

PENNSYLVANIA HOMESCHOOLERS

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A STATEWIDE NETWORK SHARING INFORMATION ABOUT HOME EDUCATION Editors: SUSAN & HOWARD RICHMAN
PA Homeschoolers masthead hand lettered by Jacob Richman, age 10.

Judge Tells off Pittsburgh Superintendent

from Howard Richman

On October 18, 1990, Federal Judge Donald J. Lee in Pittsburgh told off Pittsburgh School Superintendent Richard Wallace for trying to make requirements of homeschoolers which are not in Pennsylvania law. At the same time, Judge Lee held that Wallace had not caused any damages and so he dismissed the Home School Legal Defense Association civil rights suit, *Stobaugh et. al. v. Wallace*. If Wallace had gone so far as to charge any of the homeschoolers with truancy, he would probably have been liable for damages. This case is a clear victory for the Home School Legal Defense Association (HSLDA), homeschooling families in Pennsylvania, and our homeschooling law Act 169-1988.

Background

Several school districts have tried to make requirements of homeschoolers which are not in the Pennsylvania home education law. Sometimes families have submitted to these requirements and at other times they have stood their ground. Some families simply showed the districts the home education law (available from us if you send an SASE) or asked the districts to call Dr. Philip Mulvihill (717-787-4860) chief of the Division of Advisory Services at the Department of Education. Except for the Pittsburgh Public Schools, all of the school districts backed down if the parents stood their ground.

At the beginning of the 1989-90 school year, Superintendent Wallace wrote to Pittsburgh homeschooling families telling them to bring their children to public schools to take the "MAP" (Monitoring Achievement in Pittsburgh) tests which are part of the Pittsburgh Public School Curriculum, but

not required by the home education law. Several Pittsburgh families stood their ground and refused. Then Wallace wrote to the families telling them to bring in their portfolios and get evaluations midyear as required in the homeschooling law if the superintendent has a "reasonable belief" that education is not taking place. At that point these families had their lawyers (the HSLDA) write to Wallace telling him to withdraw his request for midyear documentation or face a civil rights suit. Wallace refused to withdraw his request, and so the HSLDA filed suit.

Judge Lee's Opinion

In his *Memorandum Opinion* Judge Lee defined what the term "reasonable belief" means in our homeschooling law. He wrote:

A reasonable belief should be based upon substantive fact and affirmative knowledge, not upon nonoccurrence and presumption. Without an evidentiary foundation upon which Wallace could base his "belief," Superintendent Wallace was without statutory authority to require that the portfolios of records and materials required by subsection e(1) be submitted prior to the conclusion of the school year. Failure to participate in MAP testing, a requirement not found in the home education statute, is not determinative of the measure of achievement of the home school program.

Though Wallace has arbitrarily chosen to flout state law, every violation of a state statute does not give rise to an infringement of constitutional rights.... Plaintiffs undoubtedly have a property and/or liberty interest in the home education

of their children which was created by state law. There must be an allegation of deprivation of such property or liberty interest to warrant recognition as a federal constitutional question....

Stand Your Ground with the HSLDA

We urge homeschoolers across the state to stand their ground when school districts try to make requirements that are not in the Pennsylvania law. If everyone would do so, we would reach the point sooner when all the school districts stop trying to make extra requirements. We encourage families to join the Home School Legal Defense Association (P.O. Box 159, Paeonian Springs VA 22129, phone 703-882-3838) so that you will have some of the best lawyers in the country standing with you.

Victory for Act 169

In his decision Judge Lee mentioned that Act 169-1988 protects the "liberty interest" of parents. On December 22, 1990, it celebrated its second anniversary and it seems to be doing just that.

Before it passed about 50 families were in court, now none are prosecuted. Before it passed home visits were routine, now they are prohibited. Before it passed homeschoolers were tested in the schools, now they can be tested at home. Before it passed many parents could not homeschool unless they had teaching certificates or at the least 2 years of college, now all can homeschool with a high school diploma or a GED. Before it passed you had to get approval to homeschool from the local school superintendent, now you just send in an affidavit by certified mail.

Before our law passed the school