

HEIR of Georgia offers the following informational links and commentary to help home educators become better informed about Georgia laws as they concern home educators and state agencies.

The information contained here *has not been composed by lawyers and is not legal advice.*

DFCS and Home Education

1. **Question:** What is the scope of DFCS' authority and responsibility?

Answer: The Division of Family and Children Services is an agent of the state of Georgia's Department of Human Resources. According to their website,

“The Division of Family and children Services (DFCS) is the part of DHR that [investigates child abuse](#); finds foster homes for abused and neglected children; helps low income, out-of-work parents get back on their feet; assists with childcare costs for low income parents who are working or in job training; and provides numerous support services and innovative programs to help troubled families.”

Although DFCS is under the DHR umbrella, it is generally administered locally by each county under the direction of a County Director whose responsibilities include the interpretation and application of statutes and regulations. Because interpretations may vary from one county to another, it is important for individuals to be attuned to what is happening in their own counties.

2. **Question:** Does DFCS have the authority to monitor individual home study programs for compliance?

Answer: There are two situations that might apply. First, the local superintendent, after having given written notice to a parent or guardian providing a home study program that he/she is [out of compliance with attendance requirements, may seek the cooperation of agencies such as DFCS to secure enforcement](#). If you are in compliance with the reporting requirements of our home study law, this should never occur. It is **strongly advised** that all home study program participants in Georgia faithfully and promptly file the required declaration of intent to utilize a home study program (available at <http://www.heir.org/forms.htm>) and submit the required monthly attendance forms.

The second situation does not deal specifically with home study programs but with any home in which children reside. [If it is reported that you are abusing or neglecting your child\(ren\), DFCS is obligated to follow up by investigating to determine if there is merit to the report](#). It is possible, of course, that family members or disgruntled neighbors or simply those who do not value home education may interpret the fact of your home educating as neglectful or

abusive. Sometimes people are concerned about the “isolation” of home-educated children and believe that is justification for reporting a child as being neglected or deprived. The term "deprived child" as it relates to the jurisdiction of the juvenile court includes a child who is:

"without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health or morals;" [O.C.G.A. § 15-11-2\(8\)](#) (emphasis added).

It is legal to fulfill the compulsory education requirement of our law via a home study program, and it is neither the duty nor the privilege of DFCS workers to assess or determine the quality of the home study program being provided. As long as your home study program meets the requirements spelled out in [OCGA 20-2-690](#), you are in compliance with the law. Unless there are other abuse, neglect, or deprivation issues in your family that need to be investigated, DFCS should be satisfied with your having met the requirements of the home study law, whether or not they or those who reported you personally value home education.

3. **Question:** In the event that a DFCS worker comes to a home educator’s door as a result of a tip of alleged “isolation,” abuse, neglect, or deprivation, what is the right of the home educator to refuse to have his children seen, interviewed, etc.? Must the DFCS worker have a warrant?

Answer: Prudence as well as knowledge of the law is critical in such cases. Polite firmness should be the attitude, and confidence in knowing one’s rights and on which points to be firm are the underpinnings of being effective. Common sense is a good ally; it is good to know your rights and insist on them while acknowledging the honorable intent of those whose duty it is to substantiate reports of abuse. While your aim should be to help the agent find that the report is unsubstantiated, it is important also to uphold your rights as a free citizen.

No agent of the government has a right to come into your home or interview your children without the proper warrant. A judge who has already been convinced that there is sufficient cause to investigate the situation must issue a warrant. A DFCS worker may not execute the warrant; only a law-enforcement official can do that. If a DFCS or social worker arrives with the police and a warrant, it may be time to call a lawyer. First, a warrant can only be issued pursuant to a showing of probable cause. Second, the warrant must be properly completed. If an allegation is serious enough that a court found cause to issue a warrant, then it is time to enlist an attorney. An attorney will want to evaluate the sufficiency of probable cause and will want to ensure that the warrant meets all procedural requirements.

