendation(s), they shall provide a rationale for their decision.
- The ministry shall be responsible for all reasonable costs for the reviewer, including transportation, accommodation, meals and honoraria.

Policy C.4

Registration with the Ministry of Education

Authority

The Home-based Education Program Regulations, 2013

22(1) If a board of education or the conseil scolaire, as the registering authority, complies with the recommendations provided pursuant to clause 21(5)(b), the home-based educator shall not apply to the minister to register the home-based education program.

(2) If a board of education or the conseil scolaire, as a registering authority, fails to comply with the recommendations provided pursuant to the clause 21(5)(b), the home-based educator may give the minister notice of his or her intent to register the home-based education program with the minister.

(3) At the time notice is given pursuant to subsection (2), the home-based educator shall give the minister a written education plan that is consistent with the policies established by the minister.

(4) On receipt of a notice of intent and pursuant to subsection (2), the minister shall:

(a) register the home-based education program if the minister is satisfied that the home-based educator has complied with the Act, these regulations and the policies established by the minister respecting the registration of the home-based program; or

(b) deny registration of the home-based education program if the minister is satisfied that the home-based educator has failed to comply with the Act, these regulations or the policies established by the minister respecting the registration of the home-based education program.

(5) If, pursuant to clause (4)(b), the minister denies registration of a home-based education program, the minister shall notify the home-based educator, in writing, of the minister's decision to deny registration, with reasons.

Intent

- The Ministry of Education does not deliver educational services directly to parents or children. Therefore, home-based educators and their learners are better served by registering with their local boards of education/conseil scolaire.

- Where a board of education/conseil scolaire complies with the recommendations made by the review in the dispute resolution process, and even though the relationships between the home-based educator and board of education/conseil scolaire may be strained, the parent does not have the option of registering with the Ministry of Education.
- When the board of education/conseil scolaire does not implement the recommendation(s) of the Minister’s Review, the parent has a compelling reason to register with the ministry.

Policy Statements

- When a board of education/conseil scolaire refuses to comply with the recommendation(s) made in the Minister’s Review, parents have a compelling reason and shall have the option to notify their intent to register with the Ministry of Education (Policy C.3).
- Parents shall not have the option to register their home-based program with the Ministry of Education when:
 - the board of education/conseil scolaire has agreed to comply with the recommendation(s) of the Minister’s Review; and,
 - the home-based educator does not agree to comply with the recommendation(s) made in the Minister’s Review.
- When submitting their notice of intent to the Ministry of Education, parents shall include the documentation regarding the Minister’s Review which indicates that the board of education/conseil scolaire has refused to comply with the recommendations made in the Review.
- The Director of the Independent Schools and Home-based Education shall be the Ministry of Education’s registering official for home-based education programs.
- The Ministry of Education does not provide services according to Section 6 of the regulations.

Appendix A

Definition of Terms

The Education Act, 1995

2 In this Act:

“compulsory school age” means having attained the age of seven years but not having attained the age of 16 years; («âge scolaire»)

“home-based education program” means an education program:

- (a) that is provided to a pupil who has attained the age of six years but has not attained the age of 18 years;
- (b) that is started at the initiative of and is under the direction of the parent or guardian of the pupil; and
- (c) in which the pupil is receiving instruction at and from the home of the pupil; («programme d'études à domicile»)

“pupil” means a person:

- (b) who is receiving instruction in a registered home-based education program; and includes any person who is of compulsory school age; («élève»)

“registered home-based education program” means a home-based education program registered pursuant to this Act and the regulations; («programme d'études à domicile inscrit»)

178(1) In this section and sections 178.1 and 370:

“assessment” means an evaluation of a pupil's capacity to learn based on one or more of the following:

- (a) the pupil's cognitive functioning;
- (b) the pupil's social-emotional functioning;
- (c) the pupil's behavioural functioning;
- (d) the pupil's physical functioning; («évaluation»)

“pupil with intensive needs” means a pupil who has been assessed by a board of education or the conseil scolaire in accordance with this section and the regulations as having a capacity to learn that is compromised by a cognitive, social-emotional, behavioural or physical condition. (« élève bénéficiant d’un programme de soutien intensif »)

The Home-based Education Program Regulations, 2013

2 In these regulations:

(b) **“curriculum-based assessment”** means an assessment that:

(i) measures a pupil’s progress in the curriculum being studied by the pupil;
and

(ii) is appropriate for the pupil’s age and ability;

(f) **“home-based learner assessment”** means an assessment of a home-based learner:

(i) in accordance with sections 178 and 178.1 of the Act;

(ii) pursuant to a curriculum-based assessment; or

(iii) based on a standardized test;

(k) **“standardized test”** means a normed achievement, aptitude or intelligence test that includes both general and diagnostic tests and that is administered in accordance with the policies established by the minister;

Saskatchewan Home Based Education Program Policy Manual, 2012

“Consultative services” pursuant to Policy A.1 means information that a registering official provides to the home-based educator and the home-based learner according to school division policy.

“Monitoring” means checking compliance with the regulations and policies with respect to the operation of home-based education programs. It also includes assessing the progress of the home-based learner in relation to the written education plan and appropriate with the home-based learner’s age and ability. (Policy A.6)

“Not inconsistent with” the *Goals of Education for Saskatchewan* means that the written education plan, while it does not have to conform to these official goals, must not be in opposition to these official goals. (Policy B.2)

“Not inappropriate for the age and ability” of the home-based learner does not mean “appropriate for the age and ability” of the home-based learner. The broad goals identified by the home-based educator may be representative of a range of accepted philosophical thought about the means by which learning occurs based upon the philosophical statement provided by the home-based educator. (Policy B.2)

“Broad annual goals” means statements of learning or outcomes in each area of study that a home-based educator intends a home-based learner to achieve during the school year in a home-based education program. (Policy B.2)

“Summative record” means a summary of the educational progress of a home-based learner in relation to the written education plan. A summative record is a summary statement of a student’s academic achievement at the end of a period of time as opposed to samples of a student’s achievement during a period of time. (Policy B.5)

A **“periodic log”** means a record of the educational activities completed by the home-based learner in relation to the written education plan. (Policy B.5)

“Samples of work” means samples of any writing, worksheets, workbooks, projects and creative materials used or created by the home-based learner in relation to the written education plan. (Policy B.5)

Appendix B



Saskatchewan
Ministry of
Education Home-Based
Education

Notice of Intent and Registration of a Home-based Education Program

Policy

A home-based education program is an educational program:

- that is provided to a student who has attained the age of 6 years but not attained the age of 18 years;
- that is started at the initiative of and is under the direction of the parent or guardian of the student; and,
- in which the student is receiving instruction at and from the home of the student.

