

Due Process Compromise in Norwin SD

by Howard Richman

[From Issue 85 -- winter 2003-2004 -- of the PA HOMESCHOOLERS® newsletter]

In the last issue we reported that a due process hearing had been scheduled for a minimal-documentation homeschool family in the Norwin School District, near Greensburg PA. The school district was not only concerned that the minimal portfolio did not show that education was taking place, but also that the evaluator might not be qualified since the family had refused to provide the evaluator's resume. This was the case referred to on the Home School Legal Defense Association (HSLDA) website as that of the 'Springer' family and their fourth grade son "Ian".

On Thursday, November 6, 2003, the family and the school district reached a compromise agreement on the one remaining issue, the student's log. According to the compromise, the next year's log would be more detailed than the one submitted in June, but still less detailed than what the school district had initially requested. The due process procedures of the Pennsylvania home education law brought this conflict to an amicable close without requiring a courtroom.

It all started when "Mrs. Springer" refused to attend a face-to-face meeting in May with Dr. Surmacz, the assistant superintendent of the Norwin School District who handles homeschooling affairs. Dr. Surmacz liked taking care of all of the homeschool paperwork during a year-end meeting with each family. The family would come in, meet with him, and then leave with their portfolio in hand, and while they were there they could turn in the next year's affidavit if it was ready. One meeting, and all the paperwork done! Over the years, only a few families had refused to attend these year-end meetings.

Dr. Surmacz often enjoyed the meetings. First, he would read the evaluation. If the evaluation was complete, he knew he could relax. If not, he would look more closely at the samples of work and question the family more closely. He told me:

If I get an evaluation ... that is two pages and thorough, then that is all I have to do, I don't have to worry. But when you give me one of those evaluator's evaluations that is a mere check that progress was made, and when you give me a log that is a mere checklist and a portfolio that is just a few samples, I really have nothing to go on.

Meanwhile, the "Springer" family felt that Dr. Surmacz was going beyond the boundaries of the home education law. There is no requirement that homeschoolers meet with their school districts at the end of the school year, and, in fact, most homeschoolers do not. Most homeschoolers simply turn in their portfolios and pick them up when the school district has completed their review.

Besides, "Mrs. Springer" was frustrated with an uncompromising position that Dr. Surmacz had taken during the school year. Three times she had requested that he approve evaluators who did not meet the specific qualifications to do evaluations under the PA law.

She apparently wanted to use an evaluator who shared her religious and educational views. School districts have the power to approve the qualifications of any evaluator, if they wish -- but Dr. Surmacz had been unwilling to do so. He worried that if he approved a non-qualified evaluator for one family, he would have to approve other non-qualified evaluators for other families. (Dr. Surmacz worries about setting precedents that may later come back to haunt him.)

Instead of attending the end-of-year meeting, the family got their HSLDA lawyer to write a letter pointing out that the Pennsylvania law does not require that homeschooling families meet face-to-face with the school district. Accepting this position, the school district sent a letter asking the family to send in the evaluation letter, log, and portfolio. 'Mrs. Springer' sent their portfolio in early June. It consisted of:

- a minimal-type evaluator's letter which stated that appropriate education was taking place, but did not explain any further.
- about 12-14 pages listing books by subject area (which the family considered to be their log).
- about 7-10 portfolio samples.

After going around with the "Springers" over evaluator qualifications during the year, one of the first things Dr. Surmacz must have done, when he got the portfolio, was look to see who the "Springers" had hired to do the evaluation. He noticed that the evaluator had a PA physical education teaching certificate. Dr. Surmacz knew that to be qualified, the evaluator must have experience at the appropriate level grading a subject other than physical education. So he wrote the "Springers" a letter requesting either a copy of the resume or an affidavit signed by the evaluator. In response, he got a flat refusal and a letter from the family's HSLDA lawyer stating that the home education law did not require that the family turn in their evaluator's resume.

Dr. Surmacz also looked closely at the rest of the minimal portfolio that had been turned in. He didn't feel that he could tell that an appropriate education was taking place. There were hardly any samples of the student's work, and he couldn't find a log. The "Springers" considered the list of books read to be the log, because the home education law specifies that the log "made contemporaneously with instruction" must "identify by title the reading materials used." This list of books read, however, did not satisfy Dr. Surmacz's definition, borrowed from the Office of Chief Counsel at the PA Department of Education, that the log "must identify specific dates of instruction and the materials used on each date, because the log by definition is a 'day to day' record."

If the "Springer" family was going to cite the law saying that they would not come in and meet with him and would not show that their evaluator was qualified, Dr. Surmacz was ready to cite the law, too. He knew that in a courtroom a judge would likely decide in his favor both because the law requires that the evaluator be qualified and also because the family's log would not meet the Dept. of Ed. definition of a log. However, Dr. Surmacz couldn't go directly to court, he had to first go through the due process procedures specified in the home education law where the test would be whether the child was getting an appropriate education, not whether the letter of the law had been met.