If a social worker or DFCS worker asks to see your children or wants to come into your home without a warrant, here are several things you may prudently do.

1. Be polite and firm. You might join the agent on the porch or in your front yard and say something like the following:
 - “I understand you have an important job to do. Let’s talk about what brings you here.” (You have a right to be informed of the nature and cause of the accusation.)
 - “I certainly have nothing to hide, but I’m also sure you’ve heard of some cases where the rights of citizens weren’t as carefully considered as they should have been. I’m a ‘by the book sort of person,’ so you’ll understand why I need to see a warrant before admitting you to see/interview/search/etc.” If you didn’t bring a warrant, I will be happy to let you use my portable phone here outside to call the proper authorities, and I’ll wait with you here on the porch while you take care of those details.”
 - “You know, I am really interested in the concept of due process, so to protect both your office and my civil rights, I’m going to record the remainder of our conversation. Will you excuse me while I go get my digital voice recorder?”
2. Be thoroughly familiar with the [homeschool law](#).
3. Be familiar with [Georgia’s definition of Child Abuse and requirements for reporting](#).

GA Code 20-2-694:

It shall be the duty of each county and independent school system board of education and each local school superintendent within the state to administer this subpart and to secure its enforcement in cooperation with the other state and county agencies and in cooperation with the administrators of private schools and parents or guardians providing a home study program.

GA Code 20-2-701:

Local school superintendents as applied to private schools and home study programs or visiting teachers and attendance officers as applied to public schools, after written notice to the parent or guardian of a child, shall report to the juvenile or other court having jurisdiction under Chapter 11 of Title 15 any child who is absent from a public or private school or a home study program in violation of this subpart. If the judge of the court places such child in a home or in a public or private institution pursuant to Chapter 11 of Title 15, school shall be provided for such child.

Homeschooling in Georgia

Statutes affecting homeschoolers.

(The term used in Georgia statutes to refer to homeschooling is "home study program.")

O.C.G.A. 20-2-690

<http://gnsun1.ganet.state.ga.us/cgi-bin/pub/ocode/ocgsearch?docname=OCode/G/20/2/690>

Defines the requirements to establish and operate a home study program to comply with the compulsory attendance law.

Layman's Interpretation of Requirements for Establishing and Operating a Home Study Program:

1. Parents must submit a declaration of intent to homeschool within 30 days of starting and by September 1 annually thereafter.
2. Declaration of intent must list children's names and ages, and address of the home study program, and indicate the start and end of the school year; enrollment records and reports can't be used for any purpose other than providing enrollment information except by express permission of the parents or as a result of a court order.
3. Parents must have high school diploma or GED and may teach only their own children; they may engage a tutor provided the tutor has a baccalaureate degree.
4. The home study program must include, but is not limited to, reading, language arts, mathematics, social studies, and science.
5. Over a 12-month period, the instruction must be equivalent to 180 days of 4.5 hours, unless the child is physically unable to comply.
6. Attendance records must be kept and submitted to the local superintendent each month. Attendance records and reports can't be used for any purpose other than verifying attendance except with parent's permission or as a result of a court order.
7. Homeschooled children must take a nationally normed standardized test every three years beginning "at the end of third grade" but the results are not required to be submitted to "education authorities."
8. An annual progress report must be written and retained for three years.
9. The state Board of Education is required to design and make available such forms as are required, but they may not be inconsistent with the requirements of the law.

O.C.G.A. 20-2-690.1G

<http://gnsun1.ganet.state.ga.us/cgi-bin/pub/ocode/ocgsearch?docname=OCode/G/20/2/690.1>

Defines the ages of compulsory attendance and the sanctions for failure to comply.

Layman's interpretation of O.C.G.A. 20-2-690.1G.

Compulsory attendance applies to children between the ages of 6 and 16. Each day of absence is a separate offense, and parents are liable to a fine of \$100 or 30 days imprisonment or both.