Parents means parents, guardians, or lawful custodians of a student between the ages of 6 and 17 inclusive.

Parents who elect to provide a home-based education program to a student of compulsory school age (ages 7 to 15 inclusive) are required to notify a registering authority on the present prescribed form before commencing their program.

Parents who are providing a home-based education program for a student aged 6, 16, or 17 (i.e. not of compulsory school age) are entitled to have their program registered with a registering authority.

A registering authority means either:

- the board of education of the school division in which the parents of the student are resident pursuant to *The Education Act, 1995*, or,
- Saskatchewan Ministry of Education

No aspect of this notice is intended to diminish or to infringe on the right of parents to educate their children at and from their home in accordance with their conscientious beliefs, subject only to such reasonable limits prescribed by law that can be demonstrably justified in a free and democratic society.

Conscientious beliefs means sincerely-held religious or philosophical beliefs.

Instructions

Parents shall provide notice of their intent to provide their children with a home-based education program:

- at least 30 days before commencing a new home-based education program in September of a given year, and in any event by August 15 of that year;
- at least 30 days before the oldest student on the program turns seven years of age;
- within 30 days of establishing residence in a new school division; or
- at least 30 days before intending to withdraw a student of compulsory school age from a public school, separate school, francophone school, or registered independent school.

A registering authority may not refuse to register a home-based education program on the grounds that the parents failed to comply with one of the above 30-day requirements, where a reasonable attempt to comply was made.

Parents shall attach their written education plan to their notice of intent.

Parents are required to complete only one notice of intent form and one written education plan for their home-based education programs, no matter how many students are receiving instruction on the program. However, the registering authority will register each student on a program individually.

In the first instance, parents must notify the board of education of the school division in which they are resident of their intent to educate their children on a home-based education program.

If parents send their notice of intent and written education plan to Saskatchewan Ministry of Education, they must provide the documentation related to the Minister's Review.

Student Information

Expected date of commencement of the home-based education program: _____

Full Name, gender and date of birth of each student on the home-based education program.

Full name of student

Gender

Date of birth

_____	_____	_____
_____	_____	_____
_____	_____	_____

If applicable, provide information with respect to the last school which each student attended, the year that each student last attended school, and the grade completed during this year.

Parent Information

Full name, address, and telephone number of the parent or parents who are responsible for and who are directing the home-based education program. (In the case of two-parent families, either one parent or both parents may be responsible for the home-based education program.)

Full name(s) of parent(s): _____

Mailing address: _____

Street address: same as above, or _____

Telephone number: _____

The parent or parents who are responsible for and directing the home-based education program must lawfully have charge and custody of each student on the home-based education program. If applicable, explain any circumstances such as guardianship, separation, or divorce which relates to the charge and custody of the students on the program.

Registering Authority

Name of the school division in which the parent(s) are resident: _____

This notice of intent is being sent to:

- board of education of the resident school division; or
 Independent Schools and Home-Based Education Branch, Saskatchewan Ministry of Education*

If you are sending this notice of intent to Saskatchewan Ministry of Education, provide the documentation regarding the Minister's Review.

Replaced Declarations

Declarations

We (or I) *affirm* that the above information is complete and correct.

We (or I) *affirm* that we (or I) accept the control, direction, and management of the home-based education program.

We (or I) *affirm* that we (or I) accept the responsibility for the education of the students on the home-based education program.

We (or I) *affirm* our intention to comply with the written educational plan that is attached to this notification form.

We (or I) understand that a false declaration represents grounds for not registering the home-based education program, or for suspending or cancelling the registration at some future date.

Parent/Guardian Date

Parent/Guardian Date

Registration

This notification is in compliance with the Act, the Regulations and the policies and this home-based education program is hereby registered.

Registering Authority

Date

*In accordance with subsection 26(2) of *The Freedom of Information and Protection of Privacy Act*, you are advised that the information on this form is being collected solely for the purpose of the registration of your home-based education program. Personal information will not be disclosed except in compliance with the Act.

Revised January 2012

Appendix C



Saskatchewan
Ministry of
Education

Home-Based
Education

Written Education Plan

Policy

The intent of the written education plan is for the parents to demonstrate that they have a positive and constructive approach to the education of their children before commencing their home-based education program.

Each written education plan shall be:

- not inconsistent with the official *Goals of Education for Saskatchewan*; and,
- not inappropriate for the age and ability of the home-based learner on the program.

The written education plan shall contain a statement or a description of:

- the reason for and the philosophical approach of the home-based education program;
- a minimum of three broad annual goals in each of the four areas of study for each home-based learner – language arts, science, social studies and mathematics;
- the means of assessing and recording the educational progress of each learner on the program; and,
- the services that the home-based educator intends to access from the services provided to home-based learners by the board of education/conseil scolaire according to the regulations and policies.

Parents may, but are not compelled to, provide broad annual goals in other subjects, including health education, arts education and physical education.

In the case of a home-based learner who has been identified as a learner requiring intensive supports, the broad annual goals of the home-based education program shall take into account the abilities of and intensive supports required for the home-based learner.

Parents may make curricular and instructional adjustments to their home-based education program during a school year in accordance with the educational needs and progress of each learner on the program, as long as these adjustments are consistent with their education plan.

Parents may make amendments to their written education plan during a school year, as long as the amendments are acceptable to the registering authority.

Instructions

The written education plan outlines the home-based education program.

As long as the written education plan contains the elements listed to the left, parents have the freedom to structure their plan in accordance with the philosophical approach of their program.

