

Legal FAQ

What is the compulsory education law?

California's compulsory education law (Education Code § 48200) requires each person between 6 and 18 years of age to attend public, full-time day school, and requires their parents or guardians to send them, unless legally exempt. Parents who homeschool their children do so under one of these exemptions. The different exemptions can be found below under the section "How do I go about homeschooling legally?" Unless children are enrolled in a public school program or are exempt, they are truant. Complying with this law is essential.

Is homeschooling legal in California?

Yes, homeschooling is legal in California. There has never been any question that homeschooling is legal in California using a public school independent study program, a public charter school, or by tutoring your own child if you have a credential for the grades taught. Satellite programs for homeschooling through the more established private schools have also not been questioned. In the past, the California Department of Education (CDE) questioned independent homeschooling, and stated that homeschooling by establishing a private school in an individual's home was not authorized in California. This is no longer the case. The CDE is not taking a position on the legality of homeschooling. It continues to be the responsibility of the local school districts to determine if a private school has complied with the statutory requirements for establishing a school. Although homeschooling is not specifically permitted by statute and the word does not appear in the Education Code, it is not illegal as long as the homeschooler complies with one of the legal requirements for attendance in a public or private school or is tutored. Additionally, while independent homeschooling is known by the moniker "homeschooling", the law does not contain the word "homeschooling". Families file the private school affidavit and are private schools, legally speaking.

How do I go about homeschooling legally?

There are several exemptions from California's compulsory education law which provide homeschoolers with a variety of alternatives for homeschooling. You can:

- Establish a private school, which involves taking some simple steps. A teaching credential is not necessary. Once the school is established, file a private school affidavit form.
- Join a private school satellite program PSP, if it has filed its own private school affidavit in California. If it has not, then you must take all of the steps to establish your own private school and must file the private school affidavit.
- Join a public school ISP (Independent Study Program), in which case your child is enrolled in public school.
- Join a Charter School Homeschooling Program, in which case your child is enrolled in

public school.

- Employ a credentialed tutor; or, if you have the appropriate credential for the age of child you are tutoring, you may be the tutor yourself.

You may decide which option best satisfies the current needs of your family. As your needs change, you may choose to use a different option.

Do I need a California Teaching Credential in order to teach my children at home?

When children are enrolled in some type of public program, their work is supervised by credentialed teachers. Most of the teaching, of course, is done at home, but parents do not need credentials themselves. Parents who are using the private school option do not need a California teaching credential. The statute says, very plainly, that the teacher in a private school (meaning any private school, large or small) must be "capable of teaching". It is obviously a very vague requirement, but we generally believe that anyone of reasonable intelligence and mental health who can read and write in English, even if they do not have a high school or college degree, may be "capable of teaching." Many homeschool teachers attend education conferences, read educational materials, and locate the resources they need in order to meet the "capable of teaching" requirement. In fact, teachers in giant parochial high schools don't need to hold credentials, either. They also have to be "capable of teaching," and it is left to the private school administrators and the schools' customers to decide if they are. However, if you are using the tutoring option, you must have a valid California teaching credential for the subjects and grade levels of children that you will be teaching.

How do I find out what public and private programs are available?

To find out if your local district offers independent study, call them. These programs vary widely in resources, in documentation and curriculum requirements, in grade levels offered and in social and enrichment opportunities. The county office of education can tell you if neighboring districts have ISPs; to enroll in one of these, you would need to submit an interdistrict transfer form, obtained from your local district. To find out about charter and private programs, you will need to do research. HSC maintains a list of programs and our HSC County Contacts will often know about programs offered in your area.

How do I establish a private school in my home?

A private school is established by:

- Maintaining Attendance Records showing the days your school is in session and noting the days your students are absent.

