

PENNSYLVANIA HOMESCHOOLERS

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First Due Process Hearing Held -- AND WON BY FAMILY

from Howard Richman

The first homeschooling due process hearing under the new PA law was held on November 16 in Dallas, Pennsylvania. At stake was whether Joleen and Dan Suda could continue to teach their sixth grade daughter Tiffany at home. They were also teaching an eleventh grader and a fifth grader, but only Tiffany's home education program was being challenged. We are all grateful that this first hearing has been decided in the family's favor.

The Suda's problems with their district had begun two years earlier. They had put Tiffany in public school for her first four grades. When they pulled her out under the old homeschooling law, the school district prosecuted them when they wouldn't go along with the school's request that they hire a certified teacher to oversee Joleen for 7 and a half hours per week. The court case against the Sudas was dropped after HSLDA's Jeffery v. O'Donnell civil rights suit got the old law declared to be unconstitutional. Still there were ill feelings between the superintendent and the family. One of the last actions the family's HSLDA lawyer, Jonathan Sparks, had taken was to threaten to charge the superintendent with violations of the Suda's civil rights. The superintendent resented that.

Tiffany had been homeschooled for two years, and was just beginning her third. During her year of homeschooling she repeated the fourth grade, this time using the Alpha-Omega curriculum. At the end of that year she took an achievement test and scored very well. The next year Tiffany completed her fourth grade work and moved into fifth grade materials. Early March of this second year at home, the Sudas filed an affidavit under the new homeschooling law.

On June 12th they turned in their portfolios. Tiffany's daily log was two pages long. One page was a calendar with days circled, the other was a progress report which listed Tiffany's test results along with the dates the tests were taken. Her portfolio easily fit into a single duotang pocket. It mostly consisted of the tests that she had taken during the year as part of the Alpha Omega curriculum. The Suda's turned in the portfolio accompanied with a one page evaluation by a certified teacher who was a homeschooling mother in their district. They didn't include test results for fifth grade since Tiffany had not yet completed all of her work in the fifth grade curriculum.

The superintendent passed the portfolio on to an elementary school principal in the district for an analysis.

She noted that the portfolios did not include a log made concurrently with instruction. She also wondered why Tiffany had not completed fifth grade two years after having passed fourth grade in the public school.

The superintendent asked the Sudas and their evaluator to come in for a meeting with the superintendent and the elementary school principal. The evaluator was shy and asked not to go in with the Sudas. The HSLDA said that it would be OK if the evaluator didn't attend. At the meeting, Joleen presented the achievement test results from the end of the previous year. The school people dismissed those test results saying that the scores were skewed by the fact that she had taken the very same fourth grade level test at the end of the previous year.

After the meeting the Superintendent sent Joleen the official certified letter which precedes a due process hearing. He noted that he thought her language program was inadequate and requested that she send in either an achievement test score or more documentation in that area. Joleen sent in several of her text books. Next the school superintendent ruled that he still felt that education was not taking place and scheduled the due process hearing. In the meantime the HSLDA had the family arrange for Tiffany to quickly take an achievement test that is usually given to children at the end of sixth or beginning of seventh grades, the same brand of achievement test that Tiffany had taken at the end of each of her years in fourth grade.

The hearing took place in a conference room at the administration building of the Dallas School District. Present for the school district were the school superintendent Gerald Wycallis to act as a witness and the school solicitor to act as the school district's lawyer. Present for the Sudas was Mike Farris from the HSLDA to act as their attorney, and a local attorney since Mike is not licensed to practice in Pennsylvania. Also present were Dan and Joleen Suda.

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NEW CONTACT PERSON IN DEPARTMENT OF EDUCATION

from Susan Richman

Many of you have told us of your good and helpful contacts with Joseph Bard in the Advisory Services Division of the PA Department of Education. He has always been reasonable, understanding, and more than willing to help homeschooling families out in dealing with districts who did not yet understand the new law. We have deeply appreciated his fairness and the great amount of time he has put into seeing that the new law is respected and upheld. Joseph Bard has now been promoted out of the Advisory Services Division and is now the Commissioner of Basic Education, a very influential and

key position in the Department of Education.