Parents are required to attach only one written education plan to their notice of intent, no matter how many students are receiving instruction on their home-based education program. While some elements such as the philosophical approach will be common to the entire program, other elements such as the broad annual goals and the means of assessing and recording the educational progress will be specific to each student on the program.

Broad annual goals means statements of learning or outcomes in each area of study that the home-based educator intends a home-based learner to achieve during the school year in a home-based education program.

Since the *Goals of Education for Saskatchewan* are intended to accommodate both the aspirations of all parents for their children, and the needs and abilities of all students enrolled in schools, home-based education programs:

- are not required or expected to provide learning opportunities to achieve all the *Goals of Education for Saskatchewan*; and,
- may be focused on the achievement of a select number of the *Goals of Education for Saskatchewan*.

In preparing the written education plan, parents may receive assistance from a home-based education support group, or from a commercial supplier of home-based education curricula.

Parents shall indicate in their written education plan whether they intend the language of instruction to be other than English or French.

The written education plan shall provide sufficient information for the registering authority to determine that the plan is not inconsistent with the *Goals of Education for Saskatchewan* and not inappropriate for the age and ability of each student on the program.

Revised January 2012

Appendix D

Goals of Education for Saskatchewan (1985)

(based on *Directions*, 1984) (reaffirmed in *High School Review Report*, 1994) (reaffirmed in *Actualization of Core Curriculum*, 1999)

Goals of education in Saskatchewan should direct efforts to develop the potential of all students in the province. Education should affirm the worth of each individual and lay the foundation for learning throughout life.

Students benefit from exposure to learning in a variety of situations. Attainment of the goals is a venture the school shares with the student, the home, the church, and the community. Although the degree of school responsibility will vary from community to community, the school has some responsibility for each goal.

A body of knowledge and a range of skills and attitudes are necessary to function in a changing world. It is intended, then, that education will enable Saskatchewan students to do the following to the best of their abilities:

BASIC SKILLS

- 1 Read, write, and compute,
- 2 Acquire information and meaning through observing, listening, reading and experiencing.
- 3 Process information through intellectual and technological means.
- 4 Solve problems by applying basic principles and processes of the sciences, arts, and humanities.
- 5 Communicate ideas through written and spoken language, mathematical symbols, and aesthetic expression.

LIFE-LONG LEARNING

- 1 Seek and value learning experiences.
- 2 Act as self-reliant learners.
- 3 Base actions on the knowledge that it is necessary to learn throughout life.

UNDERSTANDING AND RELATING TO OTHERS

- 1 Act on the belief that each individual is worthwhile.
- 2 Base actions on the recognition that people differ in their values, behaviours, and life styles.
- 3 Interact and feel comfortable with others who are different in race, religion, status, or personal attributes.
- 4 Develop a sense of responsibility toward others.

SELF CONCEPT DEVELOPMENT

- 1 Perceive themselves in a positive way.
- 2 Appreciate their own abilities and limitations.
- 3 Set and work toward personal goals.
- 4 Assess praise and criticism realistically.
- 5 Present themselves with confidence.

POSITIVE LIFE STYLE

- 1 Practice appropriate personal hygiene, engage in sufficient physical activity, and maintain a nutritionally balanced diet.
- 2 Avoid harmful use of alcohol and other drugs.
- 3 Cultivate interests that may be the basis for personal development and leisure pursuits.
- 4 Recognize the importance of productive activity.
- 5 Display initiative and pursue tasks diligently.
- 6 Maintain a safe and healthful community.
- 7 Respect and seek to enhance the environment.
- 8 Appreciate beauty in its many natural and constructed forms.
- 9 Express themselves creatively.

SPIRITUAL DEVELOPMENT

- 1 Seek an understanding of the purpose and worth of human existence.
- 2 Develop a knowledge of God.
- 3 Respect family, religion, and culture in a pluralistic society.

CAREER AND CONSUMER DECISIONS

- 1 Develop an awareness of career opportunities.
- 2 Develop interests and abilities in relation to vocational expectations.
- 3 Adapt to shifts in employment patterns and technology.
- 4 Make informed consumer decisions.

MEMBERSHIP IN SOCIETY

- 1 Assume responsibility for their own actions.
- 2 Work with others to achieve individual and group goals.
- 3 Participate in the democratic processes of government and perform the duties of citizenship.
- 4 Respect the rights and property of others.
- 5 Act with honesty, integrity, compassion, and fairness.
- 6 Develop a sense of national pride and acknowledge the need for international understanding.
- 7 Work toward greater social justice.
- 8 Assume responsibility for dependent persons in a manner consistent with their needs.
- 9 Respect law and authority.
- 10 Exercise the right of dissent responsibly.

GROWING WITH CHANGE

- 1 Work toward immediate and long-term goals
- 2 Base actions on an understanding that change is a natural process in society.
- 3 Select workable alternatives in response to changing conditions.
- 4 Develop confidence in making decisions that involve risk.

Appendix E



Broad Areas of Learning June 22, 2010

Note to Reader: The Broad Areas of Learning reflect the desired attributes for Saskatchewan's PreK-12 students. The descriptions below show the knowledge (factual, conceptual, procedural, metacognitive) that students will achieve throughout their PreK-12 schooling career.

Sense of Self, Community, and Place²

(Related to the following Goals of Education: Understanding and Relating to Others, Self Concept Development, and Spiritual Development)

Students possess a positive sense of identity and understand how it is shaped through interactions within natural and constructed environments. They are able to nurture meaningful relationships and appreciate diverse beliefs, languages, and practices from the First Peoples of Saskatchewan and from the diversity of cultures in our province. Through these relationships, students demonstrate empathy and a deep understanding of self, others, and the influence of place on identity. In striving to balance their intellectual, emotional, physical, and spiritual dimensions, students' sense of self, community, and place is strengthened.

