



ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS



November 20, 1991

FILE NO. 91-042

SCHOOLS & SCHOOL DISTRICTS:
Home Schooling of Special
Education Student

Honorable Dennis Schumacher
State's Attorney, Ogle County
Ogle County Court House
Oregon, Illinois 61061-0395

Dear Mr. Schumacher:

I have your letter wherein you inquire whether school officials may take legal action against the parents of a seven year old child with disabilities who have refused a special education placement in the public schools for the child and have elected to educate him at home. For the reasons hereinafter stated, it is my opinion that the parents may legally educate their disabled child in a home school, provided that the child receives an adequate course of instruction in the

subjects taught to children of his age and ability in the public schools.

You have stated that the child in question was enrolled in a public school for a short time, and during that period was evaluated by the special education department and approved for placement in a class for children with multiple disabilities. The parents, however, declined the placement and elected to educate their child at home. You have not elaborated upon the nature of the child's disabilities.

Section 26-1 of the School Code (Ill. Rev. Stat. 1989, ch. 122, par. 26-1) provides, in pertinent part:

"Compulsory school age - Exemptions.
Whoever has custody or control of any child between the ages of 7 and 16 years shall cause such child to attend some public school in the district wherein the child resides the entire time it is in session during the regular school term, except as provided in Section 10-19.1; Provided, that the following children shall not be required to attend the public schools:

1. Any child attending a private or a parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools, and where the instruction of the child in the branches of education is in the English language;

* * *

"

The Illinois Supreme Court has held that a home schooling program, in which a child is taught the subjects normally taught to children of a corresponding age and grade in the public schools, may be considered a "private school", for

purposes of section 26-1. In People v. Levisen (1950), 404

Ill. 566, the Court stated:

" * * *

Compulsory education laws are enacted to enforce the natural obligation of parents to provide an education for their young, an obligation which corresponds to the parents' right of control over the child. (Meyer v. Nebraska, 262 U.S. 390, 400.) The object is that all children shall be educated, not that they shall be educated in any particular manner or place. (See Commonwealth v. Roberts, 159 Mass. 372, 34 N.E. 402.) Here, the child [in a home schooling program] is being taught third-grade subjects, has regular hours for study and recitation, and shows proficiency comparable with average third-grade students. There is nothing in the record to indicate her education is in any way being neglected. We think the term 'private school,' when read in the light of the manifest object to be attained, includes the place and nature of the instruction given to this child. The law is not made to punish those who provide their children with instruction equal or superior to that obtainable in the public schools. It is made for the parent who fails or refuses to properly educate his child.

* * *

In concluding that appellants have not been proved guilty of violating the statute we do not imply that parents may, under a pretext of instruction by a private tutor or by the parents themselves, evade their responsibility to educate their children. Those who prefer this method as a substitute for attendance at the public school have the burden of showing that they have in good faith provided an adequate course of instruction in the prescribed branches of learning. This burden is not satisfied if the evidence fails to show a type of instruction and discipline having the required quality and character. No parent can be said to have a right to deprive his child of educational advantages at least commensurate

with the standards prescribed for the public schools, and any failure to provide such benefits is a matter of great concern to the courts.

* * *

People v. Levisen (1950), 404 Ill. 566, 577-78 "

Subsequent cases have underscored the court's statement that home schooling may not be used as a pretext for evading the parental responsibility for educating children. In People v. Harrell (1962), 34 Ill. App. 2d 205, parents who withdrew their children from public school to place them in a home school that had not yet been organized and did not have appropriate materials were found guilty of violating the compulsory education law, since the education provided was not equivalent to that which was provided by the public school. Similarly, in People v. Berger (1982), 109 Ill. App. 3d 1054, parents who kept a child at home because the school environment allegedly aggravated her allergies, but who did not attempt to provide education at home, were found guilty of violating the law. These cases, together with People v. Levisen, clearly illustrate that there must be an organized, coherent plan for educating the child in a home school using appropriate materials and teaching methods, in order to satisfy section 26-1 of the School Code.

None of the reported cases, however, has involved a child with disabilities. It may be noted that although the

Honorable Dennis Schumacher - 5.

Individuals with Disabilities Education Act (20 U.S.C. §1400 et seq.) requires that a free appropriate public education be made available to every child with disabilities, the Act does not require that the child or his or her parents accept the program which is made available. Moreover, there is nothing in the Federal Act or in State statutes regarding special education programs (see Ill. Rev. Stat. 1989, ch. 122, par. 14-1.01 et seq.) which pre-empts or changes State law with respect to compulsory attendance or home schooling of a child with disabilities.

Whether a particular home schooling plan is equivalent to that offered by a public school presents a question of fact. In this case, making a factual determination as to whether the education provided by the home school program is adequate or equivalent to that provided by the public school may be more difficult because of the eligibility of the child for special education services. The qualifications of the teacher, the subjects taught and the child's proficiency in those subjects may be different for a child with disabilities than for a child of comparable age and grade without disabilities. Therefore, in order to determine the adequacy of the home school program, the child's specific needs, disabilities, development and progress will have to be measured with respect to the benefits which might be provided

by the proposed special education placement (in essence, the disabled child's "grade"), rather than with respect to the average program and proficiency of non-disabled students.

Parents who withdraw their child from public school have the burden of proving that their plan of home instruction qualifies as a private school, for purposes of the compulsory education law. (People v. Levison (1950), 404 Ill. 266, 577-78; See also, Scoma v. Chicago Board of Education (N.D. Ill. 1974), 391 F.Supp. 452, 462.) Therefore, the school district may inquire into the child's non-attendance at public school and the adequacy of the home school plan. If it is determined that the plan is not adequate or equivalent to the education provided by the public school, charges can be filed against the parents for violation of the compulsory attendance law. (Ill. Rev. Stat. 1989, ch. 122, par. 26-10.) Alternatively, under appropriate circumstances a child whose parents do not provide for his proper education may be treated as a neglected minor, pursuant to section 2-3 of the Juvenile Court Act. (Ill. Rev. Stat. 1989, ch. 37, par. 802-3.)

In summary, it is my opinion that the parents of a child with disabilities may elect to educate their child in a home school if the education provided is equivalent to that which a child of similar abilities receives in the public schools. The failure to provide an equivalent education,

Honorable Dennis Schumacher - 7.

however, constitutes a violation of section 26-1 of the
Illinois School Code.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL