STATE OF NEW YORK

FAMILY COURT

COUNTY OF OSWEGO

IN THE MATTER OF

PATRICIA, AMY, SUSAN, GERALD,
JACQUELINE AND KATHLEEN GRACEY,

CHILDREN UNDER THE AGE OF SIXTEEN
YEARS ALLEGED TO BE NEGLECTED.

D E C I S I O N

COMSTOCK, DONALD K.
FAMILY COURT JUDGE

This is a proceeding under Article 10 of the Family Court Act to determine whether Patricia, Amy, Susan, Gerald, Jacqueline and Kathleen Gracey are neglected children within the meaning of Section 1012, Sub-divisions (f) (i) (A) of the Family Court Act. The proceeding was commenced on September 25, 1970 with a petition filed by the Central School District No. 1 of the Town of Mexico, New York through its Attendance Officer, Kathleen Gibbs. The petition alleged that Kathleen, Gerald and Jacqueline had been absent from school since September 11, 1970 and that Patricia, Amy and Susan had been absent since September 14, 1970. The petition further alleged that "when contacted by school authorities Mrs. Gracey stated that she disapproved of the teaching methods at the school and so she was not going to send the children to school but was going to teach them herself. Mrs. Gracey is not qualified to teach. The above acts under Article 10, Section 1012 constitute improper guardianship".

Both parents, Gerald and Cecile Gracey were charged in the petition with being responsible for the alleged neglect. On September 28, 1970 both parents, the six children involved and representatives of the Central School District (Petitioner) appeared in this Court. The petition was read to Respondents and they were advised as to the right to have legal representation and to an adjournment to consult with an attorney. Mr. Gracey waived the right to legal representation and stated "just as soon go ahead as it is". The Court construed this latter statement to mean that Mr. and Mrs. Gracey wished to proceed without counsel. Mrs. Gracey thereafter admitted that the children in question were not attending the public schools stating "they are attending school at home". Subsequent discussion revealed that Respondents objected to certain subjects being taught in the public schools of Mexico making specific mention of Sex Education, Evolution, Ecology and Communism with most emphasis being placed on the alleged teaching of Sex Education. The Court adjourned the proceeding and directed the school authorities to exempt the Gracey children from attending any health class or any other classes which might concern themselves with Sex Education. The Court made further effort to persuade the Respondents to secure counsel. A Law Guardian was appointed and the children were continued in the custody of the Respondents. The Court directed that the children attend school under the conditions as above outlined and the matter was adjourned to October 14, 1970.

On the adjourned date the Respondents appeared without counsel, Petitioner appeared with its attorney, John Mowry, Esq.

and the children appeared through their Law Guardian, Robert Hurlbutt. The Court listened to further arguments put forth by Mrs. Gracey concerning her objections to the curriculum in the Mexico public schools and of her right to educate her children in her own home. Respondents further advised the Court that they wished additional time in order to obtain legal representation. The Court was informed that the children had not been enrolled in the public schools as directed on September 28, 1970 nor had Respondents enrolled the children in any private school. The Court again directed that the children be enrolled in either the public schools or private schools and renewed its directive that the children be excluded from any courses that the parents found objectionable. The Court further advised that the children must be so enrolled in some school on or before noon October 16, 1970 and upon failure of the Respondents to so comply the children would be removed temporarily from the custody of the Respondents and placed in foster homes.

On October 19, 1970 the Court was advised that the Gracey children had not been enrolled either in the public schools or in any private school and accordingly an Order was entered by this Court temporarily removing the children from their home and placing them in the custody of the Social Service Department of Oswego County pending further proceedings. On October 28, 1970 the Law Guardian Robert Hurlbutt filed an Order To Show Cause with this Court requesting that custody of the Gracey children be returned to the Respondents on condition that Respondents institute a course of home instruction

substantially equivalent to that offered in the Mexico School System. Respondents were present at the Show Cause Hearing with their attorney James T. McKenna. The motion was not opposed. The Order was granted and the children were returned to Respondents who were directed to institute such a course of home instruction which was to be supervised by the Mexico Central School. The proceedings were adjourned to November 13, 1970 for a fact finding hearing.