Lifelong Learners

(Related to the following Goals of Education: Basic Skills, Lifelong Learning, Positive Lifestyle)

Students are curious, observant, and reflective as they imagine, explore, and construct knowledge. They demonstrate the understandings, abilities, and dispositions necessary to learn from subject discipline studies, cultural experiences, and other ways of knowing the world. Such ways of knowing support students' appreciation of Indigenous worldviews and learning about, with, and from others. Students are able to engage in inquiry and collaborate in learning experiences that address the needs and interests of self and others. Through this engagement, students demonstrate a passion for lifelong learning.

Engaged Citizens

(Related to the following Goals of Education: Career and Consumer Decisions, Membership in Society, and Growing with Change)

Students demonstrate confidence, courage, and commitment in shaping positive change for the benefit of all. They contribute to the environmental, social, and economic sustainability of local and global communities. Their informed life, career, and consumer decisions support positive actions that recognize a broader relationship with, and responsibility for, natural and constructed environments. Along with this responsibility, students recognize and respect the mutual benefits of Charter, Treaty, and other constitutional rights and relationships. Through this recognition, students advocate for self and others, and act for the common good as engaged citizens.

² A sense of place is a geographic concept that attempts to define our human relationship with the environment and knowledge derived from this relationship.

Appendix F

Constitutional and Legal Context

The purpose of this chapter is to summarize as succinctly as possible the constitutional and legal context for home-based education in Canada, while at the same time, relating the new legal framework for home-based education in Saskatchewan to this constitutional and legal context.

When parents elect to educate their children on a home-based educational program, they are exercising a constitutional right, pursuant to section 2(a) of the *Charter of Rights and Freedoms, 1982*, to educate their children **in accordance with their conscientious beliefs.**¹⁸

However, no rights are absolute. As stated in section 1 of the Charter, all rights are **“subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”**

In particular, the right of parents to educate their children in accordance with their conscientious beliefs must be **balanced** against both the **right of every child to an education** and the **compelling interest of the state in the education of all children.**

The new legal framework for home-based education in Saskatchewan represents precisely the kind of balance envisaged by the Supreme Court of Canada in *Jones vs. The Queen*, and in other cases.

Freedom of Conscience and Religion in Education

Section 2(a) of the *Canadian Charter of Rights and Freedoms, 1982*, reads as follows:

2. Everyone has the following fundamental freedoms:
 - (a) Freedom of conscience and religion;

In *Regina v. Big M Drug Mart Ltd.*, which was the first freedom of conscience and religion case decided by the Supreme Court of Canada subsequent to the Charter in 1982, Mr. Chief Justice Dickson held that freedom of conscience and religion includes the freedom of parents to manifest conscientious and religious beliefs through teaching their beliefs to their children:

¹⁸ *Jones v. The Queen* (1987) 31 Dominion Law Reports, at p. 683. Throughout this chapter, bold type represents emphasis added by the Department in preparing this document.

Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.

The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal; and the right to manifest religious belief by worship and practice or by **teaching** and dissemination.¹⁹

In *Jones v. The Queen*, which was the first and is still the only occasion, post-Charter, that the Supreme Court of Canada has specifically passed judgment on Canada's compulsory attendance laws, Mme Justice Wilson held that a parent has the right "**to educate his children in accordance with his conscientious beliefs**".²⁰

Furthermore, this right to educate one's children in accordance with one's conscientious beliefs is, according to Mme Justice Wilson, one facet of the right to **raise** one's children in accordance with one's conscientious beliefs. A parent has the right

to raise his children in accordance with his conscientious beliefs. The relations of affection between an individual and his family and his assumption of duties and responsibilities towards them are central to the individual's sense of self and of his place in the world. This right to educate his children is one facet of this larger concept. This has been widely recognized. Article 8(1) of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (1950), 213 U.N.T.S. 222, states in part "Everyone has the right to respect for his private and family life...." Particularly relevant to the appellant's claim is art. 2 of Protocol No.1 of the Convention:

No person shall be denied the right to an education. In the exercise of any functions which it assumes in relation to education and to teaching, **the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.**²¹

Conscientious beliefs are broader than, and include, religious beliefs.

Religious belief and practice are historically prototypical and, in many ways, paradigmatic of conscientiously-held beliefs and manifestations and are therefore protected by the Charter. Equally protected, and for the same reasons, are

¹⁹ (1985) Supreme Court Reports, at p. 97-98.

²⁰ *Supra*, at p. 583.

²¹ *Ibid*, p. 583.

expressions and manifestations of religious non-belief and refusals to participate in religious practice.²²

Freedom of religion is prototypical in the sense that freedom of conscience, which was first expounded and accepted for religious beliefs, has subsequently been broadened to include freedom of conscience based on moral and political beliefs as well.²³

Thus, when parents elect to provide a home-based education program for their children, they may base their home-based education program on **either a philosophical or a religious perspective**. While in accordance with section 8, of the regulations, they must notify a registering authority in writing before commencing their program, no aspect of the notification is intended to diminish or to infringe on the right of parents to educate their children at and from their home in accordance with their conscientious beliefs, subject only to such reasonable limits prescribed by law that can be demonstrably justified in a free and democratic society.

Reasonable Limits

Section 1 of the *Canadian Charter of Rights and Freedoms, 1982*, reads as follows:

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

In other words, freedoms are "subject to such limitations as are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others."²⁴

Every individual is "free to hold and to manifest whatever beliefs and opinions his or her conscience dictates, provided *inter alia* only that such manifestations do not injure his or her neighbours or their parallel rights to hold and manifest beliefs and opinions of their own."²⁵

Since every child has the right to an education, freedom of conscience and religion in education **does not include the right not to educate one's children**. Thus, a home-based education program should be an academically credible program which respects the rights, freedoms, and moral principles, upon which our society is based, including the right of all children to an education.

²² *Regina v. Big M Drug Mart Ltd.*, *supra*, p. 105.

²³ See also the discussion of this in Saskatchewan Education, *Final Report of the Minister's Advisory Board on Independent Schools* (November 1990), pp. 65-68.

²⁴ *Regina v. Big M Drug Mart Ltd.*, *supra*, p. 97.

²⁵ *Ibid*, p. 105.

