

B. PR 04-328 Texas State Law Requirements for Home Schooling (NH Raymond L. B-, Student Tyler R. B~: SSN ~) -REPLY

DATE: July 19, 2004

1. SYLLABUS

Texas law does not specifically authorize home schooling, but it provides that private and parochial schools meet the state's compulsory school attendance provisions as long as a good citizenship course is part of the course of study. Texas has determined that a home school can be a private school; therefore, attendance at a home school can meet the state's compulsory school attendance statute. If a student alleges attendance at a home school in Texas, determine whether the student's course of study includes a course in good citizenship. The student must also meet federal standards for full-time attendance and all other requirements for payment of benefits.

2. OPINION

The purpose of this memorandum is to respond to your request for our opinion regarding whether a home school would qualify under section 202 (d) (7) of the Social Security Act (the Act) as a school that provides elementary or secondary education as determined under Texas law. *See* 42 U.S.C. § 402 (d) (7). Specifically, you asked whether Tyler B~ qualifies as a full-time student of an elementary or secondary school and is, therefore, entitled to receive benefits on the record of Raymond Bennett. After reviewing the facts and relevant law, we believe that Tyler's home school qualifies as an educational institution under Texas state law and that Tyler is entitled to benefits on Mr. B~'s record.

As we understand the facts, Tyler attained age eighteen in July 2003 and filed an application for child's benefits. Tyler has been home schooled since October 2001. In February 2003, Tyler re-enrolled in a course sponsored by the Lighthouse Christian Academy. Tyler's mother, Kimberly B~, signed a Statement of Claimant or Other Person, on which she reported that Tyler attends school approximately 250 days per year. Ms. B~ further indicated that Tyler's courses include music, physical science, civics, economics, American history, English, typing, chemistry, computers, and good citizenship. She also stated that she has obtained approval from the Board of Education to operate a home school and that she completed a letter of intent to educate Tyler at home, although verification of this was not provided. She further stated that she keeps a record of Tyler's attendance. Ms. B~'s provided a record, entitled "Lighthouse Christian Academy Master Record Sheet," which contains Tyler's test scores and attendance records. Tyler completed a Student's Statement Regarding School Attendance, on which he reported that his school is the Lighthouse Christian Academy, through a home school program, and that he is scheduled to attend school thirty-five hours per week. Tyler reported that he expected to graduate from high school in February 2004.

The materials you have provided include a web page containing a description of the Lighthouse Christian Academy (the Academy). The web page indicates that the Academy provides a curriculum and assistance to parents who serve as home school teachers, as well as report cards, transcripts, and high school diplomas. The Academy also offers support and materials for home school teachers who wish to independently select the educational materials and manage the administrative functions.

The materials you have provided also include a letter from the Texas Education Agency (TEA), which informs school administrators of the TEA'S position regarding home-schooled students. The TEA states that home-schooled students are exempt from compulsory attendance requirements and are entitled to transfer credits to the same extent as students enrolled in private schools. The materials provided also include a letter from the TEA entitled "Home School Information Letter," which reiterates the TEA position and provides guidance to individuals on potential sources of information. The letter indicates that the TEA does not regulate, index, monitor, approve, or register home schooling programs. You have also provided a copy of a 1991 opinion released by this Office on the subject of home schooling in Texas. As discussed below, the conclusions and analysis in that opinion remain valid.

As you know, the child of a wage earner may receive benefits after age eighteen if he is a full-time elementary or secondary school student. *See* 20 C.F.R. § 404.350 (d) (1). A student receiving home school instruction in accordance with the law of the state in which he resides is considered a full-time elementary or secondary school student. As Tyler resides in Texas, Texas state law applies. *See* 20 C.F.R. § 404.367.

Texas does not have a statute specifically authorizing home schooling. Texas does, however, acknowledge private and parochial schools as meeting the state's compulsory attendance provisions, as long as a course in good citizenship is included in the course of study. *See* Tex. Educ. Code Ann. § 25.086(1). As discussed in our 1991 opinion, although Tyler is age 18 and, therefore, not subject to compulsory attendance requirements, acceptance of his home schooling for compulsory attendance purposes indicates state acknowledgement of his instruction for other purposes as well.

The Texas Supreme Court has expressly determined that a home school can be a private school and, therefore, that attendance at a home school satisfies the state's compulsory attendance statute. *See Texas Education Agency v. Leeper*, 893 S.W.2d 432, 443-44 (Tex. 1994), *reh'g overruled* March 16, 1995. In *Leeper*, the court affirmed the lower court holding that was addressed in the 1991 opinion provided by this Office. The court discussed Texas' long history of acceptance of home schooling as equivalent to private schooling. *See id.* at 433-35. The court then discussed the Texas Education Agency's (TEA) having taken the position in 1981 that home schooling did not satisfy the compulsory attendance requirements, a position the TEA abandoned during the defense of its case in *Leeper*. *See id.* at 435-37, 443-44. The court found that the lower court had properly determined that home schooling satisfies compulsory attendance requirements and that the TEA properly acknowledged the error of the position it had taken in 1981. *See id.* at 443-44. Following the *Leeper* decision, the TEA released the materials discussed above, acknowledging the validity of home schooling.

As discussed above, Texas requires that a course in good citizenship be included in the course of study for private or parochial school attendance to satisfy compulsory attendance requirements. *See* Tex. Educ. Code Ann. § 25.086(1). A home school can be considered a private school. *See Leeper* at 443-44. Ms. B~ has indicated that Tyler's curriculum includes a course in good citizenship. She has also included civics on the list of Tyler's courses. Thus, we believe that it would be appropriate to determine that Tyler's home schooling meets the compulsory attendance requirements.

In addition, the records provided indicate that Tyler takes numerous courses typical of a high school curriculum and representative of a full course load and that attendance records and test scores are maintained. Moreover, Ms. B~ and Tyler have indicated that Tyler attends school 250 days a year and approximately thirty-five hours a week. If you are satisfied that these representations are accurate, the requirement that Tyler be a full-time student would also be met. Thus, Tyler would be entitled to benefits on Mr. B~record (assuming that all other eligibility requirements, not included in your request for our opinion, are met.)

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