This is Atty. Stevenson's response to the 6/5/17 CT Law Tribune article. It's lengthy to include the relevant facts. Please make the time to read it.

June 5, 2017

RESPONSE TO EDITORIAL BOARD ARTICLE, "IT'S TIME TO EXAMINE REGULATING HOME SCHOOLING"

It is unfortunate that before the Board published this article the Board did not reach out to those who know the most, and have the facts about, home schooling. Had the Board done so, the Board certainly would have been more informed, and the article published would have reflected more accurately existing history, law, and custom.

The argument contained in the article is nothing new. Uninformed individuals articulated similar arguments when home schooling came back in vogue in the late 1980's. It was debunked then, as it can be debunked now.

First, it is important to note that the term, "home schooling", is simply a nickname coined in the 1980's to describe a statutory right, and duty, that parents have had since the inception of the colonies, and as recorded initially in Ludlow's Code of 1650. That is, parents have the statutory duty to instruct their own children, or cause them to be instructed, in certain subjects. That mandate is codified today in Connecticut General Statute §10-184.

"All parents and those who have the care of children shall bring them up in some lawful and honest employment and instruct them or cause them to be instructed in reading, writing, spelling, English grammar, geography, arithmetic and United States history and in citizenship, including a study of the town, state and federal governments."

That is the first sentence of that statute, and it is what is known as the state's "compulsory education law", i.e., all children must be educated in those subjects - by whom? - by their parents. This is not a choice. This is a statutory obligation.

Parents do have a choice if they do not abide by that statutory mandate to instruct their own children. The second sentence of the statute specifies that if parents have children between certain ages, they must send them to a public school, unless they are able to show that the child is being equivalent instruction elsewhere.

"Subject to the provisions of this section and section 10-15c, each parent or other person having control of a child five years of age and over and under eighteen years of age shall cause such child to attend a public school regularly during the hours and terms the public school in the district in which such child resides is in session, unless such child is a high school graduate or the parent or person having control of such child is able to show that the child is elsewhere receiving equivalent instruction in the studies taught in the public schools."

That second sentence is what is known as the state's "compulsory attendance" law. That section of the statute, however, is not applicable if parents already are undertaking their mandatory obligation under the first sentence of the statute to instruct their own child. If parents are undertaking their obligation to instruct their child, then attendance at a public school simply does not apply.

If the parents are not undertaking that obligation, however, then, and only then, are the parents required to send the child to a public school, if the child is between five and

eighteen years old. Still, parents do have another choice under that second sentence, if they do not wish to undertake their obligation to instruct their own child, and they also do not wish to send their child to a public school. The second sentence of the statute specifies that those parents can remain in compliance with the compulsory attendance provision, if they are able to show that the child is receiving an equivalent instruction elsewhere. Under those circumstances, it is patently obvious that the parents easily can show that the chid is being given equivalent instruction elsewhere, if the child is enrolled in a private school. In effect, Conn. Gen. Stat. §10-184 places an obligation on parents to instruct their own child in certain subjects, but if they do not wish to do so, parents become obligated to send their child to a public or a private school. With this statutory background in mind, the Board's argument can be reviewed.

Starting with the first paragraph of the article, several flaws can be noted. The Board states, "There are, however, instances of abusive or neglectful parents who are able to hide their mistreatment of their children because they home-school. These children are not visible on a daily basis to teachers, nurses, psychologists, coaches, bus drivers, principals, lunch ladies, janitors, other parents, etc.—in short, the scores of people who see schoolchildren every weekday. When children who are registered for school don't attend, the schools call home to ensure the absence is a permitted one and to hear the excuse for the absence. In fact, repeated unexplained absences result in referrals to the Department of Children and Families for educational neglect."

The Board does not document, nor cite any references documenting, any instances of "abusive or neglectful parents who are hiding their mistreatment of their children because they home school". All things are possible, but when one advocates for changes to state law, especially when the Board of a prestigious legal publication, presumably made up of distinguished lawyers with years of legal training, one would think that the advocates for the change in the law would present at least a modicum of statistics proving the existence of a problem severe enough to warrant such a change in the law. In this instance, the article is bereft of such statistics, or any other evidence of such a problem. A simply conclusory statement is made, apparently based on assumptions.