Furthermore, according to Mme Justice Wilson, freedom of conscience and religion in education **does not include the right to educate one's children "as one sees fit"**, as legal counsel for Pastor Jones had claimed.²⁶

Rather, the right to educate children at home is based on the **right of parents to educate their children in accordance with their conscientious beliefs.**

The Compelling Interest of the State in the Education of All Children

In *Jones v. The Queen*, all seven justices concurred that the interest of the state in the education of children is **compelling**.

In the words of Mr. Justice La Forest,

Whether one views it from an economic, social, cultural or civic point of view, the education of the young is critically important in our society. From an early period, the provinces have responded to this interest by developing schemes for compulsory education. Education is today a matter of prime importance to government everywhere. Activities in this area account for a very significant part of every provincial budget. Indeed, in modern society, education has far-reaching implications beyond the province, not only at the national, but at the international level. Much of what was said by the Supreme Court of the United States in the following passage in *Brown v. Board of Education of Topeka* (1954), 47 U.S. 48 at p. 49, has application here:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.²⁷

In Saskatchewan, as in other provinces, this compelling interest of the state in the education of all children is manifested in a number of ways including the very establishment of public systems of education and compulsory attendance laws.

²⁶ *Jones v. The Queen*, *supra*, p. 583.

²⁷ *Jones v. The Queen*, *supra*, p. 592.

In Canada, the public education system can be traced back to the establishment of common schools as “public authorities” in the United Province of Canada after 1841, and in Saskatchewan, to *The Northwest Territories Ordinance* of 1884, which was the first legislation providing for the establishment of public schools in what is now Saskatchewan.

Similarly, compulsory attendance laws originated in Ontario in 1871, and existed in most provinces and territories by the 1890s, both to ensure an educated workforce for the industrial age as well as to counteract child labour practices.

More recently, Canadian governments have affirmed in many places and in many forms the right of every child to an education. These include Saskatchewan's *Education Act*, subsection 144(1); *The Saskatchewan Human Rights Code*, subsection 13(1); and international declarations to which Canada has assented: *The International Covenant on Economic, Social, and Cultural Rights*, Article 13(1), and *The United Nations Convention on the Rights of the Child*, Article 28.

Home-Based Education as an Exemption from Compulsory Attendance

Since the first compulsory attendance legislation in Saskatchewan in 1888, territorial and provincial law have always provided for home-based education as an exemption from attendance in a public school. In *Jones vs. The Queen*, the Supreme Court of Canada upheld both the constitutionality of compulsory attendance laws and the provision for home-based education as an exemption from compulsory attendance at a public school.

At the time of the case, the *Alberta School Act*, like the Saskatchewan *Education Act*, provided that parents could seek an exemption from compulsory attendance in a public school by applying to a Department of Education inspector or superintendent for a certificate of efficient instruction for a home-schooling program, or by enrolling their children in a registered private school. Operators of private schools, in turn, could register their school with the Department of Education.

Speaking of these accommodations, Mr. Justice La Forest stated:

It would be to negate history to fail to recognize that for many years the individual and the church played a far more significant role in the education of the young than the State. And when the State began to take the dominant role, **it had to make accommodations to meet the needs and desires of those who had dissentient views.** The provisions regarding separate schools in the Constitution are an example. But our historical experience is by no means confined to these arrangements. One need only refer to the serious social and political crises that developed in this country in the latter part of the 19th century when governments sought to establish common schools in the various provinces. These attempts gave rise to major political issues, and compromises inevitably followed. Many of

these continue to this day.²⁸

Pastor Jones had refused to register his private church school with the Department of Education, or to seek a certificate of efficient instruction as a home-schooling program. Since he sincerely believed that his right and duty to educate his children came from God, "requesting the state for permission to do what he [was] authorized by God to do would, he assert[ed], violate his religious convictions",²⁹ contrary to the section 2(a) of the Charter.

Four of the seven justices held that the Alberta School Act did not violate Pastor Jones' freedom of religion to educate his children in accordance with his conscientious beliefs. Rather, according to Mme Justice Wilson, by envisaging the education of students at private schools, and at home or elsewhere, *The School Act* **accommodated** religious freedom. It provided for **compulsory education, but not education in a compulsory manner or place.**

It defers to parental authority by allowing home instruction and instruction in private schools, thereby accommodating the State purpose to the preferences of individual parents. It defers, in other words, to beliefs such as the appellant's. It recognizes the very values for which the appellant contends. If the statutory machinery has any impact at all on the appellant's freedom of conscience and religion which, for the reasons I have given, I doubt, it is an extremely formalistic and technical one.³⁰

Three of the seven justices, including Mr. Justice La Forest, writing for the majority, held that *The School Act* constituted some interference with Pastor Jones' freedom of religion, but that this interference was saved by section 1 of the Charter. Requiring anyone who sought exemption from the general scheme of education in the province to make application for this purpose -- such as requiring Pastor Jones to register his church school as a private school -- was a **reasonable limit** on his or her religious convictions concerning the upbringing of his or her children that was "**demonstrably justified in a free and democratic society**".

To permit anyone to ignore it on the basis of religious conviction would create an unwarranted burden on the operation of a legitimate legislative scheme to assure a reasonable standard of education....

No proof is required to show the importance of education in our society or its significance to government. The legitimate, indeed compelling, interest of the State in the education of the young is known and understood by all informed citizens. Nor is evidence necessary to establish the difficulty of administering a

²⁸ *Ibid*, pp. 591-592.

²⁹ *Ibid*, p. 588.

