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SB 337 - A Solution to a Non-Existent Problem

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New Hampshire has a long tradition of respecting the constitutional right of parents to direct the upbringing and education of their children. In 1990, the state passed its home education law (RSA 193-A and related regulations), and since then, New Hampshire homeschoolers have thrived. In 2006, in recognition of homeschoolers' achievements, the state legislature passed House Bill 406, which removed several reporting requirements from the home education law. New Hampshire homeschoolers continue to perform well academically and become productive members of our society.

S.B. 337 Infringes Upon Parents' Constitutional Rights

1. The United States Constitution gives parents the right to direct their children's upbringing and education. *Pierce v. Society of Sisters* 268 U.S. 510 (1925).
2. The United States Constitution requires that if the government infringes upon a constitutional right, it must meet a two-pronged standard: 1) demonstrate a compelling interest and 2) adopt the least restrictive means of achieving that interest.
 - a. Though the State does have a compelling interest in the education of its citizens, SB 337 does not employ the least restrictive means of achieving that interest.
 - b. Furthermore, the state does not have a compelling interest in dictating the details of home education.
 - c. Absent any evidence that current New Hampshire law is not working, the State does not have a compelling interest to change it.
 - d. The State's interest is in knowing that its citizens are being educated. How they become educated is not relevant as long as this interest is addressed.
 - e. In recognition of this, the Supreme Court of New Hampshire stated in *Appeal of Pierce* 122 N.H. 762, 451 A.2d 363 (1982), "Thus, while the State may adopt a policy requiring that children be educated, it does not have the unlimited power to require they be educated in a certain way at a certain place."
3. The New Hampshire Constitution suggests a balancing test which SB 337 does not meet:

- a. Part 1, Article 3. Society, its Organization and Purposes states, “When men enter into a state of society, they surrender up some of their natural rights to that society, in order to ensure the protection of others; and, without such an equivalent, the surrender is void.”
- b. This seems to indicate that the giving up of a natural right can only be exchanged for the protection of others.
- c. SB 337 requires parents to give up some of their natural rights, but does not ensure the protection of others.
- d. Not only do SB 337’s provisions not protect others, but they also do not benefit others. Instead, they infringe on parents’ right to direct their children’s upbringing and burden those involved in enforcing the law.

There is No Evidence That SB 337 is Needed; Homeschooling is Good for New Hampshire and Should Be Encouraged, Not Further Regulated

1. There is no evidence that New Hampshire’s home education law is not working. No testimony has been presented that indicates that homeschooled children are not receiving an adequate education under the current law.
2. At the Senate Education Committee hearing, even Senator Estabrook (SB 337’s sponsor) conceded that home education works. Consequently, homeschooling is good for the welfare of New Hampshire. Placing undue burdens upon home educators is not in the best interests of the State or the children living there. Furthermore, these provisions which are being proposed were just removed two years ago in HB 406 (see <http://www.gencourt.state.nh.us/legislation/2006/HB0406.html>)! Nothing has changed in two years to warrant a reversal of position in this area.
3. Studies demonstrate that home educated students score 30 or more percentile points higher than their public school counterparts. New Hampshire homeschoolers are no worse.
4. Increased regulation does not correlate with improved performance:
 - a. The success of home education is the result of many factors, one of which is the freedom and flexibility to adapt the program to the child and the family. Requiring the busy work of providing a curriculum that is likely to be modified many times is arbitrary and unnecessary.
 - b. Studies have shown that there is no correlation between home education restrictions, such as provision of curricula and teacher certification, and the academic achievements and success of home education.

SB 337 Discourages Parents from Choosing What is Best for Their Children

1. New homeschoolers might be so concerned about submitting a curriculum description by the deadline that they will transfer time and energy from educating their children to complying with unnecessary state requirements.
2. As educators, we can recognize and empathize with the fact that many in the legislature and Department of Education have little firsthand experience with home education despite their

expertise in many other areas of education. Home education varies from family to family and from child to child. As a result, much of its success is contingent upon the freedoms and flexibility afforded to it by both the New Hampshire and U.S. Constitutions. Unreasonable interference by the State is likely to discourage potential home educators from exploring the option, even when it may be the best option for their child.

SB 337 Does Not Help New Home Educators

Sen. Estabrook expressed her concern about the hypothetical new home educator who doesn't realize what he or she is getting into. In response, we would state that:

1. There is no evidence showing that this is a problem; in fact, the success of home education proves the opposite to be true;
2. If problems occur, it is the exception, and the parent corrects the situation and returns the child to a public or private school, revises their program, and/or obtains assistance from home education groups, one of the many accredited home education programs, or tutors, to name a few possible solutions. Again, this is borne out by the statistics regarding the success of home education;
3. The busy work of providing a curriculum to the State takes time away from the parent's home education efforts and is actually counterproductive;
4. Curricula are often changed and improved by the parents as they adapt it to their child; thus, requiring their submission becomes an exercise in futility and takes away from the good work being done; and
5. Studies have shown that this requirement does not improve performance.