The new contact person in the Division of Advisory Services is **Dr. Ken Miller**. I spoke with him just recently, and he seems just as balanced and fair-minded as Joseph Bard, and I think we can all look forward to working with him in a very positive way. His number in Harrisburg is 717-787-4860. Many problems can, and should, be solved through your own negotiating and information sharing at the local level, but if you find you really need help from a "higher authority", do feel free to give Dr. Miller a call. ●

"PA. Homeschoolers' masthead
handlettered by Jesse Richman, age 12.

myself, and Lucille Madeira who had just administered the test to Tiffany. There were also a few homeschoolers from the area in the audience. The officials at the hearing were Attorney Paul Stevens as hearing officer, and a stenographer who tape recorded the whole proceeding and later transcribed it.

Attorney Stevens introduced himself first. He was from a law firm which specialized in providing impartial arbitrators. He himself had chaired over 100 special education due process hearings. He had never before done any work for the Dallas School District. His purpose was to determine whether Tiffany was receiving an appropriate education. The attorneys for each side then summarized their cases. In his brief introduction Mike Farris flashed a graph which I had prepared showing Tiffany's progress in grade equivalents on the achievement tests she had taken in 1987, 1988, and 1989. He also pointed out how parents rights to determine the education of their children make the issues in this homeschooling hearing different from those in the special education hearings.

The first to testify was the school superintendent. First he was questioned by the school solicitor, then he was cross examined by Mike Farris. In his testimony, the superintendent tried to show that Tiffany was doing average work in her four years in his schools. His point was that Tiffany had not made progress in her academic level since then. To prove his case that she was not behind when she left school after fourth grade he submitted Tiffany's report cards and her achievement test results for her four school years. In his cross examination Mike Farris poked some holes in the argument. He noted that the reading level of the basal reading series reported on Tiffany's report cards showed that she was falling behind in first and second grades. She had started third grade in the book normally used in the first half of second grade, then she had moved through the entire third grade curriculum in the second half of the year. The superintendent had to admit that it was possible that Tiffany had been rushed. Then Mike began to chart Tiffany's achievement test on a large sheet of display cardboard. The superintendent would read out Tiffany's percentile ranks in total reading, total math, and total battery and Mike would write them on the chart. Just looking at it, it was evident that her achievement test scores had been declining in her four years in school beginning in first grade as high as the 73rd percentile and declining in fourth grade to the fortieth and fiftieth percentiles.

The superintendent was feeling defensive. In response to one of Mike's questions he stated that anything from the 27th percentile to the 73rd percentile was in the average range. Mike pounced on that, "Do you mean," he asked, "if she were now scoring between the 27th and 73rd percentiles that you would be satisfied?" Yes he said. Mike

drove the point home. "If she were now scoring above the 27th percentile on a seventh grade test, you would have no problem." The superintendent assented. Mike had in his hand, as his next witness would testify, an achievement test normed at the seventh grade level which showed Tiffany achieving at about the 52nd percentile rank.

Then it was Mike's turn to call his witnesses. His first was Mrs. Madeira, an experienced homeschooling mother (three of her children have graduated from college, and one is now attending college), and a former Christian School teacher and principal. She was questioned about her test giving experience and her scoring experience, which was extensive. She testified as to Tiffany's achievement test scores in the test she had administered. The school superintendent asked to see the actual copies of the test, which she made available. We took a 10 minute recess while the superintendent poured over the test form to try to find any errors in test scoring, but couldn't find any.

Then it was my turn to testify. I had visited the Suda's home the night before. I had interviewed Tiffany and Mrs. Suda and given Tiffany a short oral reading test. That morning I had written up a three page evaluation. It was passed around for the superintendent and the hearing officer to read. Mike prompted me to tell about the math textbook that the Suda's were now using (Saxon Math 65). I pointed out that it was for sixth grade students and bright fifth graders. He also took me through the evaluation. I had found that the Sudas were giving their children a much broader education than they had shown in the portfolio. For example, the family had put together a mural of the Mayflower in which the children had drawn the things that the pilgrims would have taken with them. There was no evidence of that project in the portfolio. (Mrs. Suda is a neat housekeeper and threw it away when they were done with it without first taking a picture of it which could be mounted with an accompanying explanation in the portfolio.) Similarly, Mrs. Suda had actually directed a musical extravaganza put on by the local homeschooling support group involving about 15 songs, dances, and 20 children. It was performed to a packed church, but there was no indication of it in the portfolio -- no picture, no description, nothing. No mention of field trips. No mention of frog, worm and crayfish dissections by her big sister with Tiffany watching. No mention of the many books that Tiffany was reading to herself. Nothing to indicate the breadth of Tiffany's education.