³⁰ *Ibid*. p. 579.

general provincial education scheme if the onus lies on the educational authorities to enforce compliance. The obvious way to administer it is by **requiring those who seek exemptions from the general scheme to make applications for the purpose.** Such a requirement constitutes a **reasonable limit** on a parent's religious convictions concerning the upbringing of his or her children.³¹

Mr. Justice La Forest **did not define precisely what "registration" meant.** He did not inquire how far the province could go in imposing conditions, such as the program of studies or the qualifications of the teachers in his school if Pastor Jones had registered his church school as a private school or sought a certificate of efficient instruction as a home-schooling program. However, Mr. Justice La Forest did say:

Certainly a reasonable accommodation would have to be made in dealing with this issue to ensure that provincial interests in the quality of education were met in a way that did not unduly encroach on the religious convictions of the appellant. In determining whether pupils are under "efficient instruction", it would be necessary to delicately and sensitively weigh the competing interests so as to respect, as much as possible, the religious convictions of the appellant as guaranteed by the Charter. Those who administer the province's educational requirements may not do so in a manner that unreasonably infringes on the right of parents to teach their children in accordance with their religious convictions. The interference must be demonstrably justified.³²

The recent amendments to Saskatchewan's *Education Act* continue to view home-based education **as an exemption from** compulsory attendance in a public school:

156 A pupil may be exempted from attendance at a school, and no parent, guardian or other person shall be liable to any penalty imposed by this Act, where:

(a.2) the pupil is receiving instruction in a registered home-based education program.

Parents or guardians who meet certain requirements, including a written educational plan which outlines their home-based education program, are entitled to have their program registered with their resident board of education, or for a transitional period of time, with the Department of Education, Training and Employment. Once their program is registered, then their children are automatically exempted from compulsory attendance at a public school in accordance with section 155 of *The Education Act*.

While, in accordance with section 12 of the regulations, each written educational plan must be (a) not inconsistent with the goals of education for Saskatchewan; and (b) not inappropriate for the age and ability of the students on the program, parents retain the

³¹ *Ibid*, p. 594.

³² *Ibid*, p. 593.

freedom to base their home-based education program on a religious or philosophical perspective different from that of the public education system. They also have the freedom to select instructional and support materials that are consistent with their religious or philosophical perspective. For parental choice to be meaningful, the state has to accommodate such freedoms for home-based educators.

The Principles of Fundamental Justice

Registering authorities must also review each home-based education program in accordance with the principles of fundamental justice, as provided in section 7 of the Charter:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

The liberty of parents to educate their children in accordance with their conscientious beliefs having been deduced from section 2(a) of the Charter, and conceded by public authority, the state cannot intrude arbitrarily into such an area except in accordance with the principles of fundamental justice.

Freedom of conscience and religion being a substantive right and fundamental justice being a procedural right, that the two are complementary is a fundamental principle of our constitutional heritage that goes back to the *Magna Carta* in 1215 and the British *Bill of Rights* in 1689. In order for rights to be significant there must be a procedure to give them practical operation.

Pastor Jones had contended that the Alberta *School Act* deprived him of his liberty to educate his children as he saw fit in a manner that was not in accordance with the principles of fundamental justice, contrary to section 7 of the Charter. In particular, the Act conferred on someone employed by the school system, i.e. someone with a vested interest in that system, the power to judge whether a person outside that system was providing efficient instruction; and the Act limited the evidence of efficient instruction to a certificate signed by an inspector or superintendent of schools, thus preventing him a full answer and defence to the charge.

With respect to this argument, Mr. Justice La Forest, speaking for six out of the seven justices, found that Pastor Jones had not been deprived of his liberty to educate his children as he saw fit contrary to the principles of fundamental justice. Notwithstanding that a school inspector or superintendent had a vested interest in the public education system, Pastor Jones should not have presumed that they would necessarily be biased in certifying or failing to certify that instruction was efficient. Some pragmatism was necessary in the administration of *The School Act* with respect to compulsory attendance. The province had to be given room to make choices regarding the type of administrative structure that would suit its needs without always an appeal to the courts.

It is sufficient to protect the individual against the disregard of his rights or unfairness by the school authorities **when they come to deal with his application...** If it can be established that the school authorities' action is exercised in an unfair or arbitrary manner, then the courts can intervene.³³

I have no doubt that if in exercising their functions the school authorities sought to impose arbitrary standards, i.e. standards extraneous to the educational policy under the Act, or if they in other respects acted in a manner that was fundamentally unfair, such as failing to examine the facts or to fairly consider the appellant's representations, the courts could intervene. But I am unable to categorize the issue as the appellant does.³⁴

The subsequent Saskatchewan case, *The Queen v. Cline* confirmed that public authorities must act fairly when receiving applications for home-based education. As to precisely what would represent procedural fairness, Justice Young offered only the following comment:

The Saskatchewan *Education Act* must now be read in light of the *Canadian Charter of Rights and Freedoms*. *The Education Act* when read as a whole also has the underlying principle of equality of education throughout the province. If students are allowed to make use of a home school program as referred to by the Act as an exception for attendance in one school division, the same right should exist and should be governed by generally the same principles in another area of the province.³⁵

As result of these cases, the Ministry has taken pains to ensure that all aspects of the administration of home-based education programs will be handled through clearly defined processes which reflect the principles of fundamental justice and administrative fairness.

Not only the regulations with respect to registration, but also those with respect to monitoring and cancellation attempt to balance **delicately and sensitively** the respective interests of the children, the parents, and the state in order to respect, as much as possible, the conscientious beliefs of the parents in a manner which is consistent with the principles of fundamental justice.

In accordance with clause 3(e) and section 17 of the regulations, each board of education is required to develop and approve procedures with respect to a local dispute resolution process for reviewing disagreements between an official of the board and a parent with respect to the administration of home-based education regulations and policies.

³³ *Ibid*, pp. 599-600.

³⁴ *Ibid*, p. 597.

³⁵ K.J. Young, P.C.J. *Her Majesty the Queen v. Elizabeth Cline* (Saskatchewan provincial court at Turtleford, Saskatchewan, December 20, 1988), p. 13.

Sincerity of Belief

Freedom of conscience and religion does not mean that anyone can claim an exemption from the operation of an otherwise valid law. In Canadian jurisprudence, the operative principle is "sincerity of belief".³⁶

For example, in *Regina v. Wiebe*,³⁷ the court referred to the sincerity of Mennonite convictions in declaring that the particular regulatory requirement that approved private schools should employ only certified teachers was **an unnecessary intrusion of the state into the freedom of religion of the defendants**. For these reasons, Saskatchewan's independent schools regulations permit religiously-based-registered schools to employ teachers with a Letter of Eligibility to Teach.