Respondents based their refusal to send their children to the public schools upon their belief that Sex Education is being taught. They further contend that they have a statutory right not to send their children to a public school but rather have the right to teach them in their home. Mr. and Mrs. Gracey further contend that they have the right to teach the children based upon their vague undefined interpretation of certain Catholic dogma and ecclesiastical law. The Court never had the benefit of further explanation of this alleged religious doctrine upon which Respondents based their right to teach their children except for Mrs. Gracey's bare assertion that such a right did in fact exist. The Respondents and the children are of the Catholic faith and this particular religious aspect was not further pursued by Respondents during the course of the fact finding hearing. Respondents further contend through their attorney, at least in his opening statement, that the Compulsory Education Law is invalid and unconstitutional. It is interesting to note, however, that except for the opening statement of Mr. McKenna wherein he refers to certain constitutional considerations involving this case no further referense is made regarding the unconstitutionality of the Compulsory Education Law, either as part of his direct proof or in his closing statements or in his

memorandum of law.

Let us now take up the matter of Respondents allegation that Sex Education is being taught in the Mexico School System. This contention is based not upon any first hand information or knowledge by Respondents but rather is arrived at as the result of alleged conversations which the parents had with their children. At the fact finding hearing the only testimony bearing upon this contention was that offered by the Respondent Cecile Gracey. Indeed she was the only witness testifying on behalf of Respondent except for one Janet Mellon whose testimony the Court finds was immaterial and without relevance to this case. For some reason Respondent Gerald Gracey did not testify nor did any of the Gracey children. From the very beginning Mr. and Mrs. Gracey have never attempted to define what it is they mean by "Sex Education" and there was no proof offered regarding the specific subject matter which they found objectionable. All of her testimony was based upon hearsay regarding certain conversations which she had with her children including Gerald, who is only ten years of age. The alleged objectionable text material was not offered in evidence nor was any teacher called to testify. Certainly the Respondents, who apparantly felt very deeply about this matter, had at their disposal every opportunity to produce proper evidence to substantiate their contention. The Court has no credible proof upon which a determination can be made that "Sex Education" is being offered in any of the schools of the Mexico School System. Respondents never availed themselves of the opportunity to go to the schools and discuss the matter with either the teachers involved or with any of the administrative staff. It is to be further noted that Mrs. Gracey testified that not all of the children were being taught Sex Education but referred to only Kathleen, Susan and Patricia. In answer to a

direct question put to her by the Law Guardian, Mrs. Gracey admitted that Sex Education is why she took them out of school and not because of any alleged teaching that "Communism isn't so bad" and despite the fact that they were allegedly told that they did not not need God. In answer to a question put to her by her attorney, she answered, "I took them out of school because they were going to be taught Sex Education"; and again when the question was asked, "How did you come to the information that they were teaching Sex Education?" her answer, "Because the children told me". Of course the proof that the children were being taught Godless ways and that Communism isn't so bad is also totally unsatisfactory and again is based solely upon Mrs. Gracey's conversation with the children. The objection to the teaching of Ecology seems to have been forgotten for there was no testimony offered on that subject at the fact finding. She apparently objects to the teaching of Evolution, although there was no proof before the Court that Evolution was in fact being instructed or the manner in which it was presented. The Court therefore concludes that Sex Education is not being instructed in the Mexico School Systems. The Court further concludes that Communism is not being promoted or being suggested, "that it isn't so bad", nor are the children being taught that they do not need God. The Court would wish to make one further comment in this area. Apparently Mrs. Gracey also objected to conversations which were had among students in the corridors of the school wherein she claimed that matters of sex were discussed.

Thus it seems that she objects to her children receiving sexual knowledge from other students. Of course the school cannot be held responsible for any such discussions among students not held in the classroom, it not being part of a planned course of instruction.

The Respondents further contend that under the education law they have the right to instruct their children at home. With this contention the Court agrees provided the statutory requirements are met. The pertinent sections of the education law which are here involved are Sections 3205 (1) (a) which states that "in each school district of the state each minor from six to sixteen years of age shall attend upon full time instruction", Section 3204 states in part that "a minor required to attend upon instruction by the provisions of part one of this article may attend at a public school or elsewhere (emphasis mine). The requirements of this section shall apply to such a minor irrespective of the place of instruction" and sub-division 2 of this section provides in part "instruction given to a minor elsewhere than at a public school shall be at least substantially equivalent (emphasis mine) to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides".

