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10/2/03

2003 HOUSE EDUCATION

HB 1182

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1182

House Education Committee

☐ Conference Committee

Hearing Date January 15th, 2003

Tape Number	Side A	Side B	Meter #
1	x		0-5370
1		x	0-1820
Committee Clerk Signature <i>Linda Frechtrier</i>			

Minutes:

Chair Kelsch called the hearing on HB 1182 relating to relating to testing of students attending home schools.

Greg Gallagher, Education Improvement Director with the Department of Public Instruction. See attached testimony.

Rep. Mueller (926): What would the effect of 1182 have under the current practices with respect to grades 4, 6, 8, 10.

Greg Gallagher: Under 1182 the practice of 4, 6, 8, 10 testing would be retired. It would no longer be tested at those grade levels. Instead the state would have the same testing schedule as the public schools system. Under the current system that would be 4, 8, and 12. If the state law that defines the scope of assessments (15.2108) were to change there would be a direct impact on Students in home education. They would be assessed at the same grade levels and subject matters.

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Rep. Mueller: What would be the effect on the tests themselves.

Greg Gallagher: We believe it would have very little effect on the types and contents covered. Content is to reflect the knowledge and skills of the students in order to remain validity and integrity of the system.

Rep. Sitte: Is it not true that the testing of students in North Dakota has been greatly brought in line with national standards. This is the same system home schools are objecting to. The controversial standards have become a national curriculum.

Greg Gallagher: I profoundly and adamantly reject to the analysis that they are defacto forced upon the states. In North Dakota the standards are developed by the teachers in the state. This would be true of every state. There needs to be some content in order to assess. The law currently exists to protect the interests of all students. Whether public, nonpublic or home schooled.

Rep. Sitte: Referenced to the Declaration of Independence. You spoke about the duty to protect the citizens. But these people do not want the protection of you or your department.

Greg Gallagher: Referenced to Chapter 8 of the North Dakota Constitution relating to the states duty assure literacy to all citizens.

Chair Kelsch: Did you consider working out a palatable solution with the home school association with regard to assessments.

Greg Gallagher: The state consulted with local school districts relating to types of assessments currently under way and when it is proper to offer monitoring or remediation planning.

Chair Kelsch: If we only assess the home education on the same years would that be workable.

Greg Gallagher: We strongly recommend taking the package as a whole.

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Rep. Hawken: Do home education students take the same assessments that would be taken at the public school setting?

Greg Gallagher: The option is given to the parent to select an assessment tool.

Rep. Hawken: They do have the choice under the current setup.

Greg Gallagher: If the current law remains 4-6-8-10 with 6 and 10 being required. So we are part of the way there.

Rep. Hunsaker (2400): One of the fears of home scholars is that 1182 the alignment of the curriculum will be with the home schools. Is that fair considering these students will be tested on material from a different curriculum. That would not be reflective of the teaching.

Greg Gallagher: We would be using the state assessment. They are broad content points. Curriculum rests with the public/private/home schools. They can assess whenever they want. There are certain points when it becomes mandated. The testing is based on something.

Rep. Williams (2690): Does 1182 has an impact on parochial schools?

Greg Gallagher: No just home schools.

Rep. Williams: Is there a reason you did not work with the home school association?

Greg Gallagher: We believe this is a technical issue on the type of assessment. We do not believe that this is a substantial change in policy.

Rep. Williams: There is no relationship to title 1 law across the country?

Greg Gallagher: This is a state issue. We are making sure the assessment is valid.

Rep. Mueller (3065): What are we fixing? Are there any examples of evidence relating to students are not doing well with home schooling?

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Greg Gallagher: The state is not privy to those assessment records. It is with the local school districts. The issue that we see is not the connection what happened beyond it is to protect the students as they go through. As the current law is written. No doubt we have some exceptional home education sites in the state, no doubt. We also have reports of concern in some situations where it may not be as good or as healthy. In that regard the intent of what the current law is and what 1182 tries to address is to make sure that we have within our system a means to assure that we are periodically reviewing how well students are doing, so that when they do move on that they have had a good experience.

Rep. Hunsakor: Who determines the validity of these assessment tests and who writes them up?

Greg Gallagher (3370): I would be happy to provide information on the validity and reliability studies that have been conducted on ND state assessment. All of the major publishing companies go through extensive validity research. There are four validity elements: Bias- nothing that would false achievement of the student, Content -sufficient link between what is assessed and what is being taught, Relational - assessment here conducted with another tool here would lead you to comparable results, Contextual- it is connected to the overall improvement of the students performance. All of those factors come into play.

Rep. Hunsakor: Who writes these tests? If it is a teacher group, is it geared towards public school curriculum? And if so, then should home education be involved in the process?

Greg Gallagher (3601): The process is clearly laid out into protocols that we have established within the state. Under the format that we have it is teachers that develop the standards, select from the pool of test items that are available from a test company. To assure that they are aligned to the various standard. It is the teachers of the state that also judge the relative complexity of

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those questions in order to score them and meaningful results and reports available. When you buy another standardized assessment you don't know who drafted it and your buying at the judgment of that development committee. Again the issue is you have to choose the better course. And in not knowing vs. the knowing it is better to go with the knowing.

Rep. Hunsakor: Reiterated concerns over fairness and validity of tests designed by public teachers. Is this anyway going to be reflective of what home education setting would want for its content?

Greg Gallagher (3800): We are assessing reading and math are the two areas most focused on. There is great commonality. Where within any of the standard would an individual not need to know this information. That is a judgment call. Along the lines you will find the skills to have great commonality, so we think that is a natural thing that each company deals with.

Rep. Nelson: In the home school, what tests are most commonly chosen by the parents? is it a wide variety of tests? or is there one that is most preferred?

Greg Gallagher: The state collects no information on assessment that are chosen because they are by district choices, in terms of the major companies used. When it becomes the individual choice of the family that goes outside of any data that we collect. It is hard to know what the various families are choosing. For us we need to embed safety within assessment so that the tools themselves are valid and reliable. And to offer means to determine what is happening with the student. Again it is a judgment call.

Rep. Nelson: Why are you forcing a product down their throats that they have no input in. They don't want it. Wouldn't it make more sense that you collect data from the tools that they are using and see what kind of assessments you can make based on their home school parents and

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stakeholders. these people are very interested in their child's development, they aren't just picking any assessment tools. Maybe they have a better idea than you do sometimes.

Greg Gallagher: The understanding of 1182 is to put forth what we understand to be is to make an efficient means to making identification. We think it is not a good means of assessment of the true literacy level of an individual. There needs to be some sense of how well they are doing on a commonly understood achieving of a status proficiency or not. It is a technical matter. You are now basing it on National norms And what we are proposing on 1182, we don't believe what you'd need to do with every single assessment factor, you would have to go through and establish cut points to determine literacy standards, when your dealing with all these companies who are putting out norm reference data. And that is a task that is far beyond the capacity for the state to do. Frankly, in the absence of any content alignment, you would not have a meaningful result at all. That is why we are using this as a touch point. A legitimate and good touch point in order to make that determination.

Rep. Nelson (4450): Do home schools use a common test? How many tests are being used.

Greg Gallagher: In looking at the assessments, there are aligning points on all, the issue that 1182 addressed is when it comes to the reporting of this. We are always going to be reduced to the issue of a norm curve. In that it doesn't do justice to the issue of literacy. That is why when we put 1182 forward on it is that the current system in law makes touch points with the state system already. The natural point to make a clear alignment for the aid of interrupting the support that local schools districts are going to have to offer if there were to be identification for remediation or for monitoring. So that the interpretation isn't fact a good interpretation.

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Rep. Hawken: Are these students counted with whatever test they use against the school that they are assigned to if they were going to public school? So when we are looking down the road with NCLB, whether the school need improvement or not, are those home school students counted?

Greg Gallagher: Absolutely not.

Rep. Sitte: As a teacher, when I order a text book, I can find out if that text book is written at 6 or 8th grade reading level. As students enter our small private school we administer to them a McCall's Crab Reading Comprehension Test. It is three minutes, the student reads a paragraph, answer ten multiple choice question, and depending upon their scores are ranked at that grade level. Administering this test three times on three different dates, the statistical reliability has been enormous, recognized since the 1920's. What parents are objected to is when those state reading tests came out, when your asking fourth graders to tell about a time when they felt lonely, you are then probing into someone's emotional belief and then you are not really testing their literacy. Am I not right?

Greg Gallagher: The state assessment that was developed in the late 90's, was an assessment developed by teachers for use by schools if they chose to do so. Not the state assessment that we have currently. Our state assessment is developed by CTB McGraw-Hill, based on and supplemental items. So that there is no bearing on that. In terms of reliability, that there is nothing within current law or 1181 that would deter a family from using whatever assessment system they would like in any area of literacy development. We encourage them to use multiple types of assessing. But when it comes down to the decision, what ever tool you use, it is the companies population distribution that becomes the reference point for how they are making a

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determination on it. At some point there is a need to touch the students with a commonly understood tool that to measure how well that student is achieving. All other curricular matters, all other assessment that occur throughout the year remain in place by the home, the private school, or by the public school. None of that changes, we encourage it to continue and flourish. But at some point for the good of the student there is a touch point to See Attached Testimony how well they do. In order to have a good, valid reliable reading on this you need to have a commonly understood tool that reports out in straight forward language on how students are achieving. That is the intent of the law and the intent of 1182.

OPPOSITION:

(B-side, 0)

(70) Dee Black, Senior Counsel of Home School Legal Defense Association, See Attached Testimony.

(765) Greg Lange, Attorney from Hazen ND. Represented parents who were prosecuted in 1989.

Recently while I was preparing some remarks for you I looked in my code book at some of those old cases. Listed names of those who were prosecuted by the Supreme Court. When the law changed in 1989, I was involved by defending 19 different families, in the courts in the state of ND at that particular time. Since 1989, to my knowledge no home educator has been prosecuted in ND courts. The fears that we fought in the courts, that some how we were going to ruin a whole generation of children. Those fears have not been realized. On the contrary, home education, through current standardized testing has lead to excellent academic achievement.