Also, in *Jones v. The Queen*, Mr. Justice La Forest accepted the sincerity of Pastor Larry Jones' convictions with respect to the education of his children in Western Baptist Academy in Calgary:

Assuming the *sincerity* of his convictions, I would agree that the effect of the *School Act* does constitute some interference with the appellants' freedom of religion. For a court is in no position to question the *validity* of a religious belief, notwithstanding that few hold that belief. But a court is not precluded from examining into the sincerity of a religious belief when a person claims exemption from the operation of a valid law on this basis.³⁸

As a practical matter, when individuals claim an exemption based on a sincere **religious** belief -- and, by extension, on a sincere **conscientious** belief -- individuals are assumed in the first instance to act in good faith. That is, sincerity is generally assumed. However, individuals' sincerity can subsequently be challenged on one of several grounds:

- That their religion is not a *bona fide* religion, but just a sham to claim the benefits accruing to religious status;
- That the tenets and articles of faith of their religion do not in fact entitle them to the exemption; or
- That they were not sincerely practising in conformity with the articles and tenets of faith of their religion.

Ordinarily, in most civil disputes, plaintiffs or informants first have the onus, on a balance of probabilities, to make their case. Once a certain threshold of evidence has been met, however, the onus would then shift to the defendants or respondents to defend their sincerity of belief.

³⁶ In American jurisprudence, it is "conviction" as opposed to mere "preference". A sincere belief or conviction is something one would endure severe legal sanctions in order to uphold. A preference, on the other hand, is something like a suit of clothes, which may reflect transient fashion.

³⁷ (1978) 3 Western Weekly Reports 36 (Alberta Prov. Ct.).

³⁸ *Supra*, p. 591.

Freedom of Conscience and Religion Revisited

While freedom of conscience and religion is supported by the Charter, it did not originate with the Charter. In the hierarchy of rights and freedoms which Canadians enjoy, the Charter simply enumerated freedom of conscience and religion as the **first of four fundamental freedoms**. As explained by Mr. Chief Justice Dickson in *Regina v. Big M Drug Mart Ltd.*,

The Charter was not enacted in a vacuum, and must therefore.... be placed in its proper linguistic, philosophic and historical contexts.

With regard to freedom of conscience and religion,.... the on origins of the demands for such freedom are to be found in the religious struggles in post-Reformation Europe. The spread of new beliefs, the changing religious allegiance of kings and princes, the shifting military fortunes of their armies and the consequent repeated redrawing of national and imperial boundaries led to situations in which large numbers of people -- sometimes even the majority in a given territory -- found themselves living under rulers who professed faiths different from, and often hostile to, their own and subject to laws aimed at enforcing conformity to religious beliefs and practices they did not share....

Beginning, however, with the Independent faction within the Parliamentary party during the Commonwealth or Interregnum, many, even among those who shared the basic beliefs of the ascendent religion, came to voice opposition to the use of the State's coercive power to secure obedience to religious precepts and to extirpate non-conforming beliefs. The basis of this opposition was no longer simply a conviction that the State was enforcing the wrong set of beliefs and practices but rather **the perception that belief itself was not amenable to compulsion**. Attempts to compel belief or practice denied the reality of individual conscience and dishonoured the God that had planted it in his creatures. It is from this antecedent that the concepts of freedom of religion and freedom of conscience became associated, to form, as they do in s. 2(a) of our Charter, the single integrated concept of "freedom of conscience and religion".³⁹

Mr. Chief Justice Dickson then continued to comment on the placement of "freedom of conscience and religion" in section 2(a) of the Charter and the role of freedom of conscience in our democratic political tradition.

What unites enunciated freedoms in the American First Amendment, s. 2(a) of the Charter and in the provisions of other human rights documents in which they are associated is the notion of the centrality of individual conscience and the inappropriateness of governmental intervention to compel or to constrain its manifestation,...

³⁹ *Supra*, p. 104.

An emphasis on individual conscience and individual judgment **also lies at the heart of our democratic political tradition. The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government.** It is because of the centrality of the rights associated with freedom of individual conscience both to basic beliefs about human worth and dignity and to a free and democratic political system that American jurisprudence has emphasized the primacy or "**firstness**" of the First Amendment. It is this same centrality that in my view underlies their designation in the *Canadian Charter of Rights and Freedoms* as "**fundamental**". They are the *sine qua non* of the political tradition underlying the Charter.

Viewed in this context, the purpose of freedom of conscience and religion becomes clear. The values that underlie our political and philosophic traditions demand that every individual be free to hold and to manifest whatever beliefs and opinions his or her conscience dictates, provided *inter alia* only that such manifestations do not injure his or her neighbours or their parallel rights to hold and manifest beliefs and opinions of their own.⁴⁰

Indeed, Western political philosophers place freedom of conscience at or near the top of the distinctive features of Western civilization and trace the concept to both Greek and Judeo-Christian roots. The Greek element consisted in the development of the mind in the quest for truth, and the Judeo-Christian element emphasized the importance of moral obligation to God as found in conscience. It is often said that these twin pillars of the Hellenistic and Hebraic-Christian heritage are among the main supports of Western culture.

With respect to education, the ability of each citizen to make free and informed decisions would apply, among other things, to the election of public and separate boards of education. Electors and parents, in deciding who is to represent their interests in the education of children, are presumed to cast their ballots in a "free and informed" manner.

The principle would also apply to parental decisions to educate their children at home. Our democratic system assumes that this is a free and informed choice unless demonstrated otherwise. Even where the views on religion or the values of children diverge from those of the parents, the courts have generally allowed the parents, within limits, to impose their views on their children.

⁴⁰ *Ibid*, p. 105.