Thus we see that Respondents may teach their children at home provided all of their children from six to sixteen are attending upon full time instruction and further provided that the home instruction is substantially equivalent to that offered in the public schools of the Mexico School District. The children who are the subjects of this proceeding are being taught at their home by their mother, Respondent Cecille Gracey. The classroom consists of a room fifteen feet by thirty feet in

the rear of the Gracey home which is not used exclusively for classroom purposes but is apparently used as a living room-kitchen combination. There was evidence that the room was poorly lighted. There were six children, subject of this proceeding; Patricia who was fifteen at the time the petition was filed and who is in the eleventh grade; Amy who is fourteen and in the ninth grade; Susan who is twelve and in the seventh grade; Gerald who is ten and in the fifth grade; Jacqueline who is eight and in the third grade, and Kathleen who is seven and in the second grade.

Additionally, there are three other children within the home; Bonnie, who is seventeen and who is in the twelfth grade, and two pre-schoolers; James who is two and Mathew, who is four. Mrs. Gracey is a high school graduate but possesses no educational training beyond high school and has had no particular experience in teaching. It is to be noted that the statute says that the education being offered elsewhere than in the public schools must be substantially equivalent (emphasis mine). It does not say that the instruction must be equivalent or exactly the same. Webster defines substantial as essential; ample to satisfy. There was no proof that all subjects which are mandated by Section 3204 of the Education Law were being taught by Mrs. Gracey. There was no instruction in Science, Hygiene and Physical Education in grades nine through twelve and no proof of instruction for Civics, Hygiene and Physical Education in grades one through eight. Elvin H. Pierce, Supervising Principal, testified that he observed no tests or results of testing, no lesson plans, course outlines or objectives. He observed no

laboratory facilities for experiments in the Science courses. In his judgement, the library facilities were inadequate. Dr. Burton Ramer, District Superintendent of Schools, testified that he observed no real teaching process in evidence; there was no teacher-learning situation. It further appeared that the actual quality of instruction was difficult to determine by Mr. Pierce, Dr. Ramer and other school observers because communication between Mrs. Gracey and the children was accomplished in whispers. Any attempt on the part of any of the observers to more closely observe the children's studying and to question them was met by admonitions from Mrs. Gracey to stop as they (the observers) were interferring with the teaching. The children were using text books and work books supplied by the Petitioner school district. It also appeared that instruction books and review-type books were being used which were supplied not by the school district but by other private individuals and agencies. The testimony also indicated that the two pre-school children were playing in the room used as a classroom, were making a great deal of noise, and were generally demanding the attention of both Mrs. Gracey and the older children which obviously tended to distract the other children while attempting to study.

There can be no question but what Respondent, Cecile Gracey, is well-intentioned and that she has a deep love and concern for her children. However, when one considers the lack of any formal or special training in teaching techniques; attempting to instruct six children in six different grade levels while also attending to the needs of a four year old and a two year old; attempting to cook and to clean house; to sew, to mend, to wash, to iron, to shop and to generally take care of

the everyday needs of a growing family, it is obvious that she is operating under an extreme burden. The Court further finds that there was a lack of supporting facilities such as audio-visual aids, guidance counseling, and a general lack of social interaction which is so prevalent in the public schools and which contributes significantly to the teaching process.

The Court therefore finds that the instruction being offered in the Gracey home is not substantially equivalent to that offered in the Mexico Central School District.

Respondents by their counsel also raised certain objections to the constitutionality of the Compulsory Education Law; specifically to Section 3205 of the Education Law. Counsel, during the course of his opening remarks, contended that the Petitioner school district does not have the right to compel the attendance of the Gracey children upon full time instruction either in the public schools or any private school or indeed, any other place. It is claimed that this violates the First, Thirteenth and Fourteenth Amendment to the United States Constitution. The First Amendment of the Federal Constitution prohibits any "law respecting and establishing of any religion, or prohibiting the free exercise thereof". The Thirteenth Amendment states "neither slavery, nor involuntary servitude ....., shall exist within the United States, or any place subject to their jurisdiction". The Fourteenth Amendment provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws".