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Home schoolers have collected the results that are here, and they are provided to the district, there is no reason why the state can't get them from the district. The information on their success academically are is available. There is an old adage that says, "Those that don't learn from history, are doomed to repeat it." I'm providing this brief history lesson so that we can learn a few things that we have already gone through and that we don't have to go through them again. The present system works. The academic results that are demonstrated in the handouts, excellence is available. I think that we would acknowledge that home schooling is not for everybody. But as you can see from this packed hearing room, there is growing number of parents for who it is the education of choice for their children. It is often religiously orientated, we can't do that in the public school. Our present system then gives our parents a degree of flexibility that they treasure in choosing their curriculum and the content of that curriculum, so that it best meets the unique needs of their children at their particular ages. Why should this freedom be taken away? Is there a need? no. 1182 threatens to take away the freedom of choice and that is a hallmark of home education. Let's not fix what is not broken.

(1150) Cam Leedahl, home educator from Leonard, ND. See Attached Testimony

I'm departing from my written remarks. I would like to say that state standards and assessments would limit our choice of curriculum. As Mr. Matthew's informed the committee on Monday, test drive the curriculum and the curriculum drives the test. It is a circle. A home education program is not similar to a classroom approach, method or philosophy. And it is not similar to the public schools. In fact each home school program has there own uniqueness, were not similar to each other in some respects. And that is one reason why home education works. Each family is flexible and each student is an individual. In the attempt to provide a safety net for the

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few that DEPARTMENT OF PUBLIC INSTRUCTION say could fall through the cracks, the Department of Public Instruction is throwing a net over all of us that is a straight jacket. It w
merely an extension of the public school. Home education is working and works better when we
are left alone. And it better for us to put our energy into educating our children than to be
worrying about what is coming next from Department of Public Instruction. I urge a DO NOT
PASS.

Rep. Jon Nelson: Does a student that has been home schooled and is graduating and going into
college take the ACT for college entry. Do you know the percentage of student going on to
higher education?

Leedah: There are no statistics for ND, but there is nationally. ACT does publish results on
how each public, private and home school students are doing on ACT in each state.

Rep. Jon Nelson Do you know the results for ND

Leedah: I think the average composite score in ND is a 21.7/21.8.

Rep. Hawken: Having heard the testimony, I move a DO NOT PASS,

Nelson second the motion

Discussion:

Rep. Hawken: Great about ND, an open process. It is really important that everyone know that I
motioned a DO NOT PASS because I got 150 e-mail. Or because this room is full of home
schoolers. I moved because this is not a good bill. If however I were a home schooling parent, I
would want some test, so that I as a parent now the teacher, was doing a good job.

Rep. Williams Echo a little bit of Rep. Hawken, the testing has to valid, I believe in choice. I
found that the home school children that have come to our school, follow the strong conviction

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and commitment on the part of the parents and they have done well whether they stay in our school district or somewhere else. This is perhaps a bad bill, because there wasn't enough participation with the people affected.

Chairman Kelsch I strongly encourage the home educators to work with any member of this committee because I do believe you have committee members who are committed to the children of our state. Each one receiving a quality education. The assessment of students so that no student falls through the cracks. Having said that I don't believe that the way this bill was crafted was fair to home educators. And I would strongly recommend that you work with us and Department of Public Instruction to put together something that ensures that our students are being assessed and well taken care of, and something for the next session. Do not isolate yourself, work with us.

Clerk took roll on HB 1182. **DO NOT PASS, passed 14-0-0.**

Carry the bill to floor will be Chairman Kelsch.

Closed hearing on 1182.

Additional written testimony attached:

Charlene Nelson, Homeschooling mother

Brand Nelson, student

Barbara Jo Miller, Mandan

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FISCAL NOTE
Requested by Legislative Council
01/02/2003

Bill/Resolution No.: HB 1182

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

HB 1182 amends NDCC 15.1-23-05, 15.1-23-06, 15.1-23-08, 15.1-23-09, 15.1-23-10, 15.1-23-11, and 15.1-23-12 regarding the administration of the state assessment to students attending home schools. HB 1182 requires all home education students to be assessed according to the provisions of NDCC 15.1-21-08. The fiscal impact from HB 1182 on the state is accounted for within the Department of Public Instruction's operational budget. The DPI operational budget includes all funding required to assume the cost of assessing all students attending home schools within the state. There is no further fiscal impact imposed on the state.

HB 1182 restates the current practice where school districts are responsible for the administration of the student assessments and the monitoring of instruction for home education students. HB 1182 places no additional requirements on school districts; therefore, there are no additional costs that impact local schools.

HB 1182 places no fiscal impact on the state or local school districts.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

The Department of Public Instruction has included within its 2003-05 operational budget all general funds required to administer the state assessment program. The department has proposed a maintenance budget of \$1.2 million for the 2003-05 biennium. There are no proposed increases in general funds for the state assessment program above the 2001-03 biennium. The state must maintain its appropriation of \$1.2 million in general funds during the 2003-05 biennium in order to meet its maintenance-of-effort commitment with the U.S. Department of Education. This maintenance-of-effort commitment covers the costs of administering the state reading/English language arts, and mathematics assessments in Grades 4, 8, and 12. Any assessment of home education students would be accounted for within this budget line item.

The Department of Public Instruction has also included within its operational budget an authority request to cover \$6,935,000 in allocated federal funds that are earmarked for the state assessment program. These federal funds, supported through Title VI of the *Elementary and Secondary Education Act*, cover any new development and implementation costs associated with the

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extension of the state's assessment program as proposed within SB 2065. Any expansion of the assessment of home education students would be accounted for in the event that SB 2065 becomes enacted.

There is no appropriation attached to this bill.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

HB 1182 does not impose any additional expenditures to the state or local school districts. All expenditures are accounted for within the Department of Public Instruction's operational budget.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

As identified within the Revenue section above (3A), there is no appropriation for general funds attached to this bill.

Name:	Greg Gallagher	Agency:	Public Instruction
Phone Number:	328-1838	Date Prepared:	01/13/2003

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Date: 1/15/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1182

House HOUSE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Hawken Seconded By Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓				
Rep. Johnson	✓				
Rep. Nelson	✓				
Rep. Haas	✓				
Rep. Hawken	✓				
Rep. Herbel	✓				
Rep. Meier	✓				
Rep. Norland	✓				
Rep. Sitte	✓				
Rep. Hanson	✓				
Rep. Hunsakor	✓				
Rep. Mueller	✓				
Rep. Solberg	✓				
Rep. Williams	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Kelsch

If the vote is on an amendment, briefly indicate intent:

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1/21/03
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REPORT OF STANDING COMMITTEE (410)
January 16, 2003 8:02 a.m.

Module No: HR-08-0629
Carrier: R. Kelsch
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1182: Education Committee (Rep. R. Kelsch, Chairman) recommends **DO NOT PASS**
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1182 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-08-0629

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2003 TESTIMONY

HB 1182

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**TESTIMONY ON HB 1182
HOUSE EDUCATION COMMITTEE**

January 15, 2003

**By Greg Gallagher, Education Improvement Director
Department of Public Instruction
328-1838**

Madam Chair and Members of the House Education Committee:

I am Greg Gallagher, Education Improvement Director within the Department of Public Instruction. I am here to support HB 1182 and to report on its fiscal note.

HB 1182 amends seven sections within NDCC 15.1-23 to change the manner of assessing the academic achievement of students who participate in home education. The assessment of home education students is a long-standing practice of the State and exists to protect the well-being of all students by identifying any low academic performance that may require (1) academic monitoring by the local school district or (2) additional assessments to identify a possible disability or to provide any special services. Assessing students supports the State's over-riding interest to protect the well-being of all its citizens, regardless of their learning environment: public, non-public, or home-based.

HB 1182 amends current state law to standardized the measurement of student achievement and to aid in the interpretation of such achievement results with a uniform, valid, and reliable assessment tool. HB 1182 eliminates the current practices of allowing any standardized assessment, regardless of quality, and accommodating a multitude of interpretation tools, regardless of adequacy.

HB 1182 incorporates the following amendments:

- Section 15.1-23-09 amends current law to require that any home education student be assessed with the same state assessment defined in NDCC 15.1-21-08. No alternative nationally normed standardized test is allowed.
- Section 15.1-23-10 clarifies current law such that the local school district is responsible for the administration costs of the assessment of home education students; however, the parent assumes all administration costs if they select the individual to administer the assessment. The State will supply the assessments at no charge.

HB 1182
Department of Public Instruction

1

January 15, 2003

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- Section 15.1-23-11 amends current law to require that a multidisciplinary assessment team assess any student for potential learning problems in the event that student's assessment results are lower than the *partially proficient* classification. Either a disability identification or an academic remediation plan may be required following this assessment.
- Section 15.1-23-12 amends current law to require any remediation plan to remain in effect until the student has raised their achievement score to the *proficient* classification.
- Section 15.1-23-06 amends current law to require the local school district to monitor a student's home education in the event the student's achievement scores fall below the *proficient* classification.
- Sections 15.1-23-05 and 15.1-23-08 offer technical amendments to current law that require the use of the state assessments as required within 15.1-21-08.
- The accompanying fiscal note indicates that there is no fiscal impact to the State or to local school districts beyond that currently experienced.

In 2001 the 57th Legislative Assembly enacted NDCC 15.1-21-08 that established the administration of assessments aligned to the State's content and achievement standards in reading and mathematics for all public school students. In doing so, the Legislative Assembly moved away from norm-referenced assessments, which can hide true student achievement amidst the collective scores of an under-achieving population. North Dakota no longer references any student's achievement compared to some national norm; instead, all student achievement is referenced to what North Dakota teachers identify as proficiency. A measure of proficiency carries more legitimacy than a measure based on a statistical norm, which carries no expectation of literacy.

Under current state law (NDCC 15.1-23), home education students within North Dakota are assessed at grades four, six, eight, and ten with the assessment tool used by the local school district or with a nationally normed standardized test selected by the student's parents. HB 1182 realigns the assessment of home education students to match the same schedule and method set for all public school students within NDCC 15.1-21-08 to accomplish the following:

- alignment establishes a common standard for the quality of assessment design and administration;
- alignment sets a clear definition of literacy;
- alignment assures that local districts will accurately interpret achievement results based on their familiarity with the tools;
- alignment allows for the extension of assessed subject and grades to match those of the State.

