

**SENATE EDUCATION**EXHIBIT NO. 9  
DATE 2-14-05  
BILL NO. SB-291**HOME SCHOOL<sup>®</sup>  
LEGAL DEFENSE  
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February 14, 2005

**TESTIMONY OF DEWITT T. BLACK, III BEFORE THE MONTANA SENATE  
EDUCATION COMMITTEE REGARDING SENATE BILL 291**

Mr. 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 whose primary purpose is to protect 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 80,000 member families in all 50 states and the District of Columbia, with approximately 350 member families in Montana.

Thank you for permitting me to testify before this Committee concerning proposed changes in the home school law of Montana. I appear before you today to speak in opposition to Senate Bill 291.

This bill represents a draconian solution to a problem which does not exist. There is no indication that the home schooling parents of Montana are not properly teaching their children at home. In fact, the uncontroverted evidence from every study conducted is that Montana home educators, along with those in the other 49 states, are more successful than the public school system. Simply put, home schoolers are doing well enough to be left alone.

Even the title of this bill is an affront to home schooling families. It is to be known as the "Quality Home School and Child Protection Act." What are home schooled children supposed to be protected from? Their parents? Parents who have given up careers and other pursuits in order to stay at home with their children and teach them six hours a day? I submit to you that these parents need to be protected from any interference by the state.

This bill punishes the home schooling families of Montana for no reason. The language is based on North Dakota's home school law, but it is even worse than

North Dakota's law which is one of the most restrictive and oppressive laws in the nation. Fortunately, there is a bill now pending in the North Dakota Legislative Assembly which would remove the law's worst provisions.

Senate Bill 291 would re-define a home school so that only a child's parent could conduct home instruction. Current law permits a stepparent or legal guardian to operate a home school as well. We know of no reason for Montana to define a home school so narrowly that a stepparent or legal guardian could not home school a child. Forty-six states, including Montana, now permit persons other than biological parents to teach a child at home.

Current law requires home schooling parents to notify the county superintendent of schools every year of the child's attendance at the home school. Senate Bill 291 would change this from a *notification* to the county superintendent to a *registration* of the child with the school district. By registering with the school district, presumably the child would be considered a public school student. If these students are counted as public school students by the local school district, the district would receive the same amount of money from the state for home school students as they do for students who actually attend the public school. By the way, every year we at Home School Legal Defense Association have to contend with county superintendents who attempt to require registration instead of notification.

Currently Montana law does not specify any level of education a parent must have in order to conduct a home school. This is in accord with 40 other states which do not require home schooling parents to possess a high school diploma or GED. Only nine states require parents to have a high school diploma or GED before they can teach their children at home. Studies conducted on home schooling have concluded that there is little statistical difference between the academic performance of children whose parents have not finished high school and those who have a college education. Most significant, home school students whose parents are high school dropouts have average test scores higher than those of public school students. Senate Bill 291 would require that a home school parent either be licensed to teach in Montana, have a baccalaureate degree, or have a high school diploma or GED. A parent with only a high school diploma or GED would have to be monitored by a state-certified teacher for the first two years of home schooling. North Dakota is the only state in the nation with this same intrusive and unnecessary monitoring requirement.

This bill requires monitoring but does not indicate how the monitoring is to be carried out or how much time the certified teacher is to spend monitoring the parent. Does this mean that a state-certified teacher will spend every school day in the family's home monitoring the parent's instruction? The bill also requires the monitor to evaluate and report the child's academic progress to the school district twice a year. Obviously the school district is going to have to hire and pay

additional certified teachers to conduct monitoring and perform evaluations, all at taxpayers' expense.

Senate Bill 291 would impose state testing on home school students for the first time since the home school law was enacted in Montana in 1983, almost 22 years ago. There is no reason to do it now. Studies have shown that increased state oversight of home schooling does not result in higher academic achievement. The national trend is to deregulate home schools to the same extent as other nonpublic schools which have proved to be successful education options. Only 28 states require any type of evaluation of home schooled students. Of these 28 states, only eight states still prescribe standardized tests as the only method of evaluation. In 1995 the Arizona State Legislature repealed the requirements for testing home schooled students, and in 2001 the New Mexico Legislature did the same.

Senate Bill 291 would not only require that home school students take the same test as public school students at certain grade levels but would require that this test be administered at the public school. No state requires that home school students be tested at the public school, not even North Dakota. States requiring testing permit the test to be administered either in the student's learning environment or some other location.

