

J. MICHAEL SMITH, ESQ.
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JAMES R. MASON III, ESQ.
VICE PRESIDENT (OR, DC)
SCOTT A. WOODRUFF, ESQ.
SENIOR COUNSEL (VA, MO)
DARREN A. JONES, ESQ.
ATTORNEY (CA, DC)
THOMAS J. SCHMIDT, ESQ.
ATTORNEY (CA)

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ADVOCATES FOR HOMESCHOOLING

MICHAEL P. DONNELLY, ESQ.
ATTORNEY (MA, NH, WV, DC)
WILLIAM A. ESTRADA, ESQ.
ATTORNEY (CA)
PETER K. KAMAKAWIWOOLE, ESQ.
ATTORNEY (MO, VA)
DANIEL T. BEASLEY, ESQ.
ATTORNEY (CA, WI)
MARY E. SCHOFIELD, ESQ.
OF COUNSEL (CA)
TOM SANDERS, ESQ.
OF COUNSEL (TX)

March 12, 2018

The Honorable R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Ave. NW
Washington DC 20210

RE: Request that the Department re-examine regulation affecting homeschool students

Dear Secretary Acosta:

The Home School Legal Defense Association is a national organization whose mission is to protect the constitutional right of parents to direct the education and upbringing of their children. We represent the interests of hundreds of thousands of homeschooling families across the country.

I write to respectfully ask that you re-examine a 2010 regulation from the Department of Labor that has led to discrimination against 14-15 year old homeschool students who wish to work for an employer.

On May 20, 2010, the Department issued a final rule, Docket Number WHD-2007-0002 and codified at 29 C.F.R. § 570.35, that changed long-standing Department of Labor policy regarding the employment of 14-15 year olds.

While “school hours” had never been defined prior to this rule, longstanding Department enforcement position had been that the term refers to the normal hours of the public school system in the child’s district of residence. This final rule for the first time established an official definition of “school hours” for the purposes of employment of 14-15 year olds with the following definition:

“School hours refers to the hours that the local public school district where the minor resides while employed is in session during the regularly scheduled school year.”

H O M E S C H O O L L E G A L D E F E N S E A S S O C I A T I O N

NATIONAL OFFICE ▪ ONE PATRICK HENRY CIRCLE ▪ PURCELLVILLE, VA 20132 ▪ 540-338-5600 ▪ 1-540-338-1952 FAX
CAPITOL HILL OFFICE ▪ 119 C STREET, S.E. ▪ WASHINGTON, DC 20003

Several commentors to the notice of proposed rule making specifically urged the Department to address the issue of homeschool students, and ensure that homeschoolers were not adversely impacted by the final rule. But the Department dismissed these comments in the background to the final rule. This dismissive approach fails to note that homeschooled 14-15 year olds and their employers would still need to follow all other laws and regulations dealing with the employment of 14-15 year olds, including the daily and weekly limit on how many hours they could work.

We believe that the Department's 2010 definition of "school hours" reflects a discriminatory view of homeschool and private school students. The DOL's definition of "school hours" frustrates the beneficent purpose of the law by applying the exact same hours for every student--even if they attend classes at different times. This one-size-fits-all approach fails to recognize the fact that homeschool and private school students are often not required to be in class at the same time as public school students. A homeschool student may work in an efficient manner and finish the school day earlier than the public school. Additionally, a homeschool student may have no classes during part of the time public schools are in session, but may be in classes during other times when public schools are not in session.

The Department's narrow definition results in both over-inclusion and under-inclusion of some students. Employers are permitted to hire homeschool students during hours they may have classes, but are prohibited from hiring them during hours when they may have no classes. Some homeschool students could potentially be deprived of education. Others could be needlessly deprived of useful employment and career preparation. This is diametrically opposed to the purpose of the law.

We believe that "school hours" should be construed flexibly to mean the hours during which any given student--whether in public, private, or homeschool--is required to attend classes.

In the almost eight years since the Department's final rule was established, we have compiled a long list of homeschool students from across the nation who are being homeschooled in accordance with their state's homeschool laws, who are in compliance with their state's employment laws, who are in compliance with all other federal child labor laws and regulations, but who are ultimately turned away from good jobs and career experience due to the Department's narrow definition of "school hours."

To fix this growing problem, we respectfully ask you to issue a new notice of proposed rulemaking for the purpose of issuing an updated regulation regarding "school hours" for the purposes of employment of 14-15 year olds. A new and fair rule could be as simple as the following:

"School hours refers to the hours that the school which the student primarily attends is in session during the regular school year."

Letter to The Secretary of Labor of the United States of America

3/12/2018

Page 3 of 3

We thank you for taking our request into consideration. Please do not hesitate to contact me if you or your staff would like to discuss this in greater detail.

Most respectfully,

A large, stylized handwritten signature in black ink, appearing to read 'J. Michael Smith', is written over the typed name and title.

J. Michael Smith, Esq.
President

CC: The Honorable Lamar Alexander
The Honorable Virginia Foxx