There are several matters related to the assessment of home education students that merit comment relating to HB 1182:

(1) State law grants to parents the right to educate their children with a curriculum of their choice. Nothing with HB 1182 interferes with this parental right.

(2) There exists no requirement from either the State or the federal government that home education students participate in the National Assessment of Educational Progress (NAEP).

(3) There exists no requirement from either the State or the federal government that home education students participate in the State's assessment system to fulfill the purposes of ESEA Title I.

(4) The requirement for home education students to participate in the assessment identified within 15.1-23-09 is to assist the parent in the event of a student's lower achievement or to protect the interest of the student in the event of a disability or service need. This is a State defined activity.

(5) The North Dakota State Assessment, the assessment tool identified for use within 15.1-23-09, is a recognized standardized achievement test, developed by CTB/McGraw-Hill, and is based on the company's nationally recognized *TerraNova, The Second Edition*. The North Dakota State Assessment has undergone extensive tests for validity and reliability as documented in its technical quality report submitted by CTB/McGraw-Hill.

(6) The North Dakota State Assessment references the State's content standards for the inclusion of assessment content material. The North Dakota State Assessment is not based on any curriculum or text.

(7) The North Dakota State Assessment is in no way used as a factor in determining a student's promotion or graduation. Any such determinations are made solely by the local school district.

(8) The use of the North Dakota State Assessment to assess a home-educated student in no way fulfills any requirement of the *No Child Left Behind Act*.

(9) The North Dakota State Assessment is used within a home-education setting solely for formative or diagnostic purposes.

The State has made substantial progress since the 57th Legislative Assembly to assess students in terms of recognized literacy standards and in reporting these results to our students and their parents. The State has abandoned nationally normed standardized assessments for assessments based on a clear expectation of what a literate student should know or be able to do. For the first time, the State has established assessments designed to measure students' improvement based on credible, reliable criteria. HB 1182 makes the assessment of home education students more meaningful and lessens the likelihood of a student falling through the cracks due to statistical references that do more to obfuscate than to clarify.

Madam Chair, this completes my testimony. I am available to answer any questions from the committee.

HOME SCHOOL LEGAL DEFENSE ASSOCIATION

Advocates for Family & Freedom

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PRESIDENT (CA, DC, VA)

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ATTORNEY (CA)

January 15, 2003

TESTIMONY OF DEWITT T. BLACK, III BEFORE THE NORTH DAKOTA HOUSE EDUCATION COMMITTEE REGARDING HOUSE BILL 1182

Madam Chairman, Members of the Committee, Ladies and Gentlemen:

My name is Dee Black. I am Senior Counsel of Home School Legal Defense Association, a non-profit association which has as its primary purpose the protection of the right of parents to educate their children at home. Our office is located in northern Virginia within the Washington, D.C., metropolitan area. Our Association presently has over 75,000 member families in all 50 states and the District of Columbia, with approximately 250 member families in North Dakota.

Thank you for permitting me to testify before this Committee concerning proposed changes in the home education law of North Dakota. I appear before you today to speak in opposition to House Bill 1182.

As you know, House Bill 1182 would require students in home education programs to meet the state content standards on the state tests required of public school students. This bill would eliminate standardized achievement

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Deanna H. [Signature]
Operator's Signature

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testing for homeschool students which has been in North Dakota law since 1989, the year North Dakota first enacted a homeschool law.

¹¹² There are two reasons we oppose this bill. First, it is a direct violation of the federal No Child Left Behind Act of 2001, thereby placing North Dakota in jeopardy of losing all federal funding for education. ¹⁴³ Second, this legislation is unconstitutional because it is fundamentally unfair for the state to test students on course content they have not been taught.

The No Child Left Behind Act of 2001 requires states to test public school students in the areas of mathematics, reading or language arts, and science at certain grade levels in order to measure their achievement of state academic content and achievement standards. However, this federal law contains a provision specifically excluding homeschools from the testing requirement:

Nothing in this chapter shall be construed to affect a home school, whether or not a home school is treated as a home school or a private school under State law, nor shall any student schooled at home be required to participate in any assessment referenced in this chapter. 20 USCA § 7886(b).

In order to adopt the state tests for public school students required by federal law, the Superintendent of Public Instruction requested the filing of Senate Bill 2065. A review of the new testing provisions proposed for public school students in Senate Bill 2065, a copy of which is attached to my testimony, reveals that the language describing the new testing for public school students is almost identical to what is required by federal law. I have also attached a copy of the applicable federal statutes to my written testimony.

36 There can be no question that Senate Bill 2065 is intended to create state assessments to comply with the No Child Left Behind Act of 2001. There is nothing wrong with this proposed change in North Dakota law. We do not oppose Senate Bill 2065 adding testing requirements for public school students.

38 The problem arises in House Bill 1182 which would change the homeschool law and make homeschool students take the state tests required of public school students. This is where the violation of federal law occurs. The No Child Left Behind Act of 2001 is clear that no homeschool student may be 48 required to participate in any assessment used by the state to comply with this federal law. And it doesn't make any difference whether the state tests were already a part of state law when the federal law was enacted or whether the state passes a new law to meet the federal requirements. Whatever

assessments the state uses to comply with the federal law cannot be forced on
homeschool students.

If North Dakota passes House Bill 1182 requiring homeschool students to take the tests adopted to comply with the No Child Left Behind Act of 2001, this will not only violate federal law but will probably result in the forfeiture of all federal funds for education. No other state in the nation has even introduced legislation like House Bill 1182. We believe that current law in North Dakota requiring standardized achievement testing of homeschool students establishes more than enough accountability to the state. By the way,

North Dakota is one of only eight states in the nation requiring any type of testing of homeschool students.

Besides violating federal law, testing homeschool students for meeting state content standards is unconstitutional because it is fundamentally unfair to test students on material they have not been taught. This was the ruling of the U.S. Fifth Circuit Court of Appeals in the 1981 decision of *Debra P. v. Turlington*, which I discuss in more detail in my letter to Dr. Sanstead of January 7, 2003, a copy of which is attached to my testimony. Without a doubt, the state tests have been and will be constructed without reference to the current content of instruction in the myriad home education programs in

North Dakota. Nor could the examinations reasonably be expected to do so, given the diversity of homeschool curricula being utilized throughout the state.

54 So, why can't the state simply prescribe the course content of subjects taught in home education programs? Then the students would be tested on the same material they were taught. There would be no unfairness in this testing. The problem with this approach is that it would effectively destroy this form of private education. This was previously attempted in the early 1920's in Oregon which enacted a law banning all private schools. All children had to attend public school and be taught the same course content. In the case of 69 *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), the U.S. Supreme Court ruled that this law was unconstitutional because it violated the right of parents to direct the education of their children as guaranteed by the Due Process Clause of the Fourteenth Amendment. House Bill 1182 requiring homeschool students to achieve minimum test scores on assessments for content standards would necessitate their being taught the public school curriculum, thereby denying parents the right to choose a different curriculum for their home education 60 program. North Dakota's homeschool law has always prescribed what subjects must be taught in a home education program, but not until now has the state attempted to effectively prescribe the course content of these subjects. Many homeschooling parents object to the course content of subjects taught in

the public schools, particularly in science. By not being able to choose the course content of their curricula, homeschooling parents in North Dakota would find themselves in the same circumstance as those parents in Oregon who were unconstitutionally required to send their children to public school. Under Dr. Sanstead's testing proposal, home education in North Dakota would become nothing more than public school at home.

On behalf of our member families in North Dakota, we at Home School Legal Defense Association ask this Committee to vote against House Bill 1182.

Thank you.

UNITED STATES CODE ANNOTATED
TITLE 20. EDUCATION
CHAPTER 70—STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS
SUBCHAPTER IX—GENERAL PROVISIONS
PART E—UNIFORM PROVISIONS
SUBPART 1—PRIVATE SCHOOLS

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Current through P.L. 107-313 (excluding P.L. 107-273, 107-295, 107-296, 107-306) approved 12-02-02

§ 7886. Private, religious, and home schools

(a) Applicability to nonrecipient private schools

Nothing in this chapter shall be construed to affect any private school that does not receive funds or services under this chapter, nor shall any student who attends a private school that does not receive funds or services under this chapter be required to participate in any assessment referenced in this chapter.

(b) Applicability to home schools

Nothing in this chapter shall be construed to affect a home school, whether or not a home school is treated as a home school or a private school under State law, nor shall any student schooled at home be required to participate in any assessment referenced in this chapter.

(c) Rule of construction on prohibition of Federal control over nonpublic schools

Nothing in this chapter shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of any private, religious, or home school, whether or not a home school is treated as a private school or home school under State law. This section shall not be construed to bar private, religious, or home schools from participation in programs or services under this chapter.

(d) Rule of construction on State and local educational agency mandates

Nothing in this chapter shall be construed to require any State educational agency or local educational agency that receives funds under this chapter to mandate, direct, or control the curriculum of a private or home school, regardless of whether or not a home school is treated as a private school under state law, nor shall any funds under this chapter be used for this purpose.

CREDIT(S)
2002 Electronic Update

(Pub.L. 89-10, Title IX, § 9506, as added Pub.L. 107-110, Title IX, § 901, Jan. 8, 2002, 115 Stat. 1979.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2002 Acts. House Conference Report No. 107-334 and Statement of President, see 2001 U.S. Code Cong. and Adm. News, p. 1230.

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Diana H. Hall
Operator's Signature

10/2/03
Date

38226.0100

Fifty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2065

Introduced by

Education Committee

(At the request of the Superintendent of Public Instruction)

- 1 A BILL for an Act to amend and reenact section 15.1-21-08 of the North Dakota Century Code,
2 relating to state assessment of public school students in reading, mathematics, and science.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 15.1-21-08 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **15.1-21-08. Reading ~~and~~, mathematics, and science - Admin. stration of test.**

7 ~~Beginning during the second half of the 2001-02 school year and annually thereafter, the~~

8 1. The superintendent of public instruction shall administer to all public school
9 students a test that is aligned to the state content and achievement standards in
10 reading and mathematics. This test must be administered to at least one grade
11 level selected within each of the following grade spans: grades three through five;
12 grades six through nine; and grades ten through twelve. Beginning no later than
13 the 2005-06 school year and annually thereafter, the superintendent of public
14 instruction shall administer the reading and mathematics test in grades three, four,
15 five, six, seven, and eight and in one grade selected within the grade span ten
16 through twelve.

