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# HSLDA

*Advocates for Homeschooling*

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August 8, 2008

Nina Pace  
Nonpublic Educational Options Coordinator  
Ohio Department of Education  
25 South Front St., MS 710  
Columbus, OH 43215

Dear Ms. Pace,

By way of introduction, I am an attorney for the Home School Legal Defense Association (HSLDA), a national organization dedicated to protecting the right of parents to teach their children at home. Presently, we have more than 83,000 member families in all 50 states and the District of Columbia, and nearly 3,700 members in Ohio, who I am privileged to serve. I am writing to comment on O.A.C. 3301-34 which, as I understand it, is undergoing a legislatively mandated 5 year review.

### **The Ohio Regulations Has and Continues to Serve Stakeholders Well**

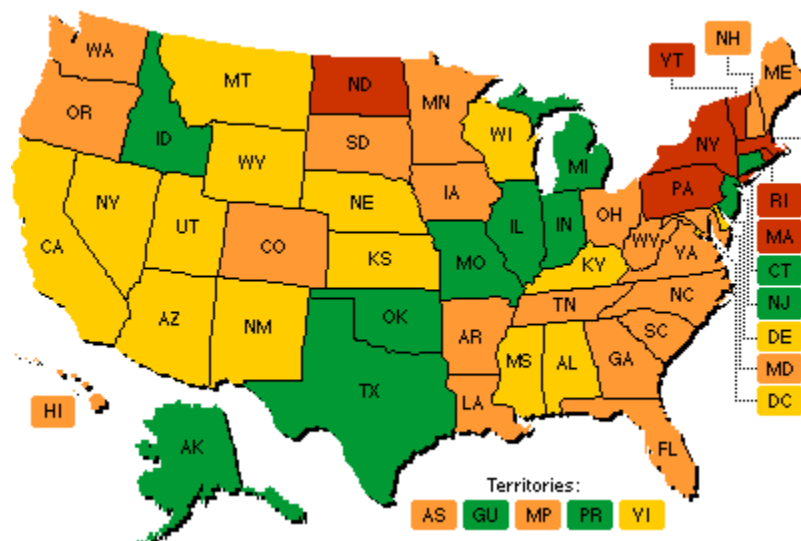
In my position as staff attorney for HSLDA I am responsible for assisting over 10,000 of our members in understanding and complying with the homeschool laws in nine states including Massachusetts, Minnesota, Nebraska, New Hampshire, Ohio, Utah, Vermont, Wyoming and the District of Columbia. Every year I interact with hundreds of Ohio homeschool families and scores of superintendents. While there are occasional misunderstandings I have found that the Ohio framework is very clear and allows for a consistent application of the law that is reasonable and respects the right of parents to homeschool their children and allows the state to properly carry out its role in knowing that its citizens are educated.

In my experience and opinion it is in the best interest of all stakeholders to maintain the current regulatory framework that has likely served hundreds of thousands of homeschooled students and their families. Creating new regulations would require re-educating many tens of thousands of homeschoolers as well as requiring significant work on the part of superintendents of education who have developed forms, procedures and organizational structure to accomplish their role under the regulation. The saying "If it isn't broke don't fix it" has never been more appropriate.

## Ohio is Already a More Highly Regulated State

One of the services HSLDA provides to homeschoolers and those interested is a nationwide analysis of homeschool laws. This analysis is updated annually. You may view this interactive analysis at <http://www.hsllda.org/laws/default.asp>. As part of our analysis we also rank states by their level of regulation.

Today Ohio is considered a state with “moderate” regulation. In relation to the rest of the country homeschooling in Ohio is relatively more regulated. 33 states and territories have fewer requirements for homeschoolers, while only 6 have more requirements.



### LEGEND

**States requiring no notice:** No state requirement for parents to initiate any contact.

**States with low regulation:** State requires parental notification only.

**States with moderate regulation:** State requires parents to send notification, test scores, and/or professional evaluation of student progress.

**State with 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 qualification of parents, or home visits by state officials).

Modifying or increasing regulations on homeschoolers in Ohio would run counter to what has been observed in the rest of the country with homeschool regulation – namely that states’ legislative efforts have been easing regulation on homeschoolers not increasing it. States like Arkansas, Virginia, Vermont, New Hampshire, West Virginia, North Dakota, Maine, Nevada, Utah, Arizona and Colorado have enacted legislation that reduces the regulatory and oversight burden on homeschoolers.

For example, last year Nevada eliminated 75% of its previous regulation providing for a one time notification and eliminating assessments. New Hampshire eliminated the requirement for any submission of a proposed curriculum.

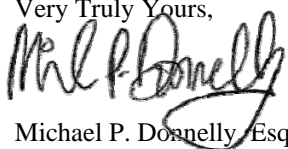
Vermont significantly reduced the amount of information required to be submitted by homeschoolers. Maine changed its law rescinding the need for approval by the local educational authority. In the last 5 years only the District of Columbia<sup>1</sup> has marginally changed their legal framework to increase reporting requirements for homeschoolers.

**Parents have a Fundamental Right to Direct their Children’s Upbringing and Education**

In 1925 Mr. Justice McREYNOLDS of the United States Supreme court authored a unanimous opinion in *Pierce v. Society of Sisters*, penning these famous words, “Children are not the mere creatures of the state.” The Court went on to hold that Parents have a fundamental right to direct the upbringing and education of their children. This right has been upheld in a long line of cases since then holding that this fundamental liberty interest is protected under the 14<sup>th</sup> amendment of the US Constitution. In *Wisconsin v. Yoder*, the court recognized that while a state has an interest in being assured that its citizens are educated; it does not have a compelling interest that they be educated in a particular way. When a state burdens a fundamental right regulation it must be narrowly tailored to meet the states’ compelling interest, if it can articulate one, and such interest must also not be otherwise served.

In Ohio, OAC 3301-34 addresses the state’s interest in knowing that children are being educated. Any more than this would be excessive. Furthermore, experience with tens of thousands of homeschooling families over the past 24 years has shown that the regulation achieves its stated purpose “to provide for the consistent application thereof throughout the state by superintendents, and to safeguard the primary right of parents to provide the education for their child(ren).”<sup>2</sup>

If I may be of further service please do not hesitate to contact me at 540-338-5600.

Very Truly Yours,  
  
Michael P. Donnelly, Esq.  
Staff Attorney HSLDA

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<sup>1</sup> In July 2008 the District of Columbia “State Board of Education” enacted 52 DCMR 5200 that required a parent to have High School Diploma or equivalent, requires simple notification and the maintenance of a portfolio that would be reviewable upon request by the District’s Office of the State Superintendent. Even with these changes, this framework approach is less regulated than Ohio’s OAC 3301-34.

<sup>2</sup> **O.A.C. 3301-34-02, Statement of purpose.**