When I was cross examined I defended the instructional level of Tiffany's program. I noted that the proper level is where children are neither bored nor frustrated, but somewhere in between. I said that finding the proper level is not a problem at home, because parents can readily see how their child reacts to instruction. In schools teachers realize that they have

to teach to the middle of the class, though they know it will leave some of the brighter kids bored and some of the slower kids frustrated. I also pointed out that Tiffany was better at math and science and so it was appropriate to put her at a more advanced level with those subjects than with language and reading. In schools, I noted, it is difficult to organize things so that children can be at different levels in different subjects. I had good eye contact with the solicitor and the superintendent while I gave this testimony. I had a feeling that they were beginning to understand some of the differences between school education and home education. When questioned whether repeating fourth grade wouldn't be boring, I noted that it would have been if Tiffany had followed the usual practice of schools, putting the child back through the same material again, but in *this* case she was using a different curriculum. I said that one fourth grade curriculum may be very different from another. I noted that many fancy prep schools will often routinely require public school students to move back one grade level when they enter.

Then the hearing officer asked me a question. Did I know much about the Alpha Omega Curriculum? "No," I answered. "I am not an expert on this specific curriculum." Then a minute later I thought of something. "One thing I do know is that they provide a placement test to decide where a child will begin in the program."

"Did you give Tiffany that placement test?" he asked Joleen Suda. "Yes!"

"If I had known that," muttered the superintendent, "this would have been avoided."

"Why didn't you include that placement test in your portfolio?"

"It was given two years ago," put in Mike Farris.

The last witness was Joleen Suda. Mike questioned her on her religious commitment. She quoted relevant passages in the Bible which she had marked with book marks. Then he asked her if this meant that she believes she would suffer terrible consequences in the hereafter if she turned over the education of her children to someone else. "Yes," she replied. The hearing officer knew that things would not be simple if he ruled against the family.

Three weeks after the hearing Attorney Stevens ruled that the Sudas were indeed giving their children an appropriate education. The first due process hearing in PA has been won.

Lessons from the Hearing

1. Keep your Home School Legal Defense Association Legal Insurance. If you don't have it already, get it. While you may not have to have an attorney at a due process hearing, it certainly provides extra safety to have an attorney as good as Mike Farris there. (To get in touch with the HSLDA write to P.O. Box 159, Paeonian Springs, VA 22129, or call 703-882-3838.) (continued next page)

2. Due process hearings are different from court cases in that the whole focus is on whether education is taking place, not on technicalities like did the people follow the right procedures.

3. Hearing officers will really be impartial and will give you a fair hearing.

4. If your children score well on achievement tests those test scores will protect you at a hearing no matter how scanty your other documentation.

5. If your child is in a grade where achievement tests are required (third, fifth, or eighth), you must include test results in your portfolio. You should test even if you haven't yet completed the curriculum for that grade. Also, you cannot long get by without describing grade level in PA, even though many of us prefer having an ungraded program. Districts may well be suspicious that you are just trying to avoid testing. (And to some districts the only reason you would want to avoid testing would be because your child was NOT progressing) You may also want to ask your evaluator to specifically mention where your child is working up to or exceeding grade level expectations in various subjects, or how the parents are working with the child at his appropriate instructional level.

6. It is probably worthwhile to contract with an evaluator who will stand up for you and not be afraid to be your advocate before the school superintendent.

7. If you don't turn in a daily log, it raises a red flag which might lead to your documentation being looked at much more carefully. This year Joleen is keeping a daily log in a teacher's planning book, rather than her one page calendar.

8. If you don't turn in a portfolio which shows the breadth of your home education, the superintendent may not realize that there is more to your program than what can be measured by achievement test scores.