- Preparing a list of the courses of study offered based on the statutory requirements set forth in the Education Code.
- Keeping a list of the faculty and their qualifications, which can include short resumes of the teachers, including their education and teaching experience;
- Requiring each teacher and employee to have a Tuberculosis Clearance. While there is some disagreement over whether a home based private school teacher teaching exclusively his or her own children requires a Tuberculosis Clearance, we believe the better option is to complete a Risk Assessment with a doctor, and do any followup testing required.
- Obtaining Criminal Record Summaries on each employee, unless all persons teaching are working exclusively with their own children.
- Obtaining a copy of the students' Immunization Records (complete or not) or Waivers, available from their doctor.

After you have complied with the above requirements, you need to review the requirements for filing the private school affidavit.

If I might decide to homeschool later in the school year, should I file a Private School Affidavit during the October 1-15 filing period?

If you're unsure whether your child will last in the school/charter program he or she is in now and you may wish to withdraw your child at some later time to homeschool, do not file now. The CDE will accept filings of affidavits throughout the school year for newly-formed schools, and we have no reason to think that people who file at a later time will, absent other factors (such as unresolved truancy problems with the former school), be subject to any greater scrutiny than schools that file during the October filing period.

Is the CDE opposed to small home-based private schools?

The CDE is not opposed to small home-based private schools. In the past, the CDE took the position that individuals could not transform their homes into a school by merely filing a private school affidavit (PSA), formerly known as an R-4. Even though the CDE is no longer taking a position on homeschooling using the private school option, it is still technically correct that filing the private school affidavit does not create a private school. You create the private school by following the education codes that apply to private schools. Once the private school is created, the school's administrator must file the affidavit between October 1 and October 15 of the school year.

It is the position of all of the major homeschool groups in California that any individual can establish a home-based private school, for any number of students, by following the requirements set out in the Education Code, and complying with the code's requirements regarding the filing of a private school affidavit. HSC worked with one of the biggest and best law firms in the state to make sure we were analyzing this correctly, and they agree that

the law clearly allows private individuals with no business motive to open very small private schools. In the past, the CDE took that position that individuals were not capable of meeting the requirements for establishing a private school, that individuals could only homeschool their children if they had a teaching credential, and that a school must have a business purpose. However, they are no longer taking this position. While there were two cases a number of years ago that might have supported these arguments, they probably would not do so any longer because of more recent United States Supreme Court holdings interpreting parents' fundamental rights in the care and control of their children. One case was decided based upon the wording of a provision of the Education Code that has since been changed, eliminating the problem (it is now perfectly clear that the state has no duty, but also no authority, to regulate private schools beyond ensuring that the affidavits are filed). In the other case, the family used a correspondence course that did not offer civics, one of the courses of study required to be offered at the time. This is obviously a simple thing to fix-- make certain that your documentation reflects that your school offers all of the required courses of study (this doesn't mean your students must choose to study it, just that you must offer it).

While the CDE has changed its response to questions regarding the legality of homeschooling by establishing small home based private schools, this change in policy does not change the law. It is still necessary for private schools to follow the statutory requirements for establishing a private school in California.

Must a private school have more than 6 students?

No. The only reference to the number 6 has to do with a budgetary issue. The state is required to compile a directory of all private schools that have 6 or more students, and specifically is prohibited from using state funds to include smaller schools in that directory.

Does a private school have to be operated outside of a home and run as a business, including charging tuition?

The Education Code does not say that a private school has to be operated outside of a home or run as a business. It does not need to charge tuition.

What forms must I maintain in order to have a valid private school?

If you decide to operate a small private school, you must maintain the following records:

A copy of the private school affidavit as filed by your school. If you file online, make sure you have printed a copy prior to submitting it, and keep a copy of your signed confirmation copy. Also, the following:

- Attendance Records
- Courses of Study offered
- Faculty and their qualifications (you can write short resumes of the teachers, including

their education and teaching experience)

- Criminal Record Summaries, unless all persons teaching are working exclusively with their own children
- Immunization Records or Waivers

Although you must keep these records, an attendance officer is entitled to see only a copy of the filed affidavit and a verification of attendance. A verification of attendance is simply a letter stating that your child is enrolled and attending your private school. You may wish to keep additional records such as the actual course work, grades, etc. These records are not legally required and should not be volunteered to any government agency. (Education Code section 48321.5 (e))

The legal team has prepared a letter that you can give to anyone who challenges your authority to homeschool or who demands to see any papers other than your affidavit and attendance records. The letter explains what statutory authority there is for parents forming their own home-based private schools and covers which documents the state has the authority to see and which it does not. We recommend that you print out a copy of this letter and put it in the binder you keep with your copy of your affidavit.

