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**20 YEARS AFTER *LEEPER* –  
CURRENT LEGAL ISSUES IN HOME SCHOOLING**

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## **I. The *Leeper* Case**

### **A. Background**

For many years, the Texas compulsory school attendance law has provided for compulsory school attendance. Currently, Section 25.085(b) of the Education Code provides that unless "specifically exempted by Section 25.086, a child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade, and who has not yet reached the child's 18<sup>th</sup> birthday shall attend school." Section 25.086(a)(1) provides that a "child is exempt from the requirements of compulsory school attendance if the child: attends a private or parochial school that includes in its course a study of good citizenship."

The Legislature has never provided a definition of the term "private or parochial school" as used in the Education Code. During the late 1970s and early 1980s, an increasing number of parents started keeping their children at home to educate them.<sup>1</sup> The Texas Education Agency at the time was consistently advising school districts that a so-called "home school" did not qualify for the "private or parochial school" exemption to the compulsory school attendance law, and instructed school districts and their attendance officers that they should therefore initiate truancy prosecutions against home school parents.

### **B. Trial Court**

In 1985, a class action case was filed in state district court in Tarrant County. The Plaintiffs consisted of two main classes: one comprised of "persons who are teaching their children at home in the state of Texas," and the other of "entities who are providing home school

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<sup>1</sup> The trend has continued to this day. It is estimated that more than 300,000 Texas children are educated at home. Associated Press, *More Texas Parents Opt for Home Schooling*, WFAA (Aug. 23, 2010), [www.wfaa.com/news/More-Texas-parents-opt-for-home-schooling-101292714.html](http://www.wfaa.com/news/More-Texas-parents-opt-for-home-schooling-101292714.html).

curricula and instruction to families residing in the state of Texas." The Plaintiffs sued the Texas Education Agency, the Commissioner of Education, and a Defendants' class consisting of "public school districts and their school attendance officers in the state of Texas."

The plaintiffs advanced various theories of recovery, including a claim that the systematic prosecution of home school parents violated the equal protection clause of the Fourteenth Amendment. They basically sought, however, a declaratory judgment to the effect that a home school could qualify as a private school as that term is used in the Education Code.

After failed settlement efforts, the case proceeded to non-jury trial in January of 1987. The Plaintiffs introduced considerable evidence regarding the history of the compulsory attendance law and home schooling in Texas. At the turn of the century, only about 10% of the school-age children in Texas attended public schools, a small number attended private academies or parochial schools, but the majority were educated at home. In 1915, the first compulsory attendance law was passed. It exempted from public school attendance "[a]ny child in attendance upon a private or parochial school or who is being properly instructed by a private tutor." In 1923, the Legislature deleted the private tutor provision, and inserted the requirement for a course of study of good citizenship. A 1923 amendment also required that private or parochial schools "make the English language the basis of instruction in all subjects." The English language restriction was moved in 1969, and dropped in 1971. *Texas Educ. Agency v. Leeper*, 893 S.W.2d 432, 434-35 (Tex. 1994).

The trial court admitted expert testimony to the effect that at the time, "a child pursuing a bona fide course of study at home designed to meet the basic educational goals of reading, spelling, grammar, mathematics and good citizenship was considered to be attending a private school," and that this was not affected by the deletion of the private tutor instruction option in

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