These constitutional considerations have been before the Courts for generations and the same arguments that are proposed in this instance have been offered before and have been found to be without merit. As stated in People vs. Donner, 199 Misc. 643; "the reports are replete with cases which indicate the vital stake which the State has in the secular education of its citizens; and its power to enforce laws reasonably required to compel compliance". Education has long been recognized as one of the purposes for which the police power may be exercised. Society has a right and a duty to see to it that every child receives a basic education since the quality of the education each child receives has a direct bearing upon the kind of citizen that he will ultimately become. Certainly it cannot be seriously denied that ignorance breeds hostility, and frustration and all too frequently violence. These are difficult times wrought with ever increasing change and dissent; and the need for a quality education is greater than ever in our nation's history. It has been consistently decreed that the religious convictions of parents cannot interfere with the responsibility of the state to protect the welfare of children (People vs. Pierson, 176 N.Y. 201). As the Court so ably stated in People against Donner, supra, "neither rights of religion nor rights of parenthood are beyond limitation; acting to guard the general interests in youth's well being, the state ---- may restrict the parents control by

requiring school attendance". The authority of the state is not diminished merely because the parents grounds his claim to control the childs course of conduct on religion or conscience. The United States Supreme Court decided in Pierce vs. Society of Sisters, Etc., 268 U.S. 510, "no question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils, to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught and that nothing be taught which is manifestly inimical to the public welfare". (See Elma DiLease vs. Nolan, 185 A.D. 83; Application of Auster, 102 N.Y.S. 2d 418 People vs. Sandstrom, 279 N.Y. 523) There is no need to belabor the point further, the law is clear in this regard. The state is soverign in the matter of compelling the attendance of a child at full time instruction someplace and the Courts have consistently found that this power in no way is in violation of the First, Thirteenth or Fourteenth Amendment to the Federal Constitution.

Counsel for Respondents cites In Re Skipworth (180 N.Y.S. 2d 852) in which the Court dismissed a child neglect petition stating "these parents have a constitutionally guaranteed right to elect no education for their children rather than to subject them to discriminatory inferior education". The case is not in point. The parents had withheld their children from a public school in New York City because the schools involved were 100% Negro and Puerto Rican. It was further established

in that case that the quality of education was inferior as being discriminatorily staffed with teachers who have inferior qualifications. It was there claimed that the children attending those schools were being denied equal protection of the laws as guaranteed by the Fourteenth Amendment. The Court concluded that the children need not be subjected to a discriminatory inferior education.

The case of In Re Richards, 2 N.Y.S. 2d 608; Aff'd. 7 N.Y.S. 2d 722 can also be distinguished. In that case the parents of an eight year old child removed her from school as she had to walk a long and hazardous road in severe winter conditions in order to get to the school bus. The Court found the parent to be justified under the extraordinary conditions of that case in removing the child from the school and the petition for neglect was dismissed. However, the Court had found in that case that the mother was a "competent teacher" and that she intended to and did in fact teach her child all of the school courses; that she did take the child to school for testing periodically and that as soon as the conditions improved, she would re-enroll the child in the public school.

We therefore come to the real issue in this case and that is whether the Gracey children are neglected children within the meaning of Article Ten of the Family Court Act. Section 1012 (f) (i) (A) of this article defines a neglected child as "a child less than eighteen whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of the parent ---- to exercise a minimum degree of care in supplying the child with adequate ---- education". Article Ten of the

Family Court Act is a completely restructured and redefined article dealing with Child Protective Proceedings. It took effect May 1, 1970 and replaced the old Article Three of the Family Court Act. Its stated purpose as set forth in Section 1011 was to provide a due process of law for determining when the State, through its Family Court, may intervene against the wishes of a parent on behalf of a child so that his needs are properly met. Obviously the paramount consideration is the welfare of the child. It should be noted that the former Section 312 defined a neglect child as one whose parent "does not adequately supply the child with ---- education ----". The new section significantly differs in two ways. It first provides that a childs condition must in some manner be impaired or be in "imminent danger" of becoming impaired by the alleged neglectful act. The conduct amounting to neglect has been changed from "does not adequately supply ---- education" to "failure ---- to exercise a minimum degree of care in supplying the child with adequate ---- education ----".