How do I get an affidavit?

Schools that filed last year for more than 6 students should have been contacted with their password for accessing their prior year's affidavit and updating it. New schools and those with fewer than five students will need to file a complete affidavit every year. The private school affidavit is available online at <https://www.cde.ca.gov/sp/ps/affidavit.asp>

For those without access to the Internet, a paper affidavit will be available. Schools should request a paper affidavit from the **California Department of Education, Policy & Program Coordination 1430 N Street, Rm. 4309, Sacramento, CA 95814**. While some people have expressed security concerns over online filing, and others have expressed concern over having their information in an easily searched database, we have not encountered any problems. We encourage people without personal access to the on-line form to go to friends, neighbors, or the local public library and fill out the on-line form.

When do I need to file an affidavit?

All private schools are required to file an affidavit each year between October 1 and October 15. (Education Code § 33190.) They should NOT be filed earlier; if you file earlier by mistake, file again in the correct time frame and say, when you send in the confirmation copy, that the new filing replaces the earlier one. Schools begun after October 15 but before the end of the regular school year should consider whether they should file an affidavit for their first year.

They should then file an affidavit each year between October 1 and October 15. Do not file in the summertime, even if you feel your school is in operation then.

Why is it important to file an affidavit?

The law provides an exemption from compulsory public school attendance for children who are being instructed in a private, full-time day school. (Education Code §§ 48200, 48220, 48222.) However, the exemption is not valid until the attendance supervisor of the public school district verifies that the private school has complied with the requirement to file the annual Private School Affidavit. (Education Code § 48222.)

By filing the affidavit, the owner or other head of the school certifies, under penalty of perjury, that the information on the form is true, that the records that are required to be maintained are being maintained at the address stated on the form, that the records are true and accurate, that criminal record summary information has been obtained pursuant to Education Code Section 44234, and that neither the owner nor the operator of the school has been convicted of any crimes that would prohibit his or her employment in a private school. (Education Code §§ 33190, 44237.)

If you are contacted by the attendance supervisor, you only need to show him or her the affidavit. Once the affidavit has been provided, the supervisor can verify that your private school complied with the filing requirement. The attendance supervisor or any other government official may ask to see other documentation relating to your school, such as curriculum or work samples. You are NOT required to furnish these.

How should I fill out my private school affidavit (PSA) form?

The questions are generally self-explanatory but HSC has line by line instructions on our website. Keep in mind that your school is a day school (residential boarding schools have complex requirements), does not offer kindergarten (it is not compulsory and there are additional legal requirements), you can offer a diploma, your school is not eligible for NDSL loan cancellation status, and most schools do not have a tax exemption.

Are there any risks to filing the affidavit online?

Information submitted online is inherently vulnerable. A hacker could access it. Some people have expressed concern that predators could look for schools with a small number of children nearby. We believe that people with criminal intent will not be given any advantages by these online filings; they only need to drive around to find homes with small children. There is very little other information in the affidavit that would be of great value.

What is the affidavit used for? Can my local school district access the information and use it to prosecute my children for truancy? Wouldn't it be safer for me not to file anything?

The CDE regards the affidavit as a purely ministerial document. It is used to report annual

information required by law from private, full-time day and boarding schools. The information from private schools with 6 or more students is then used to publish the California Private School Directory. Private Schools with less than 6 children do not go into the online searchable Directory.

Filing the Private School Affidavit does not mean that the State of California or any accrediting agency has made any evaluation, recognition, approval, or endorsement of the school or course. (Education Code § 33190.) The affidavit is not a license or authorization to operate a private school; the state does not grant these to anyone. It's simply notification to the state that your private school exists.