The first step of those procedures requires that the school district send a certified letter to the family specifying which areas of the portfolio were inadequate and specifying that the family had 20 days to submit additional documentation or be out of compliance with the home education law. Dr. Surmacz requested three things: (1) evidence that the evaluator was qualified to do the evaluation, (2) more samples of work, and (3) a real log that would "include the day and date of instruction and indicate, by subject or content area, what was covered in each area each day."

Within 20 days, the family sent in 16 additional samples of work to supplement the portfolio and an attendance record to supplement the log. HSLDA litigation attorney, James R. Mason, III, was assigned to the case. The "Springers," backed by HSLDA, were still refusing to show that their evaluator was qualified. Other homeschoolers had not been asked to turn in a resume, so why should they?

The school district, then, took the next step and scheduled a due process hearing. Over the next three months, the hearing was twice postponed, first at the family's request, second at the school district's request. In the meantime, the family turned in additional information that got many of the issues taken off the table. The "Springers" turned in a second evaluation, this time by the same clearly-qualified evaluator who had evaluated their son at the end of third grade. They also supplemented the samples of their portfolio with test scores showing that "Ian" was succeeding well academically. The only issue unresolved, as they went into the November 6 due process hearing, was the log.

Attorney Mason brought a witness to the hearing: homeschool researcher Dr. Brian Ray, flown in from the state of Washington. Dr. Ray planned to testify that keeping a substantial log would interfere with this family's valid homeschooling style. Attorney Mason planned to argue, based on the PA Religious Freedom Protection Act, that the requirement that the family keep an extensive log would be a "substantial burden" upon the family's religious freedom. The new test scores showing that "Ian" was actually a very good reader would buttress the argument.

The school district also had a witness: a homeschool evaluator who was also a homeschooling mother and a former missionary to Africa. She planned to testify about the many different ways that homeschooling families keep their logs.

On the day of the hearing, as the witnesses and an audience of several homeschoolers sat in the hearing room, the attorneys for both sides met and discussed the one remaining issue -- the log. As they talked, they realized that they weren't as far apart as they thought. Attorney Mason then met with "Mrs. Springer," and eventually a compromise emerged. The school district had not realized that the family was faithfully following the Son Light homeschool curriculum, a comprehensive literature-based program. With just a few notations in the daily log, indicating which subject areas occurred each day, the family could indicate enough information so that it would be possible to determine which lessons from the Son Light curriculum had been covered each day. The log-keeping compromise would place little burden upon the homeschooling family and yet satisfy the school district's definition of a log.

No hearing was actually held. The hearing examiner, Dr. Joseph Dimperio, a retired school superintendent with a law degree from Duquesne University, had little to do other than write up the terms of the compromise that had been reached.

Ever since the home education law passed in December 1988, its due process procedures have provided an important check upon the powers of school superintendents. Only a handful of hearings have been held in the 15 years of the home education law, partly because paying the impartial hearing examiner costs the districts several thousand dollars. To date we have only learned about three hearings: (1) a due process hearing that the family won which we reported in Issue 30, (2) a hearing that the family lost that we reported in Issue 46, and (3) the current hearing.

The compromise reached at this hearing indicates that when push comes to shove, the “log made contemporaneously with instruction” required by the PA Home Education Law must be more than simply a list of books read and an attendance check-off. We often recommend that homeschoolers keep their logs as a sort of to-do list. Usually the parents (sometimes self-directed students) write down what they hope to accomplish. Then either the parent or student checks off those goals that actually get done. This sort of log not only meets the legal requirement of the home education law, but also helps keep the family organized. For some examples, see our [Guide to PA Homeschool Law](#).

But even if you don’t keep a detailed log, don’t expect to get taken to a due process hearing. As the assistant superintendent who initiated this due process procedure noted, “If I get an evaluation ... that is two pages and thorough, then that is all I have to do, I don’t have to worry.” Those homeschoolers who have extensive samples of good-quality work in their portfolios *and/or* who turn in lengthier narrative evaluation letters, rarely have any trouble with their school districts, no matter how skimpy their logs.

But when homeschoolers turn in documentation that does not show that they are educating the child, *what is the school district to do?* If the family voluntarily comes in for a meeting, the superintendent or his designee can ask questions, and get a sense of what is really happening. Or if the family refuses to come in, the district can trust the judgment of an evaluator. After all, if a professional educator, qualified to do evaluations under the PA law, says that an appropriate education is taking place, the school district can file a copy of that letter and if it later turns out that the child was not getting an education, the professional educator would be to blame, not the school district. But if the family refuses to show that the professional educator is qualified, *what is the school district to do?*

And once the fight has been started, what will end it? Here in Pennsylvania, such conflicts are rare—just a handful in the past 15 years. And when they occur, there is a procedure for resolving them before they spin out of control. In 2003 that procedure worked to keep this unnecessary conflict out of court and to satisfy both parties.