17 2. Beginning no later than the 2007-08 school year and annually thereafter, the
18 superintendent of public instruction shall administer to all public school students a
19 test that is aligned to the state content and achievement standards in science.
20 This test must be administered to at least one grade level selected within each of
21 the following grade spans: grades three through five; grades six through nine; and
22 grades ten through twelve.

Each State plan shall demonstrate that the State educational agency, in consultation with local educational agencies, has implemented a set of high-quality, yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading or language arts, and science that will be used as the primary means of determining the yearly performance of the State and of each local educational agency and school in the State in enabling all children to meet the State's challenging student academic achievement standards, except that no State shall be required to meet the requirements of this part relating to science assessments until the beginning of the 2007-2008 school year.

(B) Use of assessments

Each State educational agency may incorporate the data from the assessments under this paragraph into a State-developed longitudinal data system that links student test scores, length of enrollment, and graduation records over time.

(C) Requirements

Such assessments shall--

- (i) be the same academic assessments used to measure the achievement of all children;
- (ii) be aligned with the State's challenging academic content and student academic achievement standards, and provide coherent information about student attainment of such standards;
- (iii) be used for purposes for which such assessments are valid and reliable, and be consistent with relevant, nationally recognized professional and technical standards;
- (iv) be used only if the State educational agency provides to the Secretary evidence from the test publisher or other relevant sources that the assessments used are of adequate technical quality for each purpose required under this chapter and are consistent with the requirements of this section, and such evidence is made public by the Secretary upon request;
- (v)(I) except as otherwise provided for grades 3 through 8 under clause vii [ENI], measure the proficiency of students in, at a minimum, mathematics and reading or language arts, and be administered not less than once during--

- (aa) grades 3 through 5;
- (bb) grades 6 through 9; and
- (cc) grades 10 through 12;

(II) beginning not later than school year 2007-2008, measure the proficiency of all students in science and be administered not less than one time during--

- (aa) grades 3 through 5;
- (bb) grades 6 through 9; and
- (cc) grades 10 through 12;

(vi) involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding;

(vii) beginning not later than school year 2005-2006, measure the achievement of students against the challenging State academic content and student academic achievement standards in each of grades 3 through 8 in, at a minimum, mathematics, and reading or language arts, except that the Secretary may provide

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HOME SCHOOL LEGAL DEFENSE ASSOCIATION

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January 7, 2003

Dr. Wayne G. Sanstead
State Superintendent of Education
North Dakota Department of Public Instruction
600 East Boulevard Avenue, Dept. 201
Bismarck, ND 58505-0440

Re: Testing of Home Education Students

Dear Dr. Sanstead:

Thank you for your letter of December 19, 2002, responding to my letter to you of December 6, 2002, and enclosing a proposed bill which would impose state testing on students receiving home instruction. We have since obtained a copy of this bill pre-filed as House Bill 1182. After reviewing these materials as well as the statutory provisions of the No Child Left Behind Act of 2001, there is no question that enactment of your proposed legislation would violate federal law, thereby jeopardizing all federal educational funding being received by North Dakota. Additionally, our research indicates that testing of home school students for state content standards based upon a public school curriculum is unconstitutional.

Your letter states that the basis for requiring students receiving home instruction to participate in state assessments is found in Section 15.1-23-09 of the North Dakota Century Code (NDCC). In fact, this section says nothing about state assessments but requires each child receiving home education to take a standardized achievement test at certain grade levels. Standardized achievement tests are used by local school districts as part of the state assessments, but this does not require a child receiving home education to take any test other than a standardized achievement test. In other words, home school students are not required by Section 15.1-23-09 of the NDCC to take the State Assessment Supplement which is not a standardized achievement test. Therefore, any effort to impose testing for state content standards on homeschool students would require an amendment to Section 15.1-23-09 and the other home education statutes of the NDCC as House Bill 1182 would do.

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Unfortunately, the legislation you have proposed constitutes a direct violation of the No Child Left Behind Act of 2001, now codified as Chapter 70 of Title 20 of the United States Code Annotated. 20 USCA § 7886(b) states as follows:

Nothing in this chapter shall be construed to affect a home school, whether or not a home school is treated as a home school or a private school under State law, nor shall any student schooled at home be required to participate in any assessment referenced in this chapter.

The current provisions of Section 15.1-21-08 of the NDCC and your proposed amendment to this statute in Senate Bill 2065 are precisely the assessments referenced in 20 USCA § 6311(b)(3)(C) of the No Child Left Behind Act of 2001. House Bill 1182 would require students in home education to take these assessments.

20 USCA § 6311(b)(3)(C)(v)(I) requires testing in mathematics and reading or language arts at least once during grades 3 through 5, grades 6 through 9, and grades 10 through 12. Not coincidentally, Section 15.1-21-08 of the NDCC requires the same testing. 20 USCA § 6311(b)(3)(C)(v)(II) requires testing in science at least once during grades 3 through 5, grades 6 through 9, and grades 10 through 12 beginning in the 2007-2008 school year. This is one of your proposed amendments to Section 15.1-21-08 of the NDCC. 20 USCA § 6311(b)(3)(C)(vii) requires state testing in mathematics and reading or language arts in grades 3 through 8 beginning in the 2005-2006 school year. Another of your proposed amendments to Section 15.1-21-08 of the NDCC is clearly intended to comply with this federal testing requirement. It is obvious that your proposed changes to state law are intended to comply with the No Child Left Behind Act of 2001 which expressly prohibits states from requiring homeschool students to participate in any of these assessments.

Apart from the violation of federal law which your proposed legislation would bring about, there are other testing issues to consider. Presumably the state tests would be text-specific tests based upon course content offered in the public schools. The testing prescribed for students in home education should be standardized achievement testing as now required by Section 15.1-23-09 of the NDCC, not any text-specific tests developed by the state. The standards for test administration as set forth in the Standards for Educational and Psychological Testing (1985) by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education confirm that it is improper to test students on specific material not previously taught and that text-specific tests are generally invalid in determining the overall knowledge or ability of a student. Therefore, the testing proposed for students receiving home education is contrary to the standards recognized and utilized by these most prominent authorities on testing in the United States.

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Finally, there are serious constitutional issues raised by the testing requirements proposed in your bill. Under the proposed testing, requiring home school students to take these examinations would clearly violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. We base our assessment on the case of *Debra P. v. Turlington*, 644 F.2d 397 (5th Cir. 1981), a 1981 decision by the United States Court of Appeals for the Fifth Circuit. In this case, the plaintiffs brought suit to challenge the constitutionality of a state law requiring all public school students to take and pass a literacy examination before receiving a high school diploma. The overriding issue in that case was whether the state can constitutionally deprive public school students of their high school diplomas on the basis of an examination which may cover matters not taught through the curriculum. The court found that a student's expectation of receiving a diploma was a property interest protected by the Fourteenth Amendment. In doing so, however, the court expressed a general principle which is applicable to situations not necessarily involving the expected receipt of a diploma. In the *Debra P.* case, the Fifth Circuit said:

The due process violation potentially goes deeper than deprivation of property rights without adequate notice. When it encroaches upon concepts of justice lying at the basis of our civil and political institutions, the state is obligated to avoid action which is arbitrary and capricious, does not achieve or even frustrates a legitimate state interest, or is fundamentally unfair. See *St. Ann v. Palisi*, 495 F.2d 423, 425 n.5 (5th Cir. 1974). We believe that the state administered a test that was, at least on the record before us, fundamentally unfair in that it may have covered matters not taught in the schools of the state.

Testimony at trial by experts for both plaintiffs and defendants indicated that several types of studies were done before and after the administration of the test. The experts agreed that of the several types of validity studies, a content validity study would be most important for a competency examination such as SSAT II. The trial court apparently found that the test had adequate content validity, 474 F.Supp. at 261, but we find that holding upon the record before us to be clearly erroneous. In the field of competency testing, an important component of content validity is curricular validity, defined by defendants' expert Dr. Foster, as "things that are currently taught." (Tr. 2845) This record is simply insufficient in proof that the test administered measures what was actually taught in the schools of Florida. 644 F.2d, 404-405.

Without a doubt, the tests for state content standards described in Section 15.1-21-08 of the NDCC are or will be constructed without reference to the current content of instruction in the myriad home education programs in North Dakota. Nor could the examinations reasonably be expected to do so, given the diversity of homeschool curricula being utilized throughout the State. Moreover, it is clear that there has not been a validity study which is necessary in this context.

The court in the *Debra P.* case also said that, "if the test is found to be invalid for the reason that it tests matters outside the curriculum, its continued use would violate the Equal Protection Clause." One of the constitutional requirements of equal protection is that there be a rational relationship between such a test and the state's interest in education. In the Florida case, the court said that if the test was not fair, then the test was not rationally related to a state interest and therefore failed the constitutional equal protection requirements. The tests proposed for homeschool students in North Dakota would not be fair, because they would cover course content not taught in home education programs.

Further, it is impermissible for the state to prescribe the course content of subjects taught in home education programs. To do so would effectively destroy this form of private education. This was previously attempted in Oregon which enacted a law banning all private schools. In the case of *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), the U.S. Supreme Court held this law to be unconstitutional in violation of the right of parents to direct the education of their children as guaranteed by the Due Process Clause of the Fourteenth Amendment. Your proposed legislation requiring students in home education to achieve minimum test scores on assessments for content standards would require these students to be taught the public school curriculum, thereby denying parents the right to choose a different curriculum for their home education program. Many homeschooling parents object to the course content of subjects taught in the public schools, particularly in science. By not being able to choose the course content of their curricula, homeschooling parents in North Dakota would find themselves in the same circumstance as those parents in Oregon who were unconstitutionally required to send their children to public school. Under your testing proposal, home education in North Dakota would become nothing more than public school at home.

Needless to say, we will assist the homeschooling families in North Dakota in opposing this legislation which would require them to meet state content standards. No other state in the nation has any such law, nor has any other state even proposed such legislation.

