



Texas Home School Coalition ASSOCIATION

Dedicated to Serving and Protecting the Home School Community of Texas

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August 12, 2014

Commissioner John J. Specia, Jr.
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714-9030

Commissioner Specia:

Thank you for your letter of July 2, in response to our earlier communication this year regarding the Tutt case in Dallas County. You have it made abundantly clear that you cannot address specific issues of this case, and I appreciate your assurance that the Office of Consumer Affairs is reviewing and monitoring the case regarding agency policy.

I also appreciate your assurance that “a parent or guardian’s choice to educate their children at home” does not “raise a red flag or trigger a Child Protective Services investigation” and that “no DFPS policy . . . would interfere with a parent or guardian’s personal decision to educate a child at home.” However, your comment, “As long as the educational needs of the child are fully met, it makes no difference whether the choice made is a public, private or home school environment,” is troubling.

In fact, that is the basis upon which CPS in the Tutt case argued that the state was justified in keeping the children illegally removed from their parents in the initial hearing. CPS attorneys argued that the family was not meeting the educational needs of the children, solely on the basis of a cursory academic assessment of the traumatized children, and that, therefore, CPS should maintain custody of those children.

I also find the following statements troubling: “[T]he educational setting of the child is relevant to the investigation and is documented as part of the investigation. The educational environment is one place where witnesses with firsthand knowledge can often be found. For example, a teacher or school counselor may have witnessed behaviors or physical injury that would support or negate the allegation of abuse or neglect. To ignore or fail to document the child’s educational setting in an investigation could preclude the full discovery of the relevant facts. It is essential to every CPS investigation that all relevant, available facts be considered.”

Yet, this is a change from the agency’s position, as expressed in Memorandum PSA 05-055 of March 2005, which stated, “Whether parents choose to home school their child or send their child to another public or private school is not relevant to a CPS investigation.”

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If CPS policy regards the fact that a family under investigation home schools is relevant to the investigation, does DFPS policy hold that the academic status of the children is relevant to an investigation? While you may assure that no policy of CPS raises a red flag or triggers an investigation, the truth is that CPS investigation policies and rules do impact home school families differently from other families.

For example, while state law requires caseworkers to tell parents what allegations have been made against the family, caseworkers routinely refuse to give that information to a home school family because of CPS policy prohibiting making the parents aware of specific allegations prior to an interview of the children.

Many home school families under investigation are reluctant to waive their Fourth Amendment right in order to allow a CPS caseworker into their home, based on well-publicized cases like the Tutt case. When these families seek to cooperate with a caseworker to provide the evidence necessary for the investigation, they are told that the *only way* that can occur is to allow the caseworker complete and unfettered access to the home and private interviews/examinations alone with each child in the home. If parents suggest a professional be allowed to examine their children and the results be made available to CPS or for an attorney to be present during the interviews, they are told that is not acceptable under CPS policies and procedures. Failure to comply with CPS workers' demands to immediately examine the home and interview the children alone is met with threats of legal action for "failure to cooperate with an investigation."

In many of these situations, CPS will, *as a matter of policy*, seek an ex parte hearing, in which the family is neither notified nor represented, without giving the judge the families' offers to comply in alternative ways. The judge is simply told the family is refusing to cooperate, and CPS asks the court for an order to force the family to allow them into the home and to interview/examine the children. In fact, it was an ex parte court order initiated by a caseworker that led to removal of the children in the Tutt case.

In the initial hearing after the taking of the Tutt children, the bulk of the *12-hour* hearing focused on the "educational setting" and the academic performance of the children. The court was told that the children were two years behind academically, while the academic method of assessing these children, two of whom were special needs children, was not clear. After five months in public school and much resistance, officials confirmed that two of the children were special needs and the others were performing at grade level. What is the policy for assessing the academic status of children who have been in a home school environment and are in CPS custody?

In the Tutt de novo hearing, CPS made the same educational arguments as in the previous hearing. While we disagree with the judge's ruling to disallow the children returning to the family at that time to be home schooled, the fact is that CPS argued that the educational setting and academic level of the children were the basis for maintaining its involvement in the family and custody of some of the children to this day. I seriously doubt that CPS would have made such an argument if the children in question were in a public or traditional private school.

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Does your statement, "As long as the educational needs of the child are fully met, it makes no difference whether the choice made is a public, private or home school environment," together with the actions of CPS, represent the policy of CPS regarding a child being behind grade level academically as equivalent to abuse or neglect, as has been argued by CPS in the Tutt case? Does CPS take this same approach to the educational level of a child in cases in which the child is in public or traditional private schools?

Commissioner Specia, I hope I have clarified that some of the concerns of the home school community, as highlighted by the Tutt case, are related to the manner in which home schooling families are investigated by caseworkers during which time CPS policies are routinely violated. I hope you can see that the examples I have shared lead many in the home school community to question your assurance that there is no bias against home schooling families.

I welcome your assurance that, "Communication related to the rights of families who home school will be addressed." However, we have heard such assurances in the past, and they have proven to be ineffective in dealing with these ongoing problems. Consequently, we strongly encourage home school families who are the subjects of a CPS investigation to record every communication with caseworkers and to obtain legal counsel to protect themselves and their children from caseworkers who abuse the policies and procedures of the agency.

As you have asked, I will make [your letter](#) available to the home schooling community on our website.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Lambert".

Tim Lambert

CC: Ms. Lisa Black, Assistant CPS Commissioner; Ms. Kristine Mohajer, CPS Education Specialist; Dr. Kyle Janek, Executive Commissioner, Health & Human Services Commission; Human Services Committee of the Texas House; Health & Human Services Committee of the Texas House; Sunset Commission; Governor Rick Perry; Texas Legislators; Texas Home Schoolers