Before proceeding further, the Court feels that it is necessary to distinguish between a proceeding to adjudge a child neglected under the Family Court Act for failure to educate the child and a proceeding commenced under the appropriate provisions of the Education Law for an alleged violation of the Compulsory Education section. Much has been said in this case regarding the right of a parent to instruct his child at home rather than for the child taught either in a public school or in an accredited private school. This Court is in complete accord with that proposition. That right was clarified in People vs. Turner;

227 A.D. 317 (4th Dept, 1950) and further preserved in matter of Myers, 203 Misc. 549 (Dom. Rel. Court - New York City, 1953). It need only be established to the satisfaction of the Court that the instruction being offered in the home is "substantially equivalent" to that offered in the public schools. People vs. Turner, however, dealt with a prosecution of the parents under Section 3205 of the Education Law. The various provisions of the Education Law are not necessarily germain to a proceeding to establish neglect. Counsel for Respondent is correct when he states that there is no authority for reading Section 3204 of the Education Law into Section 1012 of the Family Court Act. A case of neglect is not established by merely proving that children are not attending a public school or a private school. A case of neglect under the new Section 1012 of the Family Court Act is not established by merely showing that the instruction the children are receiving in the home is not substantially equivalent to the public schools. The burden of proof relating to allegations of a petition in child neglect proceedings is on the Petitioner, the school district in this case, to be established by a preponderence of relevant, competent and material evidence. (In Re Young, 1966, 50 Misc. 2d 271) This burden is not met by merely showing that the children are not attending the public schools or any private school. The Petitioner must go forward and establish the essential elements of the alleged neglect. It must show that Mr. and Mrs. Gracey have failed to exercise a minimum degree of care in supplying the children with an adequate education and that this failure has impaired or is in imminent danger of impairing the children's physical, mental and emotional condition. This the Petitioner has failed to do. Although the education offered the Gracey children is not

substantially equivalent to that offered in the Mexico School District, nevertheless, the proof amply shows that her effort is at least minimum. Considering the burden under which she is working, Mrs. Gracey's efforts must be construed as considerably more than minimum. The Court is satisfied that she is teaching most of the subjects which are mandated by the Education Law, that the children are in attendance within the home during the hours prescribed by law for public school instruction. She testified that she did have lesson plans although there was some confusion as to whether they were written out ahead of time. She was aware of the necessity of planning for the different courses so that the books and other text works used could be completed by the end of the semester or school year. It further appears that the older children help the younger ones and that Mrs. Gracey herself spends a great deal of time with each individual child. The Court is aware that she is not a trained teacher and that she obviously does not have a total grasp of each subject which she is attempting to instruct. The Court is further aware that she does not have the benefits of the various facilities which are available to youngsters attending the public school system. There is, of course, a serious lack of space and expert planning, guidance and counselling. It does seem however to the Court that by virtue of her efforts and of her love and affection and deep concern for her children that she does make up for the lack of the sophisticated teaching aids and special expertise prevalent in the public school system.

The Court finds that Respondents are certainly exercising a minimum degree of care in supplying the children with an adequate education. Additionally, there is no proof that the physical, mental or emotional condition of the children has been impaired or is in "imminent danger" of becoming impaired. Indeed from what the Court could observe, the children are bright, alert, well-mannered and exhibit a strong love and affection for their mother and father as well as each other. The Court concludes that Respondents are exercising a minimum degree of care in supplying their children with an adequate education. This is true even though the education being offered in the Gracey home is not substantially equivalent to that offered in the Mexico Public School System.

This Court does not agree with what Mr. and Mrs. Gracey are doing. They are ill advised in keeping their children from receiving a quality education available to them in the Mexico Public School District. Nothing can be gained by withdrawing the children from school. The complaints which Mr. and Mrs. Gracey have can and should be aired through proper channels within the school system. It is also possible that Respondents may still be held to answer for their decision should the Petitioner seek to prosecute them for a violation of Section 3212 (2) (b) of the Education Law.

The Court concludes that Patricia, Amy, Susan, Gerald, Jacqueline and Kathleen Gracey are not neglected children within the meaning of Section 1012 of the Family Court Act and the petition therefore is dismissed.

Dated at Oswego, New York

this 3rd day of February, 1971.

DONALD K. COMSTOCK
FAMILY COURT JUDGE