Similarly, the Board does not present any proof or evidence of its assertion that "those children" who home school "are not visible on a daily basis to the scores of people who see schoolchildren every weekday." The Board neglects to mention that the "scores of people who see schoolchildren every weekday" are not the only people who are statutorily designated as "mandatory reporters" of abuse and neglect. Pursuant to Connecticut General Statute §17a-101(b), there are a total of 38 different types of individuals who are designated as mandatory reporters. "School employees" are identified in the statute as only 1 of the 38 types of mandatory reporters. The entire list includes:

(1) Any physician or surgeon licensed under the provisions of chapter 370,
(2) any resident physician or intern in any hospital in this state, whether or not so licensed,
(3) any registered nurse,
(4) any licensed practical nurse,
(5) any medical examiner,
(6) any dentist,
(7) any dental hygienist,
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(9) any school employee, as defined in section 53a-65,
(10) any social worker,
(11) any person who holds or is issued a coaching permit by the State Board of Education, is a coach of intramural or interscholastic athletics and is eighteen years of age or older,
(12) any individual who is employed as a coach or director of youth athletics and is eighteen years of age or older,
(13) any individual who is employed as a coach or director of a private youth sports organization, league or team and is eighteen years of age or older,
(14) any paid administrator, faculty, staff, athletic director, athletic coach or athletic trainer employed by a public or private institution of higher education who is eighteen years of age or older, excluding student employees,
(15) any police officer,
(16) any juvenile or adult probation officer,
(17) any juvenile or adult parole officer,
(18) any member of the clergy,
(19) any pharmacist,
(20) any physical therapist,
(21) any optometrist,
(22) any chiropractor,
(23) any podiatrist,
(24) any mental health professional,
(25) any physician assistant,
(26) any person who is a licensed or certified emergency medical services provider,
(27) any person who is a licensed or certified alcohol and drug counselor,
(28) any person who is a licensed marital and family therapist,
(29) any person who is a sexual assault counselor or a domestic violence counselor, as d defined in section 52-146k,
(30) any person who is a licensed professional counselor,
(31) any person who is a licensed foster parent,
(32) any person paid to care for a child in any public or private facility, child care center, group child care home or family child care home licensed by the state,
(33) any employee of the Department of Children and Families,
(34) any employee of the Department of Public Health,
(35) any employee of the Office of Early Childhood who is responsible for the licensing of child care centers, group child care homes, family child care homes or youth camps,
(36) any paid youth camp director or assistant director,
(37) the Child Advocate and any employee of the Office of the Child Advocate, and
(38) any family relations counselor, family relations counselor trainee or family services supervisor employed by the Judicial Department.
The above is merely a list of "mandatory reporters". In addition to that, any individual person, anywhere, can report suspected neglect and abuse of a child, and many do on a daily basis. That authority is found in Connecticut General Statute §17a-101p and 17a-103 ("any other person having reasonable cause to suspect or believe that any child under the age of eighteen is in danger of being abused, or has been abused or neglected, as defined