Very truly yours,



Dewitt T. Black, III

DTB:tjs

Cc: Ms. Jean Newborg, Testing Coordinator
Department of Public Instruction
Mrs. Gail Biby, Executive Director
North Dakota Home School Association
Gregory Lange, Esquire

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Testimony in Opposition to HB 1182

January 15, 2003

Madam Chairman, and members of the committee, my name is Cam Leedahl. I am a home educator from Leonard, North Dakota. I am opposed to this bill.

I am a long time home educator. I have graduated two from high school who have been successful in their post secondary experiences. I have one child yet in high school. I teach informational workshops on standardized achievement testing and field many calls from home educators on these and other questions.

A bill like this is very frustrating one to which to respond. What prompted this piece of legislation?

Is it because those introducing the bill believe home education programs should participate in state standards and assessments?

---I don't need them. My homeschool program is working. Research shows that home education programs overall are doing well.

--I don't want them. The tutorial approach of homeschooling allows for continual assessment of my child's learning, resulting in any adjustments needed to maximize his potential.

--I should not have to. A home education program is not similar to a classroom approach in method or philosophy and it is not logical for it to be treated as such.

Is the intent of this legislation to avoid conflicts between the school districts and the home educators over testing material, testing years, and who pays for the test and administration of the test?

-- Quite frankly, I have compassion for the school district and the problems it creates for them to have to figure out the logistics of the testing requirements of the homeschool law with their own challenges in getting their own students tested, especially if officials are encouraging them to ask of home educators what is not required in the homeschool law.

--However, as a homeschooler I am concerned primarily about the needs of my own unique home education program and what works for us, not about the needs/desires of the local school district.

Is the intent of this legislation really about conflicts over the achievement test instrument and grade levels being tested, or is it rooted in the basic philosophy that if home education is allowed at all it should be highly regulated, and in fact just an extension of the public school?

There will continue to be conflicts as long as home educators continue to be highly regulated. Simplify the home education statute, and those conflicts will be minimized.

12/5 Home education works. And it works better when we're left alone. It is better for us to put energy into educating our children than to be worrying about what is coming next from the Department of Public Instruction and school district officials.

Don't pass this bill.

Respectfully submitted,
Cam Leedahl
15470 County Road 2
Leonard, ND 58052
645-2578
camleedahl@aol.com

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Operator's Signature

Date

10/2/03

Testimony by Charlene Nelson, Homeschooling mother
15703 31st St. SE
Casselton, ND 58012
347-4490 l.nelson@702com.net

I think that you already know that homeschooling is a good system that produces good results. Homeschooled students are excelling. They consistently score at the top of all the standardized tests. Just look at the number and the caliber of the people who have come to this hearing today and you can tell that homeschooling is a story of success any way that you want to measure it. More to the point, homeschooling is here to stay. It is an important and viable part of our education picture.

In light of that fact, I would like to put before you a question: What do you hope to accomplish by passing more restrictive controls over homeschoolers?

North Dakota already has a reputation for being one of the worst states for homeschooling. When we learned that my husband's job would transfer us to this area, we had many friends and family express their concern over whether or not we would be able to homeschool. We rented a house in Fargo for two years while looking for a place to buy. It was during that time that North Dakota changed their homeschooling law to allow a parent with any 4-year degree to teach their child. If this law had not been changed, we very likely would not have bought our house in North Dakota. We would have had more reason to buy our house in Minnesota. If you pass HB 1182, or other laws restricting homeschoolers, how many other families will be discouraged from moving to North Dakota?

I hear a lot of talk about Economic Development and concern over out-migration. Right now the house is entertaining five bills dealing with Economic Development. I cringe at what the price tags of those might be. But if you defeat HB 1182 and pass other bills friendly to homeschoolers, you will be encouraging homeschooling families—young families, who are committed to their communities and to their children—to move to North Dakota. And it won't cost you a dime. This is the cheapest and easiest thing you could devise as part of your Economic Development programs.

Homeschooling is a growing and accepted trend. It is here to stay. The question you need to ask yourselves is "What is the message that we, that North Dakota wants to send to homeschoolers?" Do you want to tell these people who are so committed to the education of their children to stay away from North Dakota? Or do you want to welcome them to a climate that favors homeschooling and fosters a good relationship between the state and its homeschoolers?

Wouldn't it be great if, instead of being known as one of the states most hostile to homeschoolers, it were known as a haven, a model state for a healthy homeschooling climate? That's my question to you today: What do you hope to accomplish with this bill?

Please send a positive message to the homeschoolers of our state and the homeschoolers that may want to move here. Please tell them that North Dakota values its dedicated homeschooling families. Do not pass HB 1182. Vote no on HB 1182.

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Deanna Hall
Operator's Signature

10/2/03
Date

My name is Brand Nelson. I am eleven years old and I am homeschooled. I am here to talk about the bill you are discussing that would make homeschoolers take a state test.

Homeschooling means we get to choose our own curriculum. Every summer, before school starts, my mom sits down with us and shows us what we're going to be studying for the year. She asks us if there are books we'd like to order. This year we are studying the Middle Ages and the Renaissance and the Reformation. So I asked for a book on how to draw pictures of knights and castles. I also read a great biography about Leonardo daVinci and now I'm reading about Blaise Pascal. Since my brother and I get to choose some of our books we are more excited about what we are studying.

Then my mom asks us what our goals are for the year. Last year I said I'd like to improve my handwriting. So we ordered a penmanship book and spent extra time to help me improve. My dad says my handwriting is much better, but I guess I still need to work at it.

I like homeschooling because I learn a lot in a friendly environment. My mom is a good teacher and helps me learn a lot. I've learned about the famous men of Egypt, Greece and Rome. We've read *The Illiad* and *The Odyssey* and stories from Shakespeare. Even though I'm only 11, I'm in 8th grade math. If I were in public schools I would be doing 5th grade math. I think math is my best subject. If I need extra help, my Dad will help me.

My brothers are my best friends and I like having them for my classmates. I learn more when I help my brother with his schoolwork. It's fun to talk about the books we've read for school. One time we wrote and put on plays about the Greek myths we'd read.

I think that this bill is a bad idea. It wouldn't be fair to make me take a test on things that I hadn't studied. It doesn't mean I'm not learning, I'm just learning things at a different time than my public school friends. And I get to use different books. So I shouldn't have to take the same test that they do. If got a bad score you would think that my parents weren't doing a good job of teaching me. But I think they are good teachers. I've already taken tests two years in a row and I got high scores both times.

It's just like if you had a child in public school and they had a substitute teacher for a week. If the substitute taught things differently than the regular teacher and then the regular teacher gave them a test, you'd be mad if your child flunked the test. You wouldn't think that was fair, would you?

My brothers and I are very happy learning at home. Every year my parents ask us if we want homeschool or public school and we always choose homeschool. It wouldn't be fair for you to take away from us this school system that has been so effective for my brothers and me all these years. Please do not pass HB1182.

Brand Nelson
15703 31st St. SE
Casselton, ND 58012
347-4490

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Re. HB 1182, 01-15-03 Testimony of Barbara Jo Miller, 409 7th Ave NW, Mandan, ND.

Who has the primary responsibility for the training of a child? It is my conviction that the parents do, and I believe the state concurs. For if a minor child destroys someone's property or becomes truant, I believe that the parents would be held legally responsible--not the state or the community or the educational system.

What are the limits of the parents' responsibility in the upbringing of minor children? It is my conviction that, while the parents may enlist the aid of others, they are ultimately responsible for all the needs of their children--physical, mental, and spiritual--so long as the child is dependent upon them, and that this responsibility is intrinsic to the role of parenting.

My child is not a dependent of the state. Therefore, I reject any claim that the state's responsibility for my child supercedes my own responsibility. The state may assume a responsibility to its citizens to ensure that there is an adequately educated and capable citizenry. But when the state takes over a responsibility of the parent, or when parents relinquish their responsibility to the state, the parent/child relationship is diminished, and the family unit is eroded. The state cannot know the unique needs of each individual child; nor can it have the loving and enduring concern for each child that a parent has. Rather than diminishing parental responsibility in any area, let us encourage and enable parents to fulfill their responsibilities.

But are parents capable of giving their children an adequate education, on their own, and without special teacher training? I can address that question both as a parent and as a North Dakota certified educator. I have a bachelor of science degree in elementary education. My education did not make me an expert in every subject which I am required to teach. Rather, it gave me class management skills, so that I could: maintain order; present a lesson which had some meaning to twenty to thirty children of widely diverse backgrounds, experiences, abilities and learning styles; and evaluate curriculum and materials. As a parent educator, I do not face the same challenges. I am teaching a small class that I have known, not for two semesters, but from birth. If the material I have is not meeting my students' needs, it is no problem to switch to something more suitable--and there is a tremendous amount of excellent materials available to choose from. My students can't daydream behind someone else in class, and they are motivated by the sacrifices their parents have made for their education. Believe me, my friends who are employed as classroom teachers envy me these advantages. We may not have the equipment and group activities available in a larger school, but we can instill a love of learning 24-7-365.

Are we meeting the grade, and can we give evidence to the state that we are adequately educating our children? Certainly. We are required to administer nationally standardized tests more frequently than public school students are tested. On the average, home educated students test around the eightieth percentile, that is, above the average or median of all the children tested. And we already have laws which benefit home educated children who fall below minimum standards. Home educated children are not being left behind.

If the state wants to have the same level of control and accountability over home schools as it has over public schools, it should treat home educators the same as public educators: give us input in establishing state content and achievement standards, and put us on the payroll.