There Are Practical Problems with Implementing SB 337

1. Because parents' curriculum does not have to be approved by the State, it is a waste of everyone's time for the parents to submit it. Preparing and reviewing the curriculum takes parents, DOE staff, and school district officials away from other responsibilities. Additionally, provision of a curriculum is subject to abuse by well-intentioned but uninformed school officials, who think it is their job to approve of it and to interfere if, in their opinion, it is not satisfactory. [This has already happened in some parts of the state and has been the subject of much correspondence by attorneys to education officials.]
2. SB 337 is vague regarding whether the DOE would be able to require changes in the submitted curricula. It is also unclear whether the DOE would have the right to approve the curricula. SB 337 creates confusion and most certainly would hurt a system that is currently working well!
3. The deadline requirement – within 30 days of the anniversary of commencement of the home education program or by the local district's first school day – is too complicated to track. For parents who choose the 30-day requirement, the participating agency will have to track each anniversary. Even the definition is unclear – does 30 days mean 30 days before or after the anniversary?
4. Homeschooling parents adjust curriculum throughout the year to meet their children's needs. Obligating them to commit to a particular plan for a year reduces their flexibility and thus decreases the quality of their children's education. It is worth noting that these same issues exist for teachers

in the public schools, but they are not in the wonderful position of being able to switch textbooks in the middle of the year, switch to another method of reading or math, or to make any other similar adjustments that would be beneficial to the students. This demonstrates the rigidity of having a set curriculum and shows why SB 337 would be harmful to home education! This law would take away one of the factors that makes home education successful, while at the same time infringing upon constitutional rights!

SB 337 Presumes that Parents Will Not Act in Their Children's Best Interests

Furthermore, in following Sen. Estabrook's line of reasoning then, shouldn't we require all parents of newborn babies to submit to the State, their plans for how they are going to care for their baby, show that they know how to change diapers and care for a baby's physical needs, and to demonstrate that they will be able to provide financially for the baby? Or do we rather acknowledge that being a parent is such a fundamental right that absent a showing of abuse or neglect, it is not to be infringed upon?

Don't we know that most new parents learn as they go and they get it right with practice? Would we want to burden them unnecessarily at the exact time when they are so devotedly learning to care for the most important person in their life? I don't think so. Even though there are some neglectful parents out there, it would not be constitutional to infringe upon this fundamental right by regulating all new parents in such a manner. Neither should we burden home educators, most especially at the time when they are devoting so much of their time, energy and love into a teaching vocation for the most important people in their lives! At the same time, these loving, home educating parents are saving the State of New Hampshire millions of dollars!

Changes in the Notification Provisions Would Restrict Parents' Freedom to Act When Necessary; The Current Provisions Are Working, Why Change Them?

1. There are many and varied reasons for a parent to begin home education on short notice. The child may be withdrawn from school due to health issues such as allergies, cancer, and other diseases that may necessitate immediate withdrawal. A child may be withdrawn for social and emotional reasons such as bullying and physical intimidation. It may be as simple as a particular program at the school is not working for the child, and the parent has been considering the issue for months, but waits to make the final decision. The decision to home educate is a major step for many parents and they typically spend months or years investigating this option before making their final decision.
2. At such a time, when a parent is already burdened with the child's health issues and preparing for home education, or dealing with a distraught child, the State should not place an administrative burden on that parent unnecessarily. Let the parent work on the important job of finding the right program for the child, deal with any other family issues and adjust to this new lifestyle.

Reasons for Supporting SB 337 Are Already Addressed by the Current Law's Requirements

1. Current New Hampshire law requires parents to maintain a portfolio of records and materials relating to the home education program, including a log of reading materials used and samples of

writings, worksheets, workbooks, and/or creative materials. Parents who do not meet this requirement can be sanctioned for noncompliance.

2. Current New Hampshire law also requires parents to submit an annual assessment. If the student does not demonstrate adequate educational progress, the school district may hold the parent accountable through a remediation process.

SB 337 Will Not Improve the State's Ability to Identify Abused and Neglected Children

1. None of the provisions of this bill will "identify" child abusers. The abusers can submit their notifications and curriculums, just as easily as they can show up at Parent-Teacher conferences in the public schools. In fact, although this is a laudable concern, there are other, more appropriate avenues that the State uses to identify these cases. They should continue to use these other, more appropriate methods rather than to start infringing upon constitutionally protected rights. Annual and periodic doctor visits are likely to identify if there is an abuse situation as well as doctors and staff in emergency rooms at hospitals. These are all more likely to achieve identification of abused children than are restrictions upon home education.
2. In addition, home educators are not isolated. They participate in co-ops, field trips, academic competitions, library activities, social activities, etc. It is much more likely that abused children will be identified by these people than by "tracking" home educated children or requiring different notification procedures than the State currently requires. Concern for abused children should be demonstrated by supporting stronger mandatory sentences for child molesters. No evidence was introduced at the hearing to show that there was any problem with home education/child abusers in New Hampshire. Absent any evidence that there is a problem, why change a system that is working well? Even if there were a few, isolated cases that were problems, broadly infringing on the constitutional rights of all home educating parents is not justified, especially when there are other methods available to achieve the same goal. The mandate of the DOE should not be to become the state's policeman for areas that properly belong to child welfare agencies and the "real" law enforcement agencies.
3. Similarly, we respectfully submit that Sen. Estabrook's comments about the state having an interest in knowing "where all these children are" is NOT THE DEPARTMENT OF EDUCATION'S RESPONSIBILITY! "Tracking" children, as Sen. Estabrook also hopes to accomplish with this bill, is an outrageous violation of New Hampshire's citizens' constitutional rights and has NO connection at all to the education of the children in the State! Please do not let this happen in New Hampshire.

Conclusion

In light of the tremendous success of home education in both New Hampshire and across the country, we would respectfully request that the current law remain as it is and if you have any remaining concerns, that you would please obtain more information on the benefits of home education before making any changes to the law. Research on the success of home education can be found on the internet (one good resource is www.hslda.org/research, website for the Home School Legal Defense Association). We would be happy to discuss any of your concerns. Thank you for your time and serious consideration of this very important matter.