Many of the homeschoolers who were prosecuted under the old law filed affidavits last year. The Sudas were the only family whose documentation was even challenged. The main difference that I can see between them and the other families was that the other families turned in much more documentation. As Vicky Goodchild stated in her article in the last issue of the newsletter:

There are several ways to keep a portfolio. I always recommend keeping *more* than you think is necessary. I believe the old adage, "better safe than sorry" is very applicable here. I might add that "better too much than too little." This if for your protection.

Joleen Suda is keeping a much more extensive portfolio this year. →

First Homeschooler Prosecuted

from Howard Richman

The first homeschooler has now been prosecuted who filed an affidavit under the new Pennsylvania homeschooling law. The family filed an affidavit last spring when they were already being prosecuted, but did not turn in any documentation as was required by June 30th. They then refiled their next affidavit at the end of August, instead of August 1st as the law requires. The school district asked them to come in for a meeting, and when the family didn't respond, the school district filed truancy charges. When the truancy court case occurred, the family did not attend and so they were convicted by the magistrate. Now the family is trying to get it together to file an appeal, but they can't afford an attorney. If they do appeal, they might win their case since the school district has not followed proper procedures either.

Still, things don't look too bleak. I arranged a meeting between the mother and the school superintendent. Before the meeting, I helped them arrange to have their program evaluated by a certified teacher. We went in together, the homeschooling mother, the evaluator

and myself, and turned in all of the documentation that should have been turned in several months earlier. This was the first time that school personnel had ever met with the family. The assistant superintendent could see that the mother was indeed a good person who was sincerely educating her children. It may be that the family will have to pay a truancy fine for the past, but will be able to follow the law from now on.

The Home School Legal Defense Association (HSLDA) writes in their winter newsletter that the character of homeschooling cases is changing. It used to be that people's right to choose homeschooling was being challenged. *Now, more and more, they are getting court cases where homeschoolers have failed to meet the specific deadlines imposed by homeschooling laws.* Perhaps this case can serve as a warning to all of us in Pennsylvania. **Remember to turn in your portfolios and written evaluation by June 30 (including achievement test scores if child is in grade 3, 5 or 8), and don't forget to refile your affidavits for the next year by August 1.** ●

Pittsburgh Schools Trying to Impose Own Requirements

HSLDA Threatens Suit

from Susan Richman

In the last issue we wrote that many school districts are trying to impose their own homeschooling requirements. One of the more difficult has been the Pittsburgh Public Schools, and many things are in process right now that will probably bring about change even there. Representative Ron Cowell, the chair of the House Education Committee who worked so hard to see our law get passed, has been contacted and has made some excellent suggestions for action.

A little background on the Pittsburgh situation may help put this story in perspective, and show more clearly that progress is indeed being made, if slowly and with difficulty. Pittsburgh dealt with their first homeschooler 8 years ago

when a mother abruptly removed her two oldest children from the schools mid-year. The policy the district came up with in response was one of the most invasive of any in the state: the family was required to use the books and curriculum of the district; WEEKLY lessons plans for the upcoming week had to be filed each Thursday; WEEKLY and later monthly unannounced home visits were mandatory; children had to attend school to take the locally devised "MAP" tests (Monitoring Achievement in Pittsburgh) which were given every 3 to 5 weeks; written work by the child had to be turned in to the local school-- and they'd keep it. Although the district had been somewhat flexible about parent qualifications in dealing with specific families, their stated policy was still that you had to be a certified teacher, or

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The following is the most important portion of the decision rendered by Hearing Officer Paul Stevens. The complete decision is 18 pages long; if you would like to receive a copy of the entire report, send \$2.50 to PA HOMESCHOOLERS to cover printing and mailing costs (see order form).

"From all of the above, I can only conclude that the documentation provided to the district superintendent prior to Hearing was not sufficient under the Act to establish compliance therewith. In the future, the parent should submit more specific documentation that establishes the

extent of educational progress. The homeschool evaluator should by formal or informal assessment techniques establish present educational levels and compare those levels with prior assessments to establish the amount or level of progress achieved.

As indicated previously however, the documentation presented at Hearing, when viewed in conjunction with the prior submissions, DOES indicate that an appropriate ^{status} IS currently and has been taking place in the Home Education Program, and I therefore must conclude that Tiffany's program is currently in compliance with the Act."