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Barbara Jo Miller
Operator's Signature

10/2/03
Date

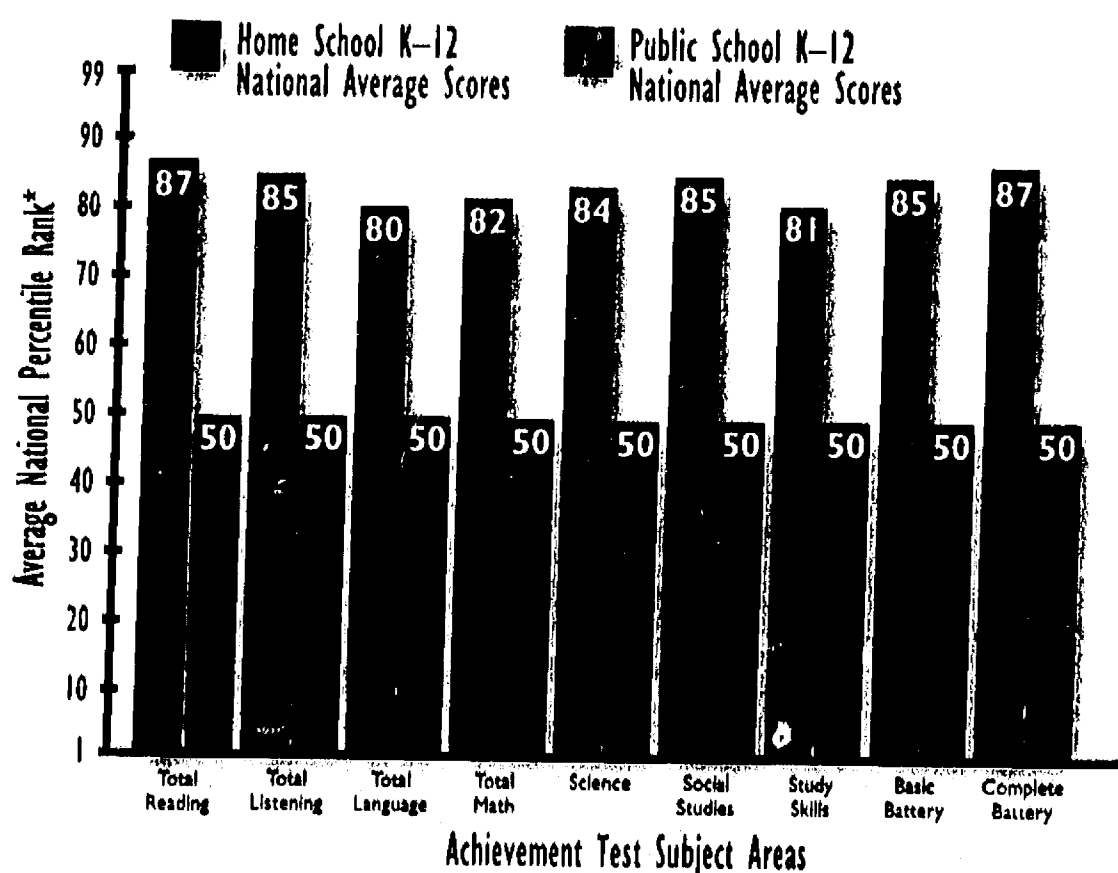
Home Schooling Achievement

Why are so many parents choosing to home school? Because it works.

A 1997 study by Dr. Brian Ray of the National Home Education Research Institute (NHERI) found that home educated students excelled on nationally-normed standardized

achievement exams. On average, home schoolers outperformed their public school peers by 30 to 37 percentile points across all subjects (Figure 1.0).

Figure 1.0 — How Do Home School Students Score?



Footnote: (Ray, 1997) Data collected for standardized academic achievement tests for the 1994-95 academic year.

*For more detail about the non-equal-interval nature of a simple percentile scale which has distortion especially near the

ends of the scale, see the complete study by Brian D. Ray, *Strengths of Their Own—Home Schoolers Across America: Academic Achievement, Family Characteristics, and Longitudinal Trends*, 1997, Salem, OR: National Home Education Research Institute.

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Does Parent Education Level Predict Student Achievement?

Key for Figures 2.1-2.3: Parents' Highest Education Level Attained

- Graduated College
- Some Education after High School
- Graduated High School
- Less than High School Education

Footnotes: (Ray, 1997) *For more detail about the non-equal-interval nature of a simple percentile scale which has distortion especially near the ends of the scale, see Ray 1997.
 **Basic battery achievement test scores not available for public school students.
 ***Public school data are for 8th grade writing scores and 13-year-olds' math scores based on tables from the U.S. Department of Education, Office of Educational Research & Improvement, National Center for Education Statistics (1996, November). National Assessment of Educational Progress (NAEP) trends in academic progress (trends report and appendices). Washington, DC: U.S. Department of Education.
 The school data are for grades K-12.

Figure 2.1 — Home School Achievement — Basic Battery Test

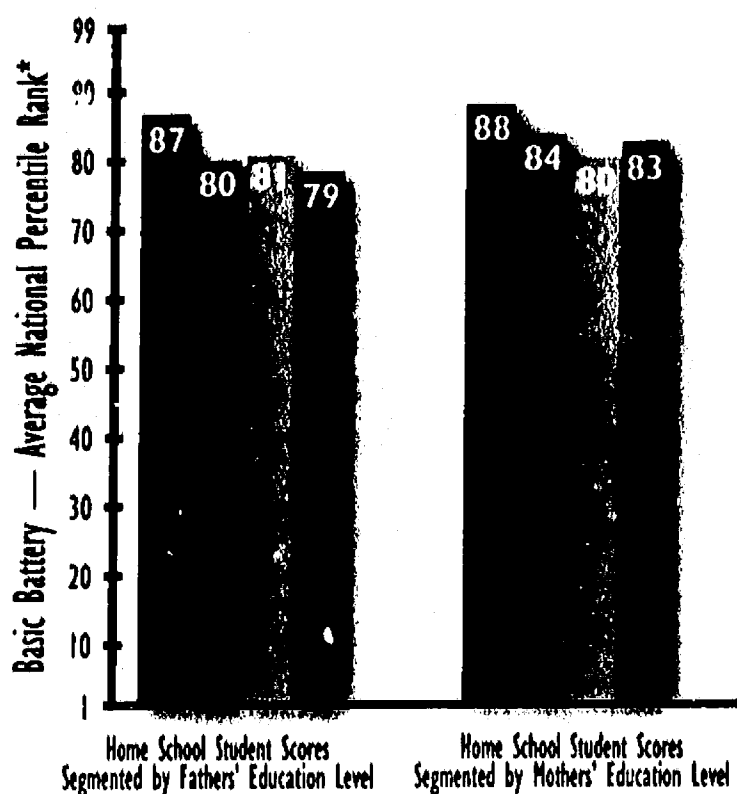


Figure 2.2 — Public School Achievement — Writing Test**

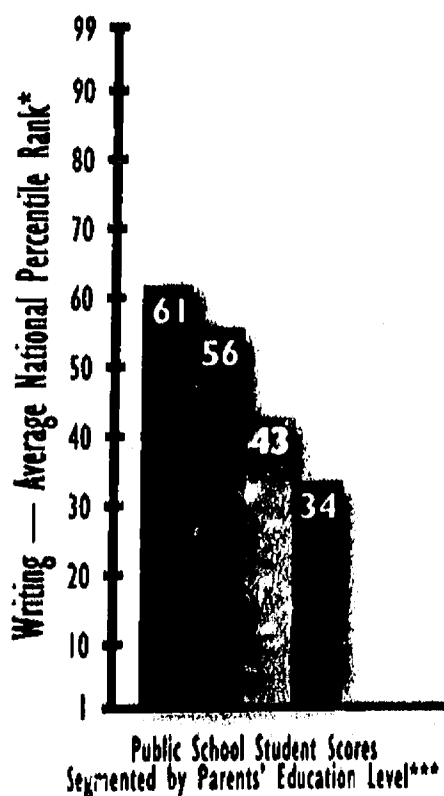
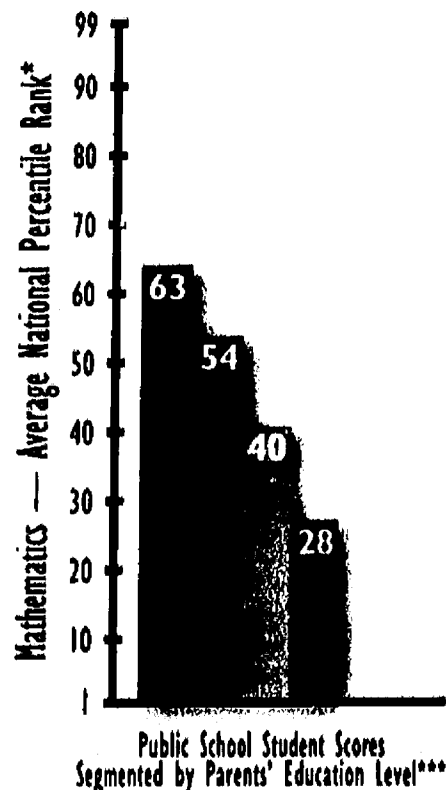


