

## **MEMORANDUM**

TO: NDDPI

FROM: Dave Schaibley, Assistant Attorney General

RE: State Civics Exam Applicability to Home Educated Students

DATE: September 28, 2016

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### **Question**

You asked whether a home educated student must pass the State Civics Exam ["SCE"] in order to be eligible for either the North Dakota Academic Scholarship or the North Dakota Career and Technical Education Scholarship ["scholarship"].

### **Brief Answer**

Under state law a home educated student need not pass the SCE in order to be eligible for the scholarship.

### **Analysis and Conclusion**

The state law identifying the criteria for students that are eligible for the scholarship is silent about the SCE. It does, however, contain language related to home education students by stating that "Any resident student . . . who completes a program of home education supervised in accordance with chapter 15.1-23 . . . is eligible to receive a North Dakota academic scholarship provided the student . . ." meets the requirements provided therein. NDCC 15.1-21-02.5. While that law does not explicitly list the SCE as a requirement for scholarship eligibility, it does state that a home educated student is only eligible for the scholarship if the student "completes a program of home education" under 15.1-23. So the issue becomes whether it is possible for a home educated student to "complete a program of study" under chapter 15.1-23 without taking the SCE. Or said another way, if state law allows a child to complete a program of home education under chapter 15.1-23 without taking the SCE, then the child is eligible for the scholarship whether or not he or she took the SCE.

To complete a home education program a student must meet the requirements contained throughout chapter 15.1-23. While that law contains a number of requirements for such a program, there is no requirement that a home educated student complete the SCE. If the legislative assembly had intended for the SCE to be a requirement for the completion of a home education program, one way it could have done so is to make the SCE an express requirement under chapter 15.1-23. But that does not end the analysis because another state law identifies the categories of students who must take the SCE. That law contains language that expressly applies to home educated students, and states that the requirement of

taking the SCE applies to a student who is “receiving home education if the student is to be issued a high school diploma in accordance with subsection one of section 15.1-23-17.” NDCC 15.1-21-27(3)(a)(4).

Thus, a home educated student who seeks a diploma under NDCC § 15.1-23-17(1) is required to take the SCE as a condition of receiving that diploma. Such a student would be eligible for the scholarship. But a home educated student who does not seek a diploma under NDCC § 15.1-23-17(1) can also complete a program of study under chapter 15.1-23 without taking the SCE. That student could receive a high school diploma under NDCC § 15.1-23-17(2). That student would also be eligible for the scholarship. If the legislative assembly had intended for the SCE to be a requirement for a home educated student who receives a diploma under NDCC § 15.1-23-17(2) it could have required those students—or all home educated students—to meet that requirement.

In addition to the analysis above, a review the legislative history for HB 1087—which eventually became NDCC § 15.1-21-27—provides additional insights. As first introduced to the legislative assembly, HB 1087 required “each student . . . receiving home education” to pass the SCE. But the Bill’s language was changed shortly after introduction in a way that stated that the SCE requirement applied only those home educated students that fall under NDCC § 15.1-23-17(1) rather than applying to all home educated students. Testimony related to HB 1087 contains discussion about the fact that the Bill would exempt home educated students who do not fall under NDCC § 15.1-23-17(1) from taking the SCE.

**In conclusion, under state law a home educated student need not pass the State Civics Exam in order to be eligible for either the North Dakota Academic Scholarship or the North Dakota Career and Technical Education Scholarship.**