A bill that would have required testing of home schooled students in Montana was introduced during the 1991 legislative session. The Legislature not only voted down this bill but enacted another statute, Section 20-5-111 of Montana Code Annotated, stating that the parent is solely responsible for the evaluation of home school instruction. Senate bill 291 flies in the face of this law by which the Montana Legislature acknowledged the parent, not the state, as the proper authority to evaluate a student's academic progress in a home school. Nothing has changed since 1991 to now warrant state testing of home schooled students.

Senate Bill 291 states that home school students must take the nationally standardized examination that public school students take in grades four, eight, and eleven. It is unclear what the intent is regarding which test would be used. Montana public school students are now tested at these grade levels under two different phases of the Montana Comprehensive Assessment System, known as MontCas. According to Judy Snow, the State Assessment Director at the Montana Office of Public Instruction, she doesn't know what is intended by the term "nationally standardized examination" in the bill. In an e-mail to me on January 25, she said, "I do not know what definition the bill authors have in mind regarding a nationally standardized test." Even the State Assessment Director doesn't know what test this bill would require. But one thing is sure. If this is the same test used by the state to comply with the No Child Left Behind Act, federal law prohibits states from requiring home school students to take this test.

The federal law 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." 20 U.S.C.A. § 7886(b). Home School Legal Defense Association drafted this language and requested that Congress include it in the law, and Congress did so. Attached to my testimony as Exhibit 1 is a copy of a memorandum from the General Counsel of the U.S. Department of Education stating that home school students are specifically exempted from state assessments used to comply with the No Child Left Behind Act. A violation of this law by Montana will probably result in the forfeiture of all federal funds for education.

Probably the worst part of this bill is that it would prohibit parents from home schooling a child with a developmental disability. This means that children with such conditions as Down's syndrome, autism, and epilepsy could not be home schooled. North Dakota is the only state in the nation now prohibiting the home schooling of children with developmental disabilities, except that in North Dakota an autistic child may be home schooled. However, on January 31 of this year, North Dakota's House of Representatives passed unanimously a bill permitting all developmentally disabled children to be home schooled. This bill is expected to pass the Senate as well. Clearly, Montana is headed in the wrong direction.

From an educational standpoint, there is no question that the one-on-one attention given to a developmentally disabled child by a parent is more effective than a classroom setting. This has been confirmed in two studies by Dr. Steven F. Duvall, a Kansas school psychologist who found that home school students with learning disabilities achieve greater academic gains than public school students in special education classes.

From a personal standpoint, there is little question that the natural bonds of affection between a parent and child provide the most loving environment for the child. These most vulnerable and needy children should not be forced by the state to be separated from their parents. Being at home in the care of their parents is the safest place they can be. And these parents of developmentally disabled children should be entitled to teach them at home the same as other parents.

There is also a legal reason why Montana should not deny parents the right to home school their developmentally disabled children. Under the Fourteenth Amendment to the United States Constitution, parents have the fundamental right to direct the education of their children. This is well-settled law. In our opinion, Senate Bill 291 would deny this right to parents of children with developmental disabilities, because these parents would be prohibited from choosing home instruction. Parents should have the right under state law to choose the educational option they

consider best for their children. We do not believe such a law would survive a constitutional challenge in court.

If there are families in Montana who claim to be home schooling but are not complying with the law, there are legal remedies for this. Current law empowers the county superintendent to inspect attendance records for the home school. Parents are required to provide at least 180 days of instruction each year in the same subjects required for public school students. Additionally, Section 20-5-105 of the Montana Code, a copy of which is attached to my testimony as Exhibit 2, gives attendance officers extraordinary powers to investigate and prosecute truancy. Subsection (1) gives them police power which inherently includes the authority to conduct investigations and explicitly includes the authority to serve warrants. Subsection (2) gives the attendance officers the authority to take children into custody and take them to school. Subsection (3) gives them the authority to "do whatever else is required to investigate and enforce the compulsory attendance provisions of this title and the pupil attendance policies of the trustees." Subsection (4) gives them the authority to institute proceedings against any parent, guardian, or other person violating the compulsory attendance law.

What additional power could the Legislature give an attendance officer to enforce the truancy law? The language of subsection (3) of Section 20-5-105 gives him the authority to do whatever is required to investigate and enforce the compulsory attendance law. You will find no broader grant of authority to truant officers anywhere else in this nation. If there really is a problem in Montana with parents pretending to be home schoolers, someone needs to light a fire under the attendance officers to investigate and enforce the law.

Any parents who are not teaching their children at home are not home schoolers. They are truant and should be prosecuted as such. Truants are not going to obey the law regardless of what requirements are adopted, certainly not taking any standardized tests or being monitored by a state-certified teacher. Montana already has laws on the books to deal with any parent who is not educating a child. These laws simply need to be enforced to address the concerns of the bill sponsor.