O.C.G.A. 20-2-697

<http://gnsun1.ganet.state.ga.us/cgi-bin/pub/ocode/ocgsearch?docname=OCode/G/20/2/697>

Addresses the authority of visiting teachers and truancy officers.

Layman's interpretation of O.C.G.A. 20-2-697

Private schools and home study programs are explicitly exempted from the provisions of this code section.

O.C.G.A. 20-2-698.

<http://gnsun1.ganet.state.ga.us/cgi-bin/pub/ocode/ocgsearch?docname=OCode/G/20/2/698>

Allows peace officers to "assume temporary custody" of certain children.

Layman's interpretation of O.C.G.A. 20-2-698.

Children out in public during school hours may be taken into custody, unless they have a written permission from their parents.

O.C.G.A. 20-2-701

<http://gnsun1.ganet.state.ga.us/cgi-bin/pub/ocode/ocgsearch?docname=OCode/G/20/2/701>

Identifies who is empowered to bring truancy charges.

Layman's interpretation of O.C.G.A. 20-2-701

Only the local superintendent is empowered to report a homeschooling parent for violations of the compulsory attendance law, and then only after written notification.

O.C.G.A. 20-2-150

<http://gnsun1.ganet.state.ga.us/cgi-bin/pub/ocode/ocgsearch?docname=OCode/G/20/2/150>

Identifies children eligible for enrollment in government schools

Layman's interpretation of O.C.G.A. 20-2-150

Once a child is enrolled in a government school program for 20 days or more, compulsory attendance is required, no matter how young. So, if a parent decides that the pre-K program is not working out, they can't just withdraw the child because now they are treated as if the child was six years old and subject to compulsory attendance.

The Georgia Department of Education maintains a FAQ page for homeschoolers:

<http://www.doe.k12.ga.us/schools/homeschools.asp>

Case law and legal opinions

In 1986, the Georgia Attorney General issued an opinion stating that local superintendents could "request" that homeschoolers provide documents related to their home study program, but had no legal basis to "require" the production of those documents. The opinion is reproduced at

<http://www.heir.org/bowers.htm> or [\(click here to link to copy in this document\)](#)

From the Division of Family and Children Services brochure "Protecting Children":

If you think a child is being hurt or neglected whom do you call?

The Department of Family and Children Services is in every county. You simply call their local office and give them the name and location of the child. Your report is confidential. While you do not have to give your name to make a report, it can be more helpful for the child if you are willing to tell who you are and to testify in court if necessary. If you believe a child is in immediate danger, call the police. They will contact DFCS.

What is considered child abuse or neglect?

• Physical abuse is injury to a child under age 18 by a parent or caretaker which results in bruises, welts, fractures, burns, cuts or internal injuries. • Neglect is the failure of the parent or caretaker to see that a child is adequately supervised, fed, clothed or housed. • Sexual abuse occurs when a parent or other adult uses a child under age 18 for sexual stimulation.

What type of maltreatment is most reported?

Neglect makes up the bulk of the reports and the majority of substantiated cases. Lack of adult supervision is the most common type of neglect. Physical abuse is the next most reported and substantiated type of maltreatment, followed by sexual abuse.

What happens when you call DFCS to report suspected abuse or neglect?

The worker first determines whether the call is about the maltreatment of a child under 18 by a parent or caretaker. Reports that fall within these guidelines are investigated by DFCS investigators, frequently along with the police.

If a report is substantiated, does DFCS automatically remove the child from the home?

No. A child may be taken from home by the police if he or she is in immediate danger. If there appears to be an ongoing risk to the child, DFCS may petition the juvenile court to remove the child.

Under what conditions may DFCS remove children who are not in immediate danger?

If the CPS staff determine that it is not safe for a child to remain at home (for example, when very young children are left home alone), then DFCS will file a petition with the juvenile court for a hearing to decide whether the agency will be granted temporary custody.