If you fail to file an affidavit and comply with the private school requirements, or to follow the requirements for the other homeschooling options listed above (How do I go about homeschooling?), then your children are not complying with the compulsory education statute and they are truant.

Will filing your affidavit correctly protect you from a claim by your local district that your children are truant?

The filing of the affidavit cannot protect you from attendance officers starting a truancy investigation, but it should protect you from it going very far. In the past, we have had to battle a number of problems, and there may well be some in the future. There have not been any recently. HSC is not a legal services organization, but in a number of situations we have sent letters and legal briefs on an "amicus" (friend of the court) basis informing governmental officials of what the law really says. In each case in which we have gotten involved, the issue has gone away. We know that other homeschool organizations do the same and have a similar track record. At best, the law is ambiguous, and at worst (from the government's viewpoint), homeschoolers are right. Most district attorneys, once they learn about a family's private school and the ambiguities of the law, quickly decide they don't have the time or energy to take on cases like that, when there are murderers and drug dealers to prosecute.

How do truancy proceedings get started? What do I do if a truancy officer comes to my door?

The local student attendance review board can only start investigating truancy if it has the name of a child. The affidavit does not ask for student names. You should not give your children's names to anyone. If they somehow have your children's names (for example, because your children had been enrolled in the public school), they can contact you, either in writing or by sending an officer to your home. If you are contacted in writing, reply on letterhead and say the child is enrolled in the private school and enclosed is a copy of the filed affidavit. If someone comes to your door, our advice remains the same. Without a warrant, they cannot come in. Do not let them. If they are wondering why your children are not in school, show them a copy of your filed affidavit (or, if they come before the October 15 deadline and before you have filed it or if you formed your school after October 15 and

chose not to file, tell them your children are enrolled in a private school and that the school's affidavit will be filed by the deadline; if you filed last year as well, you can give them a copy of the prior year affidavit). You can also prepare a letter on school letterhead to have on hand saying that [name of child] is enrolled at and attending [name of school]. DO NOT give them anything else. They are not entitled to "go behind" the affidavit and attempt to verify the truth of the statements you make. Not only can they not ask to see your curriculum, etc. while standing at your door, they couldn't even get a subpoena to see it. The state law is very clear that private schools are not regulated. Even if they continue their proceedings and find your child truant, and send a referral of the case to the district attorney, we think it unlikely that the DA will continue to prosecute the case if informed of the law. [Download the legal brief.](#)

I have filed the private school affidavit certifying that I maintain all of the required private school records. If the attendance supervisor from the public school district verifies the filing of the affidavit, am I also required to show the records to the attendance supervisor?

Once you have mailed your confirmation copy of the affidavit and have some proof of your mailing (we recommend certified mail, return receipt requested), we believe that the government has an obligation to verify that your affidavit was filed. You are not required to provide any other documents, other than perhaps a letter saying that [name of child] is enrolled in and attending [name of school]. Under the statutes, the attendance supervisor is not authorized to request these records from any private school. They would really like to say they are, but the statutes are very clear on this point. If the government believes you were lying when you signed your affidavit, their only option is to begin a criminal proceeding for perjury.

If an officer for Child Protective Services contacts me, what do I do?

CPS officers may not enter your home or speak with your children without a warrant. Warrants are only issued if there is a threat of imminent physical harm. "Educational neglect" is not a form of child abuse in California. However, psychological abuse is a form of child abuse. In an extreme case, educational neglect could be one of several allegations against a family, but it would not hold up without other substantial allegations. For instance, if you were isolating your children by preventing them from leaving your home or you were seriously neglecting them by failing to provide a safe home or adequate food, the addition of an additional charge of educational neglect would only be one of many factors considered. Homeschooling in and of itself is not educational neglect. If you are involved in a custody situation or are investigated by Children's Protective Services, you will need to consult with an attorney immediately who is familiar with homeschool law as well as custody and juvenile dependency law. If you ever have any hostile contacts regarding homeschooling, please inform an HSC board member. HSC maintains a list of attorneys and experts with experience in these areas.

