

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

DISTRICT COURT DEPARTMENT
OF THE TRIAL COURT
AMESBURY DIVISION
CHINS PROCEEDING
DOCKET NO. 9037CH0017

SEP 5 11 04 AM 1990

In the Matter of Johnna M. Searles

FINDINGS AND RULINGS AND
PRELIMINARY HEARING

A probation officer of this court brings this petition alleging a violation of the compulsory education law, G.L. c. 76, s. 1, et seq., in that the child, Johnna Searles, is not attending school.

A preliminary hearing was held on August 31, 1990, three days following the commencement of the 1990 - 1991 academic year in the Amesbury Public Schools. At that hearing, the Superintendent of the Amesbury Public Schools testified that the child's parents had failed to enroll the child in school, having notified school authorities that they intended to educate the child at home; and that, despite notification of the legal requirements of prior approval, the parents intend to commence a home education program for the child without obtaining the prior approval of school authorities, as required by statute. See G.L. c. 76, s. 1; Care and Protection of Charles, 399 Mass. 324 (1987).

Through counsel, the parents argued that their religious beliefs proscribe their seeking approval of the home education program they plan for the child. They apparently nonetheless will submit that program to school authorities. A letter submitted to

the court from the parents to Victor Atkins, Principal of the Cashman School, dated August 23, 1990, states the parents' belief that "the state does not have the authority to approve or disapprove our home school," citing the First, Fourth and Fourteenth Amendments to the U.S. Constitution. That letter goes on to state that they are "voluntarily providing information regarding our school as a pure formality for your records." Counsel advised the court that the parents intend to commence this home education program on Tuesday, September 4, 1990, notwithstanding the lack of prior approval by school authorities.

While the parents have the right under the United States and Massachusetts constitutions to direct their child's education, "such a right is not absolute but must be reconciled with the substantial State interest in the education of its citizenry." Care and Protection of Charles, *supra*, 399 Mass. at 334. G.L. c. 76, s. 1, requires school authorities to assure that home education programs meet educational requirements similar to those required of public and private schools. The Supreme Judicial Court has held that the approval process provided by that statute "is necessary to promote effectively the State's substantial interest," *id.* at 336, and does not violate parents' constitutional rights to educate their own children. Approval by school authorities "must be obtained (by the parents) in advance, i.e., prior to the removal of the children from the public school and to the commencement of the home schooling program In obtaining the superintendent's or the school committee's approval, the parents bear the responsibility of demonstrating that the home school proposal meets the requirements of G.L. c. 76, s. 1, in that the instruction will equal 'in thoroughness and efficiency, and in the progress made therein, that in the public schools in the same town" *Id.* at 337. This the parents have not done. At issue at this time is the school authorities' request that the child be ordered to enroll in the Amesbury Public Schools, or an approved

private school, pending the approval of a home education program for the child in accordance with the statutory standard and the guidelines articulated by the Supreme Judicial Court in Care and Protection of Charles. See id. at 338 - 340.

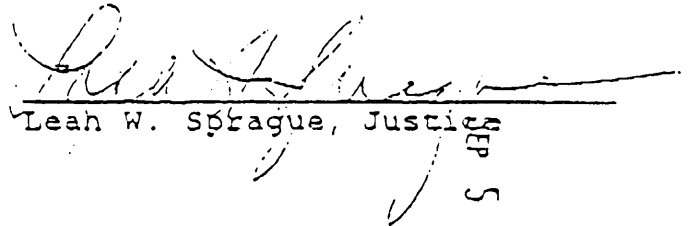
The parents through counsel represented to the court that they had enrolled the child in a program developed by the Summit Christian Academy in Dallas, Texas, and that they intend to commence this home education program on Tuesday, September 4. Counsel also represented that the parents had a pre-arranged appointment on September 4 with Amesbury school authorities to review their educational program for the child.

Balancing the interest of school authorities in assuring that the child is being educated in accordance with the law, with that of the parents in directing the child's education, I conclude that an order that the child enroll in the Amesbury public schools (or an approved private school) is premature at the present time. The parents should proceed with their intention to meet with school authorities and outline their plan for home education, keeping in mind that it is the parents' responsibility to demonstrate that their proposal complies with G.L. c. 76, s. 1, as outlined by the Supreme Judicial Court.¹ See id. The interests of all parties

¹ In Care and Protection of Charles, the Supreme Judicial Court has outlined with specificity the permissible scope of inquiry which school authorities may undertake in reviewing a home education plan. This includes consideration of the proposed curriculum and the number of hours of instruction in each of the proposed subjects, as well as the competency of the parents to teach the child. School authorities must have access to the textbooks, workbooks, and other instructional aids to be used and the lesson plans and teaching manuals the parents will rely upon. Finally, school authorities may require periodic standardized testing of the child "to ensure educational progress and the attainment of minimum standards." Id. at 333 - 340. All of these factors school authorities must review, not "as a pure formality," but to meet the substantial interests of the State in assuring that the child be educated.

are best served if they "proceed expeditiously in a serious effort to resolve the matter by agreement." Id. at 340. The Superintendent of Schools has represented to the court that such a "serious effort" of review would take one week. In the event the parents' educational plans are not approved by September 11, 1990, a hearing should be scheduled on the request that the child be ordered to enroll in school. At that hearing, the burden would then be on the Amesbury school authorities to demonstrate that the course of home instruction proposed by the parents does not equal "in thoroughness and efficiency, and in the progress made therein, that in the public schools in the same town" G.L. c. 76, s. 1. See Care and Protection of Charles, 399 Mass. at 338 - 341.

By the Court,


Leah W. Sprague, Justice

September 4, 1990

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