What happens to children who are left with their families after DFCS has confirmed abuse or neglect?

Families are rated as low-, moderate- or highrisk based on the nature and extent of their problems (substance abuse, no social support, violence). The most intensive services (more in-person visits by the case manager) are provided to the high-risk families as this has been shown to reduce repeat abuse and neglect. Case managers visit the family regularly and link them with other services to strengthen the family and address the causes of maltreatment.

What kinds of services are offered to these families?

- referral for alcohol and drug treatment
- referrals for employment and child support
- parenting education
- counseling
- in-home parent aides
- child care

The law requires DFCS to notify the police of every report. About 60 percent of the reports received require an investigation. The remainder are referred to other agencies, such as the local police, health department or school system for assistance.

How soon after a report is made does the worker begin the investigation?

In-person response time ranges from within 24 hours to five days, depending on the nature of the allegation, the age of the child and the severity of the allegation.

What happens in an investigation?

Generally, the CPS worker

- checks other DFCS offices to see if there have been previous reports on this child or on the alleged perpetrator.
- visits the child at home or school to observe and talk with him or her directly.
- meets with the family to discuss the allegations.
- talks with anyone who may have information about the child and the family situation, including relatives, neighbors, friends, school personnel, and physicians. The main concern throughout the investigation is the safety of the child.

Once an investigation is completed, how does the worker make a decision?

There are two possible outcomes of an investigation. The report is substantiated or unsubstantiated.

- **Substantiated** — means that more than half of the facts gathered indicate that the child has been abused or neglected.
- **Unsubstantiated** — means that there is not enough evidence to prove that the child has been mistreated.

[source: Child Abuse Reporting Law, Georgia Code Section 19-7-5, Department of Family and Children Services]

- Physical injury or death inflicted upon a child by a parent or caretaker thereof, by other than accidental means; provided, however, physical forms of discipline may be used as long as there is not physical injury to the child;
- Neglect or exploitation of a child by a parent or caretaker thereof;
- Sexual abuse or sexual exploitation of a child.
- No child, who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be an "abused" child.

WHEN TO REPORT AND TO WHOM

A report of child abuse should be made when a person has "reasonable cause to" believe that a child under the age of 18 has been abused by a parent or caretaker. "Reasonable cause" means a suspicion founded upon circumstances sufficiently strong to warrant a reasonable person to believe that something is true.

A report of suspected child abuse is a request for an investigation. It is not an accusation and a reporter does not have to be absolutely certain of their suspicion. The department has the responsibility for evaluating the report and determining whether an investigation is warranted. The department is also responsible for conducting the investigation and taking appropriate action to protect the child.

An oral report must be made as soon as possible by telephone or otherwise. The report is made to the Department of Family and Children Services, Child Protective Services Section. If Child Protective Services is not available the report should be made to the appropriate police authority or the district attorney.

All reports of child abuse are immediately forwarded by the agency to the jurisdictional police authority.

1. CONTENT OF THE REPORT

At a minimum, the report should contain the names and addresses of the child and the child's parents or caretakers, if known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and any other information that the reporting person believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator.

2. FAILURE TO REPORT

In Georgia, any person who is required by law to report and who knowingly willfully fails to report shall be guilty of a misdemeanor.

3. IMMUNITY

The State grants immunity for any civil or criminal liability for the making of a report based on the requirement that the report is made in good faith.

[source: Child Abuse Reporting Law, Georgia Code Section 19-7-5, Department of Family and Children Services]

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF GEORGIA

U86-19 n1 The views expressed herein are the completely
unofficial views of the writer only, and should be
considered as information only.

1986 Op. Atty Gen. Ga. 173

July 1, 1986

SYLLABUS:

Re:

(1)

While responsibility for the enforcement of the statutory requirements pertaining to home study programs rests in large measure upon local school superintendents, a local school

superintendent does not have the power to issue subpoenas, require the production of documents, or to otherwise require parents to affirmatively "produce evidence" of their continuing compliance with the law in the operation of home study programs. While the local school superintendent is free to "request" such materials and statements he has, so far as I am aware, no compulsory process which can be invoked to secure such information other than in connection with a pending legal proceeding.