What educational goals must my children meet each year?

If your children are enrolled in a public program, your contact teachers will explain what is required in the way of curriculum. If you are enrolled in a private school other than your own, they will also tell you what is expected. If you operate your own private school, you must offer the course of study required for the applicable grade levels. Your children do not have to study them, but you must have a document in your school file saying you offer them. Each parent is free to decide what curriculum or teaching method will best meet your child's needs. Education Code section 51210 contains a very broad description of these required subjects for elementary students:

The adopted course of study for grades 1 to 6, inclusive, shall include instruction, beginning in grade 1 and continuing through grade 6, in the following areas of study:

- (a) English, including knowledge of, and appreciation for literature and the language, as well as the skills of speaking, reading, listening, spelling, handwriting, and composition.
- (b) Mathematics, including concepts, operational skills, and problem solving.
- (c) Social sciences, drawing upon the disciplines of anthropology, economics, geography, history, political science, psychology, and sociology, designed to fit the maturity of the pupils. Instruction shall provide a foundation for understanding the history, resources, development, and government of California and the United States of America; the development of the American economic system including the role of the entrepreneur and labor; the relations of persons to their human and natural environment; eastern and western cultures and civilizations; contemporary issues; and the wise use of natural resources.
- (d) Science, including the biological and physical aspects, with emphasis on the processes of experimental inquiry and on the place of humans in ecological systems.
- (e) Visual and performing arts, including instruction in the subjects of art and music, aimed at the development of aesthetic appreciation and the skills of creative expression.
- (f) Health, including instruction in the principles and practices of individual, family, and community health.
- (g) Physical education, with emphasis upon the physical activities for the pupils that may be conducive to health and vigor of body and mind, for a total period of time of not less than 200 minutes each 10 schooldays, exclusive of recesses and the lunch period.
- (h) Other studies that may be prescribed by the governing board.

Subjects required to be offered for middle school or high school students can be found in Education Code section 51220:

The adopted course of study for grades 7 to 12, inclusive, shall offer courses in the following areas of study:

- (a) English, including knowledge of and appreciation for literature, language, and composition, and the skills of reading, listening, and speaking.
- (b) Social sciences, drawing upon the disciplines of anthropology, economics, geography, history, political science, psychology, and sociology, designed to fit the maturity of the pupils. Instruction shall provide a foundation for understanding the history, resources, development, and government of California and the United States of America; instruction in our American legal system, the operation of the juvenile and adult criminal justice systems, and the rights and duties of citizens under the criminal and civil law and the State and

Federal Constitutions; the development of the American economic system, including the role of the entrepreneur and labor; the relations of persons to their human and natural environment; eastern and western cultures and civilizations; human rights issues, with particular attention to the study of the inhumanity of genocide, slavery, and the Holocaust, and contemporary issues.

(c) Foreign language or languages, beginning not later than grade 7, designed to develop a facility for understanding, speaking, reading, and writing the particular language.

(d) Physical education, with emphasis given to physical activities that are conducive to health and to vigor of body and mind.

(e) Science, including the physical and biological aspects, with emphasis on basic concepts, theories, and processes of scientific investigation and on the place of humans in ecological systems, and with appropriate applications of the interrelation and interdependence of the sciences.

(f) Mathematics, including instruction designed to develop mathematical understandings, operational skills, and insight into problem-solving procedures.

(g) Visual and performing arts, including art, music, or drama, with emphasis upon development of aesthetic appreciation and the skills of creative expression.

(h) Applied arts, including instruction in the areas of consumer and homemaking education, industrial arts, general business education, or general agriculture.

(i) Vocational-technical education designed and conducted for the purpose of preparing youth for gainful employment in the occupations and in the numbers that are appropriate to the personnel needs of the state and the community served and relevant to the career desires and needs of the pupils.

