

January 17, 2023

The Honorable Don Schaible  
Chairperson  
Senate Education Committee

VIA EMAIL TO DGSCHAIBLE@ND.GOV

RE: *Testimony in Support of Senate Bill 2167*

Dear Chairperson Schaible:

By way of introduction, Home School Legal Defense Association (HSLDA) is a national organization committed to advocating for homeschool freedom and homeschool families. With over 100,000 member families, we are the world's largest homeschool advocacy organization. Thank you for your service to North Dakota families and for considering this written testimony in support of SB 2167.

For decades, HSLDA has assisted homeschooling families and sought to remove requirements that—often unintentionally—operate as roadblocks for homeschooling parents and children. SB 2167 is a positive and necessary step forward as it both lessens the notification roadblock and improves the ability for homeschooling parents to educate their child(ren) with developmental disabilities.

This bill reduces the timeline between when a parent must file a statement of intent and when the parent can begin home education from 14 days to 5 days. As of today, only four states in our country, including North Dakota, have any waiting period at all. Only one state—Maryland—has a longer waiting period at 15 days. The reduction this bill proposes is a positive step forward not only in bringing North Dakota into greater alignment with other states, but more importantly towards recognizing the lawful interest of parents to direct the upbringing and education of their children. This proposed change brings North Dakota into greater alignment with *Pierce v. Society of Sisters*, which struck down an Oregon law because it “unreasonably interfered with the liberty of parents to direct the upbringing and education of children under their control.” 268 U.S. 510, 535 (1925).

I would add that in the remaining 46 states, there is no statutory requirement that a parent wait some specified period of time before beginning the home education of their children. In light of Supreme Court jurisprudence, HSLDA believes it is doubtful whether any waiting period at all would pass constitutional scrutiny as these waiting periods infringe on the basic, fundamental rights of parents long established in legal jurisprudence.

We also support modified language in section 15.1-23-15 relating to a child with a developmental disability. First, the revised language is more clearly measurable. The former language of “benefiting from home education” is subjective but the new language regarding “making academic progress” can be measured. Second, this language is more consistent with the verbiage used in public instruction and is thus more uniformly understood and interpreted. Finally, the additional language regarding “maintaining progress based on academic ability” recognizes the varying academic abilities of children, including those with developmental disabilities. It provides that the services plan team consider each child independently with that child’s particular strengths and abilities. It measures each against themselves, rather than a potentially more arbitrary standard. This change is a positive step towards the care and education of homeschooled children in North Dakota with developmental disabilities.

Please support SB 2167.

Thank you for your consideration and service to North Dakota homeschool families.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Kevin M. Boden".

Kevin M. Boden, J.D.  
Staff Attorney  
Director of Global Outreach

cc: Honorable Members of the Education Committee (via email)