(2)

Concerning the legality of a school system paying personnel for unused sick or personal leave, I am unaware of any extant constitution or statutory prohibition of making such payments as a part of an overall compensation plan, provided that specific peripheral statutory requirements, such as those pertaining to the maximum number of days of risk leave which can be accumulated, are not violated.

MICHAEL J. BOWERS, Attorney General

Prepared by: ALFRED L. EVANS, JR., Senior Assistant Attorney General

OPINION:

This is in response to your request for our legal assessment and views on six issues in two unrelated areas of our school laws. In specificity, the first five issues, relating to home study programs under O.C.G.A. § 20-2-690 (1984), are:

1. Enforcement of Section 20-2-690(c)(3). "Whether or not the Local Superintendent of a school district can require parents or guardians to produce evidence of a high school diploma or GED certificate when they propose to teach in a home study program and whether or not he may require the production of a college/university degree of any tutor used?" (Emphasis added.)
2. Enforcement of Section 20-2-690(c)(4). "Whether or not the Local Superintendent may require evidence that a home study program includes reading, language arts, mathematics, social studies and science?" (Emphasis added.)
3. Enforcement of Section 20-2-690(c)(5). "Whether or not the Local Superintendent may require evidence that a home study program is providing the equivalent of 180 days of education with each school day consisting of at least four and one-half school hours?" (Emphasis added.)
4. Enforcement of Section 20-2-690(c)(7). Who is to enforce this Section "with regard to testing"?
5. Enforcement of Section 20-2-690(c)(8). Who is to enforce this Section "with regard to annual progress and assessment"?

In addition to the above, you request our view on whether "it would be a legal expenditure of school funds to pay an employee for accumulated/unused sick leave or annual leave, i.e., payment for unused days in lieu of the employee taking those days"? Our response to all of the above proceeds seriatim.

I. Home Study Programs.

Following our Supreme Court's "void for vagueness" decision concerning the attempted application of Georgia's prior "compulsory school attendance" law to parents operating a home study program (arguably a "private school" since what constituted a private school was left undefined by the prior Act), see Roemhild v. State, 251 Ga. 569 (1983), the General Assembly enacted a new "compulsory school attendance" law. See Ga. Laws 1984, p. 1266 (O.C.G.A. §§ 20-2-690, et seq.). The new law was designed to give statutory recognition to the paramount

right of parents to determine and control the education of their own children, whether through public or private schools, or through home study programs taught by the parents themselves (or by private tutors), while at the same time asserting the State's legitimate interest in seeing to it that parental election of non-public school options doesn't (through parental abuse or otherwise), lead to children being deprived of any bona fide educational program whatsoever. Thus, while an "at-home study program" taught by a child's parents (the focus of your concern) is a recognized and sanctioned alternative to traditional public or private school education, such a program, to comply with the new compulsory school attendance law, must meet certain specified statutory requirements. They are:

"(1) The parent, parents, or guardian must submit within 30 days after the establishment of a home study program and by September 1 annually thereafter a **declaration of intent** to utilize a home study program to the superintendent of schools of the local school district in which the home study program is located;

(2) The declaration shall include a list of the names and ages of the students who are enrolled in the home study program, the address where the home study program is located, and a statement of the 12 month period that is to be considered the school year for that home study program. Enrollment records and reports shall not be used for any purpose except providing necessary enrollment information, except with the permission of the parent or guardian of the child or pursuant to the subpoena of a court of competent jurisdiction;

(3) Parents or guardians may teach only their own children in the home study program provided the **teaching parent or guardian possesses at least a high school diploma or the equivalent GED certificate**, but the parents or guardians may employ a tutor who holds at least a baccalaureate college degree to teach such children;

(4) The home study program shall provide a basic academic educational program which **includes, but is not limited to, reading, language arts, mathematics, social studies, and science;**

(5) The home study program must **provide instruction each 12 months to home study students equivalent to 180 school days of education with each school day consisting of at least four and one-half school hours** unless the child is physically unable to comply with the above rules;

(6) **Attendance records for the home study program shall be kept and shall be submitted at the end of each month to the superintendent of schools of the local school district in which the home study program is located.** Attendance records and reports shall not be used for any purpose except providing necessary attendance information, except with the permission of the parent or guardian of the child or pursuant to the subpoena of a court of competent jurisdiction;

(7) Students in home study programs **shall be subject to an appropriate nationally standardized testing program** administered in consultation with a person trained in the administration and interpretation of norm reference tests to evaluate their educational progress at least every three years beginning at the end of the third grade and records of such tests and scores shall be retained but shall not be required to be submitted to public educational authorities; and

(8) The home study program instructor shall **write an annual progress assessment report** which shall include the instructor's individualized assessment of a student's academic progress in each of the subject areas specified in paragraph (4) of this subsection, and such progress report shall be retained by the parent, parents, or guardian of children in the home study program for a period of at least three years." O.C.G.A. § 20-2-690(c)(1-8).

Your specific questions, as previously noted, relate to items 3, 4, 5, 7 and 8. Since the common concern of your inquiries to 3, 4 and 5 is **the right of a local school superintendent "to require parents to produce evidence"**, and the common concern to 7 and 8 is **"who shall enforce"**, the same, it would appear that legal analysis and response according to the two categories of questions is appropriate.

The starting point, of course, is the question of what the Act itself has to say about enforcement mechanisms. It is noted that § 20-2-690, provides in subsection (e) that:

"The State Board of Education shall devise, adopt and make available to local superintendents of schools, who shall in turn make available to administrators of private schools and parents or guardians with children in home study programs such printed forms and procedures as may be reasonably necessary to carry out efficiently the reporting provisions of this Code section, but such printed forms and procedures shall not be inconsistent with or exceed the requirements of this Code section." (emphasis added).

This section is consequently limited in application to the "reporting provisions" of the Code section, and would not apply to the particular "non-reporting" requisites with which you are primarily concerned (i.e., 3, 4, 5, 7 and 8).

Looking at the next following Code section, O.C.G.A. § 20-2-690.1(a), it seems clear that to comply with our new "compulsory school attendance" law through a "home study program", parents must operate the program in conformity with the above stated legal requirements. In the words of this Code section:

"Every parent . . . shall enroll or send such child or children to a public school, a private school, or a home study program that meets the requirements for a public school, a private school, or a home study program under such penalty for noncompliance with this subsection as is provided in Chapter 11 of Title 15 . . ." (emphasis added).

It is clear on the face of this statutory language that at least one available enforcement mechanism is that provided by Chapter 11 of Title 15, which deals with juvenile proceedings. Turning to that body of law we find that the term "deprived child" as it relates to the jurisdiction of the juvenile court under O.C.G.A. § 15-11-5, includes a child who is:

"without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health or morals;" O.C.G.A. § 15-11-2(8) (emphasis added).

Enforcement of the "compulsory school attendance" law through juvenile proceedings could involve an investigation of the matter by county or district departments of family and children services, O.C.G.A. § 49-5-8, or by the juvenile court's probation officers, O.C.G.A. § 15-11-8, the issuance of subpoenas to require the attendance of witnesses and production of papers at a juvenile court hearing, O.C.G.A. § 15-11-22, and the entry of supervisory orders by the court, or even a transfer of a child's custody if the situation warrants, all as may be necessary for the child's proper education and welfare. O.C.G.A. § 15-11-34.