The Onus of Proof

In the case of an alleged failure of parents to provide an adequate education for their children, **the burden of proof resides with public authorities.**

This principle arises directly from the previous one, discussed immediately above, that "the ability of each citizen to make free and informed decisions is absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government". The phraseology comes from the Ontario case, *Lambton County Board of Education v. Beauchamp*.⁴¹ Because of her sincere religious convictions, Mrs. Beauchamp had removed her child from the public education system and was supervising her at home in a correspondence course offered by the Christian Liberty Academy. The court held:

Those seeking to invoke the compulsive powers of the state in the face of the alleged failure of the parent or guardian to provide an adequate alternative, and thereby to impose the sanctions of a quasi-criminal legislation, **have a substantial burden of proof.**

In this case the evidence tendered on behalf of the Lambton County Board of Education falls short of establishing beyond a reasonable doubt that Mireille Beauchamp is guilty of the offence charged.

The **corollary** is that public education authorities must have **access at reasonable times** to information about home-based education programs **in order to substantiate a concern** that a particular program might not be appropriate for the age and ability of a particular child.

Before a program starts, public authorities can reasonably expect that parents should have a written educational plan which demonstrates a positive and constructive approach to the education of their children. **Once a program has started**, public authorities should be able to monitor the educational outcomes of the home-based education program. In accordance with section 19 of the regulations, such monitoring includes determining whether a home-based student is making satisfactory educational progress (a) in relation to the written educational plan; and (b) with respect to his or her age and ability.

Unreasonable Search and Seizure

Section 8 of the *Canadian Charter of Rights and Freedoms, 1982*, reads as follows:

8. Everyone has the right to be secure against unreasonable search and seizure.

This imposes a requirement of reasonableness on the techniques available to public authorities, such as boards of education, to look for and obtain evidence of some legal wrong, such as parents failing to educate their children on a home-based education

⁴¹ (1979) 10 Reports of Family Law (2d) 354 (Ontario Prov. Ct.), at p. 362.

program. Any evidence discovered by unreasonable search or seizure is obtained in breach of the Charter. While such evidence may still be admissible in a court of law if the public authorities acted in good faith or were unaware that they were acting in violation of the Charter, deliberate violations of the Charter will nearly always lead to the exclusion of evidence in accordance with section 24(2) of the Charter.⁴²

Following the landmark British case of *Entick v. Carrington* (1765), the common law holds that a "government official has no authority to enter private property for the purpose of searching for evidence, and no authority to seize private property for use as evidence, unless authorized by law."⁴³

The issue with respect to home-based education is the legality of home visits by board of education officials, without the consent of the parents, for the purpose of administering the home-based education regulations and policies. So far, there has been no case law with respect to this issue in Canada. However, for a number of reasons, it seems likely that Canadian courts will follow the emerging American precedent in this area, where the courts are regarding home visits without consent as "warrantless searches".

In the case of analogous provisions in the *Canadian Charter of Rights and Freedoms* and the American Constitution, the Supreme Court of Canada is frequently finding American case law to be helpful and persuasive, although not of course binding. The Supreme Court of Canada is drawing upon American precedent because the United States represents not simply the closest constitutional framework but also the closest social milieu to Canada. The American *Bill of Rights*, by the fourth amendment to the Constitution, also guarantees people the right to be secure against "unreasonable search and seizure".⁴⁴

For example, the Supreme Court of Canada has followed American precedent in defining and extending the value which is protected by the law of search and seizure. Historically, the rationale for the common law prohibition against unreasonable search and seizure was the protection of property rights. Following *Katz v. United States*⁴⁵, the Supreme Court of Canada held in *Hunter v. Southam*⁴⁶ that section 8 protects not only property, but also "a reasonable expectation of privacy", which is a broader concept than property. Thus, the protection against unreasonable search and seizure protects not just private places, but also the privacy of people, whether their reasonable expectation of privacy is being exercised on their own property or not.

⁴² Peter W. Hogg, *Constitutional Law of Canada*, Third Edition (Toronto: Carswell, 1992), p. 1052. Section 24(2) holds that "evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute."

⁴³ *Ibid*, pp. 1052.1053.

⁴⁴ Indeed, this was one of the major grievances of the American colonists leading to the American revolution.

⁴⁵ (1967) 389 United States 347.

⁴⁶ (1984) 2 Supreme Court Reports 145.

Second, the Supreme Court of Canada is also following American precedent in defining various exigent circumstances which constitute lawful exceptions to requiring public authorities to possess a warrant for the collection of evidence. These include "a search incident to a lawful arrest, a search conducted in the course of a 'hot pursuit', a 'stop and frisk' search for concealed weapons, a search of a vehicle which could be quickly removed from police surveillance, a search at the international border and seizure of evidence 'in plain view',"⁴⁷ none of which obviously apply to home-based education.

Although the state has a "compelling interest" in the education of all children, where this compelling interest abuts against a constitutionally protected right, such as the right of parents to educate their children in accordance with their conscientious beliefs, the state must exercise its compelling interest by the "least intrusive means".

In its final report, the Advisory Committee on Home-based Education did not envisage routine home visits by board of education officials without the consent of the parents as necessary for the compelling interest of the state in the education of all children. First of all, once a program has been lawfully registered along with a written educational plan, there are no "reasonable and probable grounds" to believe that an offence has occurred. The initial presumption is that the parents are providing their children with a satisfactory education.

Second, there exist other means, which are less intrusive than home visits, to assess the educational progress of the children on the home-based education program. Section 13 of the regulations require parents to maintain a portfolio of work and summative record of their children's educational progress. Subsequently, in accordance with section 14, they must send an annual progress report to the board of education. Given the philosophical and structural diversity of home-based education programs, the regulations provide four options with respect to the nature and format of this progress report.

Boards of education may require two conferences a year with the parents who are directing the home-based education program, the first at the time of the initial registration and the second at the time of the annual progress report. The failure to schedule or attend such a conference constitutes grounds for cancelling a home-based education program.

In accordance with section 19 of the regulations, if the responsible board official can substantiate that a home-based student is not making satisfactory educational progress on the home-based education program, then the official may require the parents to implement a remedial instruction plan, which may involve more intensive monitoring of the student's educational progress. After a remedial instruction process, if the official can substantiate that the student is still not making satisfactory educational progress, then the official may take steps to cancel the home-based education program.

⁴⁷ Peter W. at, *op. cit.*, p. 1054.