Figure 2.3 — Public School Achievement — Math Test**

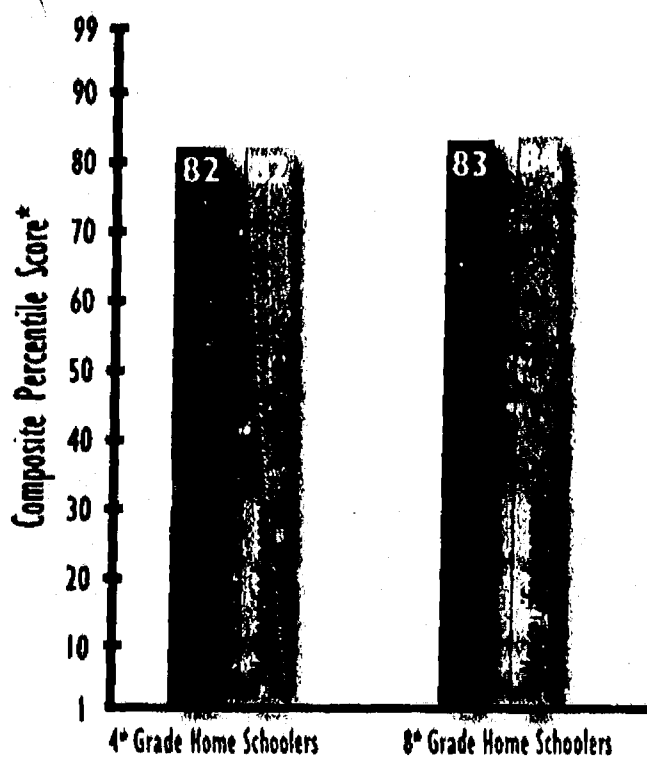


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Deanna Holbrook
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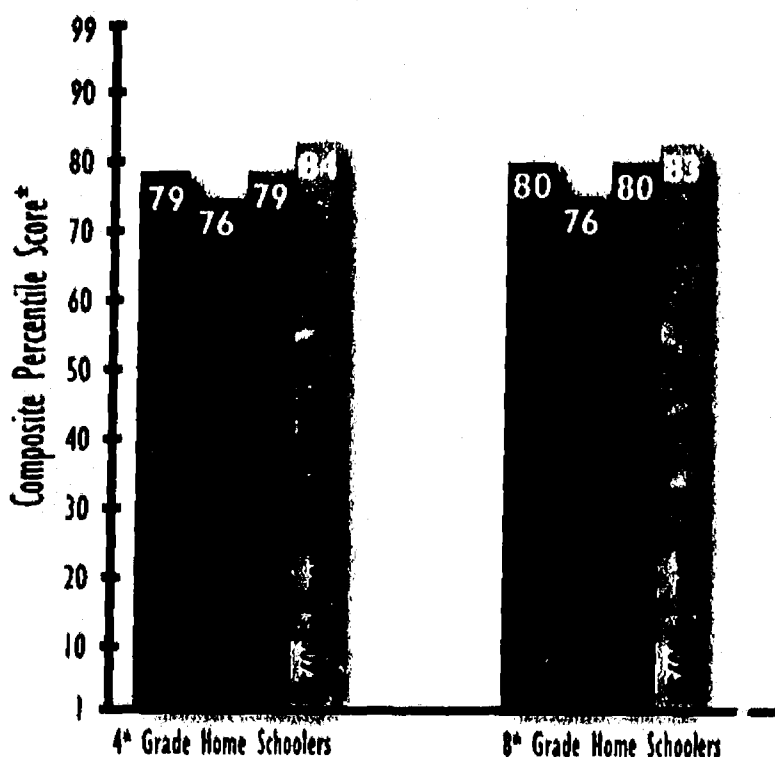
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Figure 3.0 — Home School Percentile Rankings Based on Parent Certification



Footnote: (Rudner, 1999) *Composite Percentile Score refers to the percentile corresponding to the mean composite scaled score.

Figure 4.0 — Home School Percentile Scores Based on the Money Spent on Education per Child



Footnote: (Rudner, 1999) *Composite Percentile Score refers to the percentile corresponding to the mean composite scaled score.

Is Government Regulation Necessary for High Achievement?

Key for Figures 5.1 & 5.2




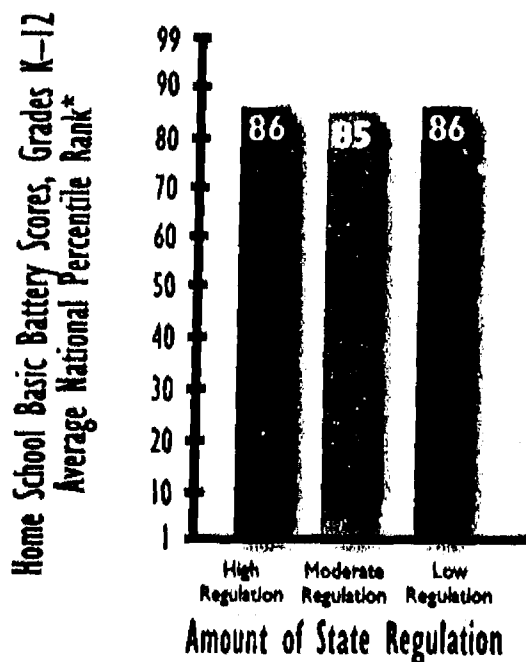
-  **Low Regulation**
No state requirement for parents to initiate any contact with the state.
-  **Moderate Regulation**
State requires parents to send notification, test scores, and/or professional evaluation of student progress.
-  **High Regulation**
State requires parents to send notification or achievement test scores and/or professional evaluation, plus other requirements (e.g., curriculum approval by the state, teacher qualifications of parents, or home visits by state officials).

Figure 5.1 — State Regulation: No Impact on Home School Achievement



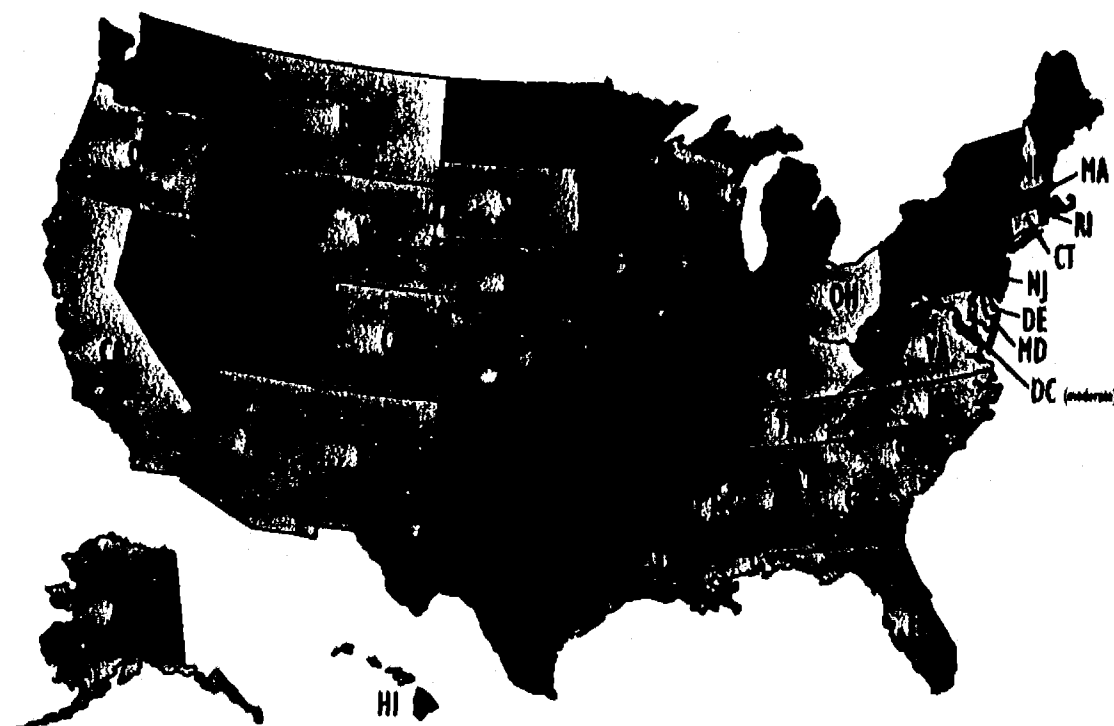
Footnote: (Ray, 1997) *See study for more detail about the non-equal-interval nature of a simple percentile scale which has distortion especially near the ends of the scale.

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Figure 5.2 — Breakdown of States by Regulatory Policy
(Ray, 1997)



Home schooling's one-on-one tutorial method seemed to equalize the influence of parents' educational background on their children's academic performance. Home educated students' test scores remained between the 80th and 90th percentiles, whether their mothers had a college degree or did not complete high school (Figure 2.1).

In contrast, a parent's education level did appear to affect the performance of children in traditional school settings (Figures 2.2, 2.3). Students taught at home by mothers who never finished high school scored a full 55 percentile points higher than public school students from families of comparable educational backgrounds. Similarly, in his 1999 study, Dr. Lawrence M. Rudner found no difference in achievement according to whether or not a parent was certified to teach (Figure 3.0). For those who would argue that only certified teachers should be allowed to instruct their children at home, these findings suggest that such a requirement would not meaningfully affect student achievement.

Rudner also found that the median amount of money spent in 1997 on educational materials for home school students was \$400. Considering this relatively small expenditure in light of the high academic achievement of most home school students, it is reasonable to conclude that it does not require a great deal of money to home school successfully (Figure 4.0).

According to Ray, the degree of governmental regulation had no significant effect on the academic performance of home schoolers

(Figure 5.1, 5.2). Whether a state imposed a high degree of regulation, low regulation, or no regulation, home school student test score averages were nearly identical. Such regulations may be legitimately questioned since there is no apparent benefit to student learning.

Traditionally, gender and race have been consistent predictors of student performance. But home schooling is breaking down those barriers. Math and reading scores for minority home school students show no significant difference when compared to white's. A similar comparison for public schools students, however, demonstrates a substantial disparity (Figures 6.0).

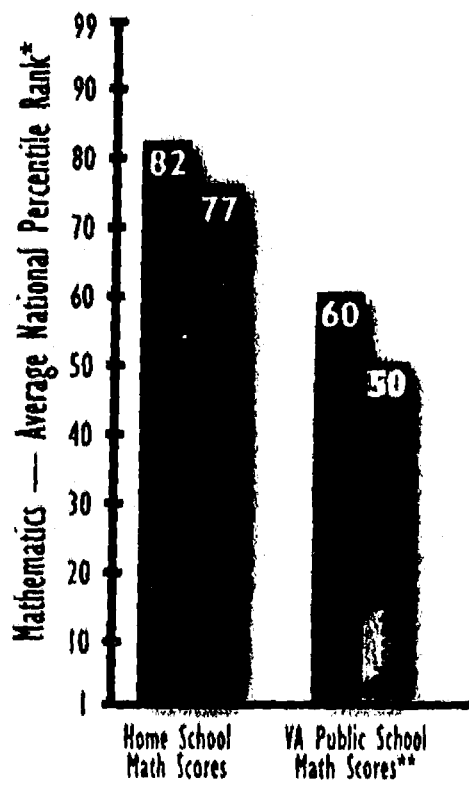
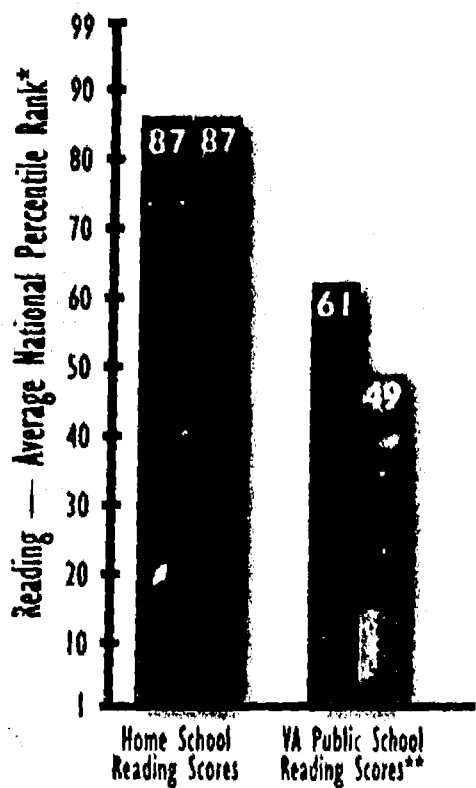
When segmented by gender, test scores for home schoolers reveal that boys are slightly better in math and girls are somewhat better in reading. Public school student performance in math follows a similar pattern, but public school boys' reading scores are markedly behind girls' (Figure 7.0).

