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## **Testimony to the Indiana Advisory Committee to the United States Commission on Civil Rights on Homeschooling in the School-to-Prison Pipeline Discussion**

Recently the Indiana Advisory Committee to the United State Commission on Civil Rights heard testimony on the issue of school-to-prison pipeline in the state. In the meeting held on February 17, 2016 there was some discussion of homeschooling in Indiana. However, since much of the information provided was not accurate we felt it was necessary to help clarify the status of Indiana homeschool law.

I work as a staff attorney for the Home School Legal Defense Association (HSLDA). We are a national organization which has as its primary purpose the protection of the right of parents to educate their children at home. We assist our member families in understanding what state law requires as well as providing practical advice and assistance in developing successful homeschool programs. We currently have more than 83,000 member families in all 50 states and over 2,300 families in Indiana.

Contrary to the earlier testimony to this Committee, Indiana is not the "Wild West" when it comes to homeschooling. Under state law Indiana families educating their children at home have the same legal status as a nonpublic school. Any parent who homeschools their children must follow the same requirements as any other non-accredited nonpublic school.

Over 100 years ago the Indiana Appellate Court held that state law allows the operation of homeschool programs. *State v. Peterman*, 32 Ind. App. 665, 70 N.E. 550 (1904). It was in this decision that the court acknowledged that a child being educated at home is to be treated the same as a nonpublic school. The court defined a school as "a place where instruction is imparted to the young. . . . We do not think that the number of persons, whether one or many, make a place where instruction is imparted any less or any more a school." *Peterman*, 70 NE at 551.

The Appellate Court also explained why homeschooling was legally permitted with minimal regulations. "Under a law very similar to ours, the Supreme Court of Massachusetts has held that the object and purpose of a compulsory educational law are that all the children shall be educated, not that they shall be educated in any particular way." *Peterman*, at 551.

The court concluded,

The result to be obtained, and not the means or manner of attaining it, was the goal which the lawmakers were attempting to reach. The law [compulsory attendance]

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was made for the parent who does not educate his child, and not for the parent who... so places within the reach of the child the opportunity and means of acquiring an education equal to that obtainable in the public schools..." *Peterman*, at 552.

Under Indiana law all children must be to be sent to a public school or "provided with instruction equivalent to that given in the public schools" for the school year in which the student becomes seven years of age until they graduate or become eighteen year of age. Indiana Code § 20-33-2-6 and § 20-33-2-8. This "equivalent instruction" language applies equally to nonpublic schools and homeschools. In fact, Indiana Code § 20-33-2-28 states:

It is unlawful for a parent to: (1) fail; (2) neglect; or (3) refuse; to send his child to a public school for the full term as required under this chapter unless the child is being provided with instruction equivalent to that given in the public schools.

Prior to 1979, the term "equivalent" was followed by the language "as determined by regulation of the Commission on General Education." However, the Indiana legislature decided to remove all authority of the State Board of Education or the local school districts to define "equivalent instruction" or to regulate it beyond that which is specifically authorized by statute.

Parents who establish a nonpublic school in their home have to provide equivalent instruction to that given in the public schools, but they are not bound to follow any of the curriculum standards or requirements for public schools that are delineated in the statute. Indiana Code § 20-33-2-12(a) states:

A school that is: (1) non-public; (2) non-accredited; and (3) not otherwise approved by the State Board of Education; is not bound by any requirements set forth in IC 20 or IC 21 with regard to curriculum or the content of educational programs offered by the school.

The intent of the legislature is that children in nonpublic schools be educated in an equivalent manner but that they have the freedom to use the curriculum that best suits the needs of their school. In the case of homeschool programs, the curriculum can be tailored to the needs of each individual student within the home. In fact, homeschool families have more choices of high quality curriculum than your average public school. It is estimated that homeschool parents in the U.S. spend over \$1,000,000,000.00 each year in educating their children at home.

Besides having to provide equivalent instruction, there are two more requirements that apply to nonpublic schools which operate in the home. Indiana Code § 20-33-2-21(b) states:

Each principle or school administrator in a nonpublic school that is attended by a student who is subject to the compulsory school attendance law...shall furnish, on request of the state superintendent, the number of students by grade level attending the school. Emphasis mine.

Therefore, homeschoolers must report the number of children by grade level attending their nonpublic school in the home whenever this information is specifically requested by the state superintendent of public instruction.

Secondly, nonpublic schools are required to keep "an accurate daily record of the attendance of each child who is subject to compulsory school attendance" [Indiana Code § 20-33-2-20]. Subsection (c) of this section states:

In a nonpublic school, the record shall be required to be kept solely to verify the enrollment and attendance of a student upon request of the 1) state superintendent; or 2) the superintendent of the school corporation in which the nonpublic school is located. Emphasis mine.

Indiana law also has numerous laws in place in the event a child is not adequately educated. These laws include the appointment of attendance officers, the power of certain officers to take children in custody when they are not in school, and the prosecution of parents when they fail to ensure the child is enrolled in a school or being provided with instruction equivalent to that given in public schools.

Homeschooling is a fundamental right that is protected by the Indiana laws and the U.S. Constitution. The purpose of compulsory attendance laws in Indiana is to ensure that children be educated, not that they should be educated in any particular way. The courts, the Constitution, and the Indiana statutes all indicate that parents have the right to control their children's education, including the right to provide an education for them at home. However, under Indiana law the State Department of Education and the local school districts, have a very limited role in dealing with nonpublic schools and nonpublic schools in the home.

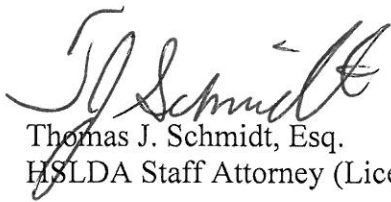
In fact, in *Mazanec v. North Judson-San Pierre School Corporation*, 614 F. Supp. 1152 (N.D. Ind. 1985), (aff'd by 798 F.2d 230), the federal district court recognized that parents have the constitutional right to educate their children in a home environment (at page 1160) with minimal regulation. The court wrote concerning the qualifications of homeschool parents that, "it is now doubtful that the requirements of a formally licensed or certified teacher...would pass constitutional muster." (at p. 1160).

Indiana is not alone in treating homeschoolers the same as nonpublic schools. At least 14 other states have laws which treat individual homeschool families as private or religious/church related schools. Six more states treat groups of homeschool families the same as private or religious/church related schools. In addition, Oklahoma protects the right of parents to provide "other means of education" under their state constitution. All told, nearly half of the states (44%) treat homeschool parents in the same way as traditional private/nonpublic schools. These parents have to comply with the same laws as any other nonpublic school, just like Indiana.

In conclusion, homeschooling in Indiana is regulated. It is regulated in a same manner as any other non-accredited nonpublic school is in the state. Parents have to follow the same laws and ensure that their children are being educated. If they fail to educate their children they can be prosecuted. There have been several situations in Indiana over the past few years where parents

failed to educate their children and they were successfully prosecuted. Many more have been investigated due to concerns of friends, family, or local school officials and found to have been adequately educating their children. Research shows that on average homeschool students score higher on nationally normed achievement tests and get into college at a high rate that their public school counterparts.

Should the Committee have any additional questions about homeschooling in Indiana we would be more than willing to assist.

A handwritten signature in black ink, appearing to read 'T.J. Schmidt', written in a cursive style.

Thomas J. Schmidt, Esq.  
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