On behalf of our member families in Montana, we at Home School Legal Defense Association respectfully ask this Committee to vote against Senate Bill 291.

Thank you.



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

Memorandum

TO: Secretary's Regional Representatives

FROM: Brian W. Jones, General Counsel

RE: Home School Provision of No Child Left Behind Act of 2001 (Section 9506(b))

DATE: February 5, 2003

As you may know, Section 9506(b) of the *No Child Left Behind Act of 2001 (NCLB)* reads:

"(b) **APPLICABILITY TO HOME SCHOOLS.**—Nothing in this Act 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 Act."

As a Regional Representative of the Secretary, you may have been or could be contacted by state legislators or other individuals in your region with questions about the meaning of this provision. If you do receive such inquiries, your response should make clear that, based on our review of the language of the provision and the legislative history, the Department of Education interprets this provision to mean: (1) the requirements of NCLB do not apply to home schools; and (2) home school students are specifically exempted from state assessments for purposes of NCLB compliance.

Please contact our Office of General Counsel (202-401-6000) should you receive questions on this matter.

20-5-104

**20-5-104. Attendance officer.** In order to enforce the compulsory attendance provisions of this title, each district shall have at least one person serving as an attendance officer according to the following requirements:

- (1) districts of the first and second class shall employ and appoint one or more attendance officers;
- (2) districts of the third class may employ and appoint an attendance officer or may appoint a constable or other peace officer as an attendance officer; or
- (3) the county superintendent shall be the attendance officer in third-class districts that do not appoint an attendance officer.

History: En. 75-6305 by Sec. 118, Ch. 5, L. 1971; R.C.M. 1947, 75-6305.

**Cross-References**

Additional positions of County Superintendent, 20-3-206.

→ **20-5-105. Attendance officer — powers and duties.** The attendance officer of any district shall:

- (1) be vested with police powers, the authority to serve warrants, and the authority to enter places of employment of children in order to enforce the compulsory attendance provisions of this title;
- (2) take into custody any child subject to compulsory attendance who is not excused under the provisions of this title and conduct him to the school in which he is or should be enrolled;
- (3) do whatever else is required to investigate and enforce the compulsory attendance provisions of this title and the pupil attendance policies of the trustees;
- (4) institute proceedings against any parent, guardian, or other person violating the compulsory attendance provisions of this title;
- (5) keep a record of his transactions for the inspection and information of the trustees and make reports in the manner and to whomever the trustees designate; and
- (6) perform any other duties prescribed by the trustees to preserve the morals and secure good conduct of the pupils of the district.

History: En. 75-6306 by Sec. 119, Ch. 5, L. 1971; R.C.M. 1947, 75-6306.

**Cross-References**

Duties of District Superintendent or county high school principal to enforce attendance laws, 20-4-402.

**20-5-106. Truancy.** (1) Whenever the attendance officer discovers a child truant from school or a child subject to compulsory attendance who is not enrolled in a school providing the required instruction and has not been excused under the provisions of this title, he shall notify in writing the parent, guardian, or other person responsible for the care of the child that the continued truancy or nonenrollment of his child shall result in his prosecution under the provisions of this section. If the child is not enrolled and in attendance at a school or excused from school within 2 days after the receipt of the notice, the attendance officer shall file a complaint against such person in a court of competent jurisdiction.

(2) If convicted, such person shall be fined not less than \$5 or more than \$20. In the alternative, he may be required to give bond in the penal sum of \$100, with sureties, conditioned upon his agreement to cause the enrollment of his child within 2 days thereafter in a school providing the courses of instruction required by this title and to cause the child to attend that school for the remainder of the current school term. If a person refuses to pay a fine and costs or to give a bond as ordered by the court, he shall be imprisoned in the county jail for a term of not less than 10 days or more than 30 days.

History: En. 75-6307 by Sec. 120, Ch. 5, L. 1971; R.C.M. 1947, 75-6307.

**Cross-References**

Duty of teachers to report truancy, 20-4-302.

**20-5-107. Incapacitated and indigent child attendance.** In lieu of the provisions of 20-5-106 and when an attendance officer is satisfied that a pupil or a child subject to compulsory attendance is not able to attend school because he does not have the physical capacity or he is absolutely required to work at home or elsewhere in order to support himself or his family, the attendance officer shall report the case to the authorities charged with the relief of the poor. It shall be the duty of such welfare authorities to offer such relief as will enable the child to attend school. If the parent, guardian, or other person who is responsible for the care of the child denies