The first question the general public asks whenever home schooling is mentioned is, "What about socialization?" Data on home school students' activities and community involvement reveal that, on average, these children are engaged in 5.2 activities outside the home (Figure 8.0).

Home schooling is an effective educational alternative chosen by dedicated and loving parents for their children. Not only is it working, it is working very well!

How Do Minorities Fare in Home Education?

Figure 6.0 — Race Relationship to Reading and Math Test Scores



Footnotes: (Ray, 1997) *See study for more detail about the non-equal-interval nature of a simple percentile scale which has distortion especially near the ends of the scale.

**Public school achievement data are based on 8th grade scores from Table 4 of The Virginia Assessment Program: Results for the 1993-1996 School Year (1996, July). Richmond, VA: Virginia Department of Education.

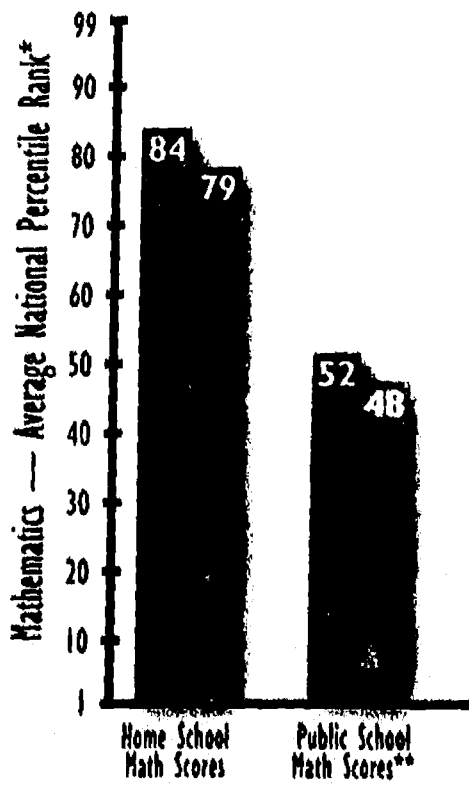
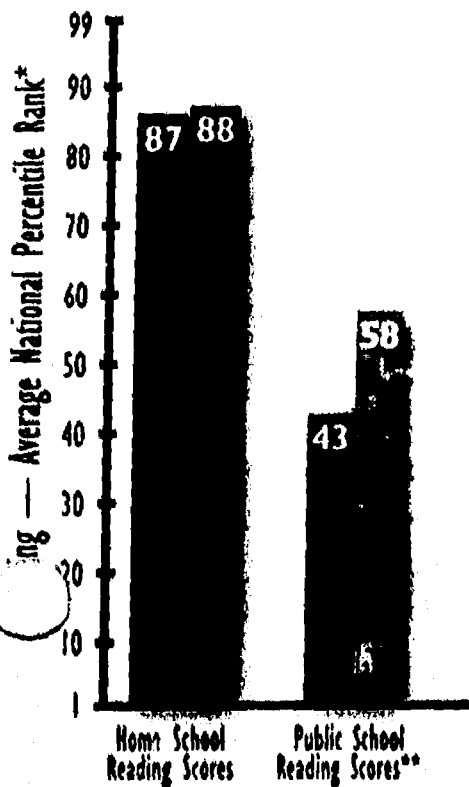
The Virginia minority scores were weighted according to the proportions of minorities in this study of home schoolers to arrive at the numbers in this figure. The minority groups were American Indian/Alaskan Native, Asian/Pacific Islander, black, and Hispanic. Of home school minority students tested in this study, about 63% were black or Hispanic.

Public school achievement data are similar for the U.S. in general but the same detail of data was not available for all public schools. See U.S. Department of Education, Office of Educational Research & Improvement, National Center for Education Statistics (1996, November). National Assessment of Educational Progress (NAEP) trends in academic progress (trends report and appendices). Washington, DC: U.S. Department of Education.

Home school data are for grades K-12.

What About the Gender Gap in Academics?

Figure 7.0 — Gender Relationship to Reading and Math Test Scores



Footnotes: (Ray, 1997) *See study for more detail about the non-equal-interval nature of a simple percentile scale which has distortion especially near the ends of the scale.

**Public school achievement data are for 8th grade based on tables from the U.S. Department of Education, Office of Educational Research & Improvement, National Center for Education Statistics (1996, November). National Assessment of Educational Progress (NAEP) trends in academic progress (trends report and appendices). Washington, DC: U.S. Department of Education.

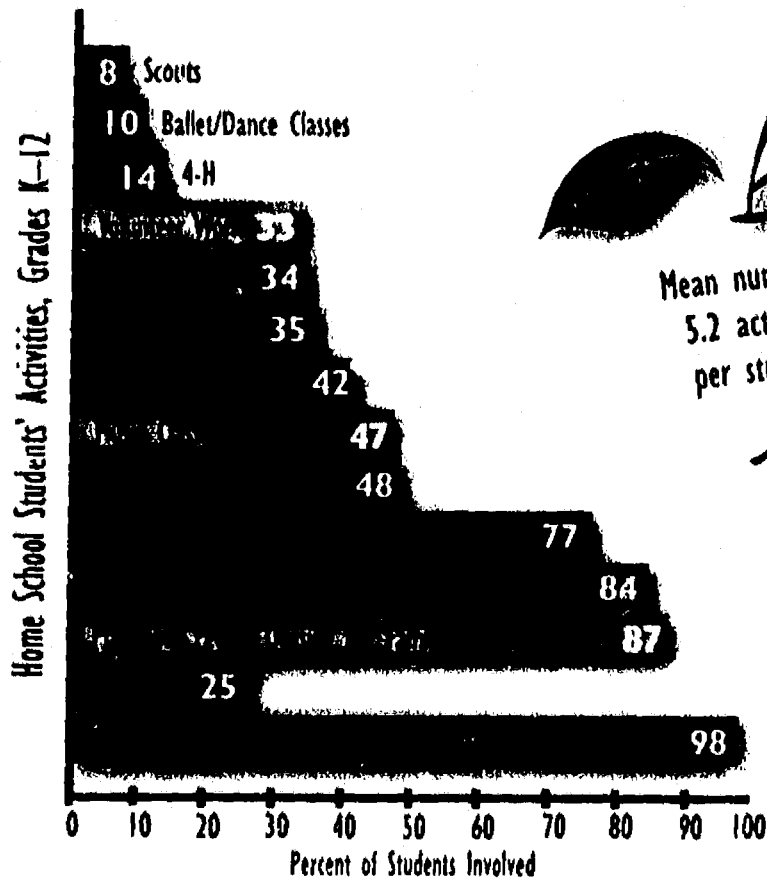
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What about Socialization?

Figure 8.0 — Home Schoolers' Activities and Community Involvement



Footnotes: (Ray, 1997) *Participation in two or more of the 12 activities does not include "other activities." See Table 8 in study.

About the Research

Strengths of Their Own—Home Schoolers Across America: Academic Achievement, Family Characteristics, and Longitudinal Traits, Brian D. Ray, 1996 (book).

Dr. Brian D. Ray collected data on 5,402 home school students from 1,657 families for the 1994-95 and 1995-96 academic years. Nearly 6,000 surveys were sent to home school families. Some surveys were mailed directly to families (those randomly selected from numerous mailing lists and longitudinal participants from a 1990 study). Others were blindly forwarded to families through the leadership of independent home school support groups and networks in every state. This was the largest and most comprehensive study on home schooling to that point.

Brian D. Ray, Ph.D., is president of the National Home Education Research Institute. He holds a Ph.D. in science education from Oregon State University, has an M.S. in zoology (1979), and has been a professor and classroom teacher. NHERI conducts basic data gathering research; serves as a clearinghouse of information for researchers, home educators, attorneys, legislators, policy makers, and the public at large; and provides speaker services. NHERI also publishes research reports and the unique, academic, refereed journal *Home School Researcher*.

The study is available from NHERI for \$8.95, plus \$2 shipping.

National Home Education Research Institute
P.O. Box 13939 • Salem, Oregon 97309
phone: 503-364-1490 web: www.nheri.org

The Scholastic Achievement and Demographic Characteristics of Home School Students in 1998, Lawrence M. Rudner, 1999.

Conducted by Dr. Lawrence M. Rudner and commissioned by HSLDA, this study involved seven times as many families as any previous study of its kind: 20,760 students in 11,930 U.S. families.

Unlike any previous study, families chose to participate before they knew their children's test scores, minimizing the possibility of selective reporting. All participants took the same tests: the Iowa Test of Basic Skills for grades K-8 and the Tests of Achievement and Proficiency for grades 9-12, both published by the Riverside Publishing Company.

Lawrence M. Rudner, Ph.D., is with the College of Library and Information Services, University of Maryland in College Park. He has been involved in quantitative analysis for over 30 years, having served as a university professor, a branch chief in the U.S. Department of Education, and a classroom teacher. For the past 14 years, he has been the director of the ERIC Clearinghouse on Assessment and Evaluation. Dr. Rudner holds a Ph.D. in Educational Psychology (1977), an MBA in Finance (1991), and lifetime teaching certificates from two states. His two children attend public school.

For a copy of the full report, see *Education Policy Analysis Archives* at <http://epaa.asu.edu/epaa/v7n8/>

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