(j) Automobile driver education, designed to develop a knowledge of the provisions of the Vehicle Code and other laws of this state relating to the operation of motor vehicles, a proper acceptance of personal responsibility in traffic, a true appreciation of the causes, seriousness and consequences of traffic accidents, and to develop the knowledge and attitudes necessary for the safe operation of motor vehicles. A course in automobile driver education shall include education in the safe operation of motorcycles.

(k) Other studies as may be prescribed by the governing board. In addition, Education Code section 51220.5 requires that students in grades 7 or 8 shall study the equivalent content of a one-semester course in parenting skills and education with content designed to develop a knowledge of topics including, but not limited to, all of the following:

1. Child growth and development.
2. Parental responsibilities.
3. Household budgeting.
4. Child abuse and neglect issues.
5. Personal hygiene.
6. Maintaining healthy relationships.
7. Teen parenting issues.
8. Self-esteem.
- 9.

The state has adopted scope, sequence and content standards for the coursework required in

each grade. These are available as PDF files and can be found at: <http://www.cde.ca.gov/be/st/ss/index.asp>. These standards are extremely detailed. While some homeschooling families try to follow them, there is no obligation that private schools do so. Many families merely keep the list of required courses of study on file and, with their children, make their own determination of what to study.

How do I remove my child from public (or private) school?

Big schools in the more urban districts do not necessarily expect students to return each year, due to the mobility of the population. If you live in such an area, and your child has not attended any classes at the beginning of the fall semester, you might not need to give prior notice to your school, although you should, by late October, make sure that your new school (your home-based private school or any other school your child is enrolled in) requests your child's cumulative file, as discussed later. If you live in a smaller district, you might need to give notice if you do not intend for your child to attend for the current year.

You are entitled to withdraw your child from school mid-year for any reason, and to enroll your child in any other school that you wish, whether a public program, a private PSP or your own home-based private school. However, it may be a little more complicated than if your child never attended during that school year or if your child has never been enrolled in public school, because the school has a record of your child and may be unwilling to lose your child as a student. The school will lose funding when you withdraw your child and may try to convince you that you are not capable of teaching your child or that you cannot homeschool using the private school option. They may even threaten you with a report to the truancy officer. As long as you follow the legal requirements set forth above, you can withdraw your child from public or private school and legally homeschool.

If you are thinking about withdrawing your child, we believe it is essential that you keep your communications with school personnel as calm and professional as you can, especially if you have been having problems. If your child has, in fact, been truant and you withdraw, then you need to be especially careful, as the school may be less willing to accept your new school as an acceptable alternative. If your family is particularly under the school's microscope, you will need to weigh the continuing to fight the school or, worse, the truancy board against other alternatives the truancy board might accept, such as a public or charter school independent study program or private satellite program. It might be best to try to find such a program for the remainder of the current year and then, if you wish, enroll your child in your home-based private school at the beginning of the next school year.

If you decide to start your own school, make sure you have all of your documentation for your school before you remove your child from school. You must give notice within three days of your child leaving the school; we recommend that you write a very professional letter on school letterhead informing them that [name of child] has been enrolled as a student in [name of school and request his or her cumulative file (EC section 49068)]. The school is required to give it to you and this letter closes its file on your child. If you do not receive it within a few months, send another polite, professional letter on your letterhead informing

them that on date X (enclose a copy of the original letter) you requested the child's cumulative file and that you have not received it yet. It might help to enclose a large pre-addressed envelope with a lot of postage on it.

How can my homeschool student graduate from high school?

If your child is enrolled in a public or private ISP and they complete all graduation requirements, most programs will issue a diploma. Another alternative is to take the [California High School Proficiency Exam \(CHSPE\)](#), which, upon successful passage, will be the equivalent of a high school diploma. This is a popular option among homeschoolers who (with the permission of their high school principal or counselor) can take the test when they are working at a 10th grade level (thus, many 13+ teens take and pass it). Finally, there is nothing in the California statutes that prevents a home-based private school from issuing a diploma.