The authority of a local county or city school superintendent to initiate juvenile court proceedings (as well as other available judicial proceedings) is expressly provided for by the new "compulsory school attendance" law. See, O.C.G.A. § 20-2-690.1(c), and O.C.G.A. § 20-2-694 [which relates to the duties of both school superintendents and local boards of education to secure enforcement of the "compulsory school attendance" law in cooperation with other state and county agencies].

A second enforcement mechanism respecting compliance with the statutory requisites pertaining to home study programs is the attendant penal provision contained in O.C.G.A. § 20-2-690.1(b). Under this provision the operation of a home study provision in violation of the statutory requisites is a misdemeanor punishable by fine not to exceed \$100, or imprisonment not to exceed 30 days, or both, at the discretion of the court having jurisdiction. Thus, in addition to initiating a juvenile court proceeding under Chapter 11 of Title 15, a local school superintendent could, if he believes the situation so warrants, file an affidavit for an arrest warrant with appropriate local law enforcement agencies. See, e.g., O.C.G.A. § 20-2-690.1(c). In my opinion, the provisions of this last mentioned code section would in the event of known violations also

authorize the filing of civil actions for injunctive relief in the superior courts in order to compel compliance.

In reviewing what the law authorizes by way of enforcement procedures under the new "compulsory school attendance" law in the context of home study programs, I cannot find, on the other hand, any grant of authority to a local school superintendent, under either this Act or any other statute, to "require parents or guardians to produce evidence" of a home study program's compliance with the requisites mentioned in these first three inquiries. I know of no statutory power of a superintendent to issue subpoenas or notices to produce such information outside the confines of pending judicial proceedings. This is not to suggest that it would be in any way inappropriate or improper for a superintendent to request documentation or other evidence of parental compliance with the particulars you mention, but simply a conclusion of the absence of any power to "compel" the parent "to produce evidence" in the matter.

Moving to your fourth and fifth questions, *i.e.*, "who shall enforce" Sections 20-2-690(c)(7) and (8) with regard to testing and annual progress assessment reports, the answer to your question of "who shall enforce" these provisions is seemingly answered by O.C.G.A. §§ 20-2-690.1(c) and 20-2-694, which place enforcement responsibility generally in the hands of local school superintendents and in the case of the latter code section in the local board of education as well. In the case of these last two matters (testing, progress and assessment), however, it would appear that the authority of these local school officials is limited to ascertaining whether or not the tests and progress assessment reports are in fact made, the language of these two sections indicating that the records and scores of such tests and the progress assessment reports "shall not be required to be submitted to public educational authorities" but are instead to be retained by the parents of the children engaged in a home study program. *See*, O.C.G.A. §§ 20-2-690(c)(7) and (8). Again we have a situation where while perfectly appropriate for the local school superintendent to periodically remind parents operating home study programs of these requisites of compliance and to ask for general information as to whether the tests and progress assessments have been made as required, the superintendents' enforcement powers (short of juvenile or other legal proceedings) is rather limited.

II. Payment for Accumulated/Unused Sick or Annual Leave.

Moving to your question concerning the legality of expending school funds to pay an employee for accumulated but unused sick or annual leave...

In sum, it is my unofficial opinion that while responsibility for the enforcement of the statutory requirements pertaining to home study programs rests in large measure upon local school superintendents, a local school superintendent does not have the power to issue subpoenas, require the production of documents, or to otherwise require parents to affirmatively "produce evidence" of their continuing compliance with the law in the operation of home study programs. While the local school superintendent is free to "request" such materials and statements he has, so far as I am aware, no compulsory process which can be invoked to secure such information other than in connection with a pending legal proceeding.

In connection with your second inquiry, concerning the legality of a school system paying personnel for unused sick or personal leave, I am unaware of any extant constitutional or statutory prohibition of making such payments as a part of an overall compensation plan, provided that specific peripheral statutory requirements, such as those pertaining to the maximum number of days of sick leave which can be accumulated, are not violated.

In the hope that the foregoing is responsive to your inquiries, I am,

Sincerely,

MICHAEL J. BOWERS
Attorney General