in section 46b-120, may cause a written or oral report to be made to the Commissioner of Children and Families or the commissioner's representative or a law enforcement agency.") Therefore, by even a cursory review of the statutes, one can readily see that even though a child is not "registered in school", the many, many other people, mandatory reporters and individual citizens alike, do come into contact with home schooled children on a regular basis, and are able to see and to report any suspected abuse and neglect. Especially if the thought process behind the Board's argument is that children who are not enrolled in public school are never seen by others, the fact that they might not be seen by others in the community, theoretically, would be sufficient even for a neighbor to suspect abuse or neglect, and the neighbor easily could report those suspicions to DCF to be investigated.
The Board also argues that when children are enrolled in school, "repeated unexplained absences result in referrals to the Department of Children and Families for educational neglect" for further investigation. It is unfortunate that the Board, again, did not undertake a review of the existing statutes before presenting that argument, because had it done so, it would have discovered that the law in this area is changing. In fact, as of August 15, 2017, such "repeated unexplained absences" will no longer be referred to the Superior Court for educational neglect. At that time, Public Act 16-147 takes effect, amending Connecticut General Statute §10-198a. Under the old statute, when children had unexcused absences, parents were notified and warned that those absences "may result in a complaint filed with the Superior Court pursuant to section 46b-149 alleging the belief that the acts or omissions of the child are such that the child's family is a family with service needs." Under the new truancy statute, that section was eliminated. Instead, the legislature directed the local school districts to implement a new "truancy intervention model identified by the Department of Education" to work with parents and students, in order to prevent, and to resolve, truancy issues within the school district, without resorting to reporting families for further legal intervention.
In fact, this issue was studied in depth by the Juvenile Justice Policy and Oversight Committee, whose recommendation for that change was adopted by the legislature as our new truancy statute. So, even when children are registered in the public schools, simply because they do not attend school, for unexcused reasons, that, alone, is not sufficient to report the child to the Superior Court as truant, or to report the parents as neglectful. The Board's argument regarding truancy reporting also clearly is not a reason for more regulation of home schooling, when the legislature is of the opposite opinion regarding legal intervention, and has indicated that less regulation and stringent measures should be employed when children are not being educated on a regular basis. Clearly, the legislature favors assistance and support, rather than accusations of neglect and judicial intervention. Thus, the Board's argument that because home schooled children are not seen by school personnel, such that they can be reported to DCF when they have unexcused absences, is wholly without merit.
Next, the Board purports to quote Connecticut General Statute §10-184, but does so erroneously. The Board attempts to connect the first sentence of that statute, that directs that all parents shall instruct their children or cause their children to be instructed in certain subjects, to the provision in the second sentence that parents must be able to show equivalent instruction. The plain language of the statute does not connect the two, as clearly can be seen above. The plain language of the statute connects the provision

regarding equivalent instruction, to the compulsory attendance portion of the law. The Board misses the crucial fact that the equivalent instruction provision only applies when parents are not undertaking their obligation to instruct their own children, and also are not undertaking their secondary obligation to send the child to a public school. Under those circumstances, then the parents who have undertaken neither obligation must be able to show that the child is elsewhere receiving equivalent instruction. Again, they can do so by showing that the child is enrolled in a private school.

The Board is correct, however, to question what the definition of "equivalent instruction" is. Currently, there is no definition of "equivalent instruction" in the statutes. As a matter of fact, individuals have been trying to obtain "equivalent instruction" for their children for years in this state. Indeed, many court cases have been decided regarding this very issue. Take for example, Horton v. Meskill, 172 Conn. 615, 649, 376 A.2d 359 (1977); Sheff v. O'Neill, 678 A.2d 1267, 238 Conn. 1 (1996); and Connecticut Coalition for Justice in Educ. Funding, Inc. v. Rell, 295 Conn. 240, 990 A.2d 206 (2010). All had to do with the idea that all children should be able to receive equivalent instruction, whether the children reside in the poorest of communities, or the richest. Many attempts have been made to make the instruction in the public schools equivalent, in both the poorest and the richest communities. None have succeeded. Nonetheless, the debate, and the efforts continue. This begs the question, assuming arguendo that the Board's interpretation of Connecticut General Statute §10-184 is accurate, and the equivalent instruction portion of the compulsory attendance section of the statute actually applies to the compulsory education portion of the statute requiring only parents of home schooled children to be able to show they are providing equivalent instruction, then to what, exactly, are the parents showing that their education is equivalent? Are they to show that the education they are providing their children is equivalent to the education being provided to the children in the poorest of the inner cities, or, are they to show that the education they are providing their children is equivalent to the education being provided to children in the richest of communities? Are they to show that the education being provided is equivalent to the education being provided by the worst teacher in a particular school, or to the education being provided by the best teacher in that school? I would suggest that until, and unless, the public school system develops equivalent instruction in all of the public schools across the state, including the poorest and the richest communities, or at least until and unless there actually is a definition of what "equivalent instruction" is, that there can be no valid requirement that parents show "equivalent instruction". If the public schools in this state cannot provide it, neither can private schools, or individual parents.

Furthermore, again assuming arguendo there is any connection between the term equivalent instruction and the right of parents to instruct their own children, there is another, and more important, issue to contemplate. That is, the fact that even if the government does develop an exact definition of the term, "equivalent instruction", the government, nonetheless, cannot compel parents to provide that "equivalent instruction" to their children. Indeed, repeatedly, the U.S. Supreme Court has held that it is beyond doubt that parents, not the government, have the primary role in the upbringing of their children. See Meyer v. State of Nebraska, 262 U.S. 390 (1923); Pierce v. Society of Sisters, 268 U.S. 510 (1925); and Wisconsin v. Yoder, 406 U.S. 205 (1972). In Pierce, the Court explained, quite

clearly, that the State simply cannot compel the "standardization of children" by forcing them to accept public school instruction. Pierce v. Society of Sisters, 268 U.S. at 534-535. Therefore, for the state to do as the Board argues, to "regulate" homeschooling to "ensure" that home schooled children are receiving such "equivalent instruction" as provided in the public schools, not only would be misguided, but also clearly would be an unconstitutional interference with primary role of the parents in the upbringing of their children.

It is unfortunate that the Board did not refer to any of these Supreme Court precedents, or Constitutional issues, in making its argument.

Finally, at the end of the Board's argument, and, again, citing no provable facts, statistics, or evidence, the Board sets forth certain theoretical, hypothetical, possibilities that, somehow home schooling may be "used as a cover for child maltreatment", and that "In its current, largely unregulated state, home schooling can enable child abuse by allowing abusive parents to isolate their children from outside contact, thus impeding their ability to seek help, tell others of their abuse or be seen by people who could help them."

The Board then poses certain questions, asking why there are no "sensible safeguards in place to ensure that home schooling is not being used as a cover" for maltreatment; and "why isn't enacting such safeguards in the best interests" of the children's "well-being"? The Board then concludes its argument by calling for "checks and balances" to be in place "to protect home schools children and to ensure their well-being."

The Board seemingly fails to realize that there are "sensible safeguards in place" to "ensure" that children are not being "maltreated". In fact, there is an entire body of law already in place, duly adopted by the legislature, and implemented by use of millions of taxpayer dollars. The body of law is the myriad neglect and abuse statutes currently in place. To repeat, under just one of those statutes, there are 37 categories of mandatory reporters who are in the community, who are not merely employees of the public school system, but who are obligated to report the "maltreatment" of children, including home schooled children. Contrary to what the Board may think, or assume, home schooled children are not isolated from contact with mandatory reporters, by any stretch of the imagination. They come in contact with the 37 other categories of mandatory reporters, all the time, in the community. Moreover, there also are an unlimited number of individuals in the community who are not mandatory reporters, but who are authorized by statute, and encouraged by policy, to report any "maltreatment" of children, including home schooled children. In fact, this body of law, these abuse and neglect statutes, are the "checks and balances" that ensure the well-being of all children in the state, including home schooled children.

It would be wise for the Board to re-consider its argument, to conduct more thorough research, to actually have conversations with home schooling parents who are well informed regarding all of these issues, and with legislators who consistently have reinforced the rights of parents to instruct their own children, in order for the Board to obtain more thorough basis of knowledge before making such its argument.

It certainly is well understood by those in the home schooling community, that, indeed, there are a certain number of parents who neglect and abuse their children, but these neglectful and abusive parents may be found, not only in the home schooling community, but also, and more frequently, in the public school system, as well as in the private school system. Those families are reported to DCF for further investigation. Neglect is not dependent on the type of education a child is receiving. In fact, it is well understood that

neglect and abuse can be found anywhere, whether or not a child is being educated in a public school, a private school, or a home school; whether or not checks and balances are in place; and whether or not regulations against it exist. This is just a fact of life, a very unfortunate and sad fact of life.

At the very least, before making any argument for increase in regulation of any educational system, the Board would do well to consider this truth, and factor it appropriately into its argument: public schools have the most highly regulated educational system, with the most checks and balances, and the most mandatory reporters already in place, and which have been operating for decades. Yet, all of those checks and balances, all of those regulations, have done little, if anything, to stop any parent, who truly chooses to do so, from neglecting or abusing their child.

It is never acceptable to neglect or abuse any child, regardless of where they are being educated, but the Board, in this case, has not done its homework, and has not provided sufficient proof, to justify its claims for regulation of those who choose to homeschool. For all of the above reasons, reconsideration of the Board's position is highly appropriate.

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