

A Homeschool Primer for

Professionals

Linda J. Conrad, Esq., Elizabeth Bryant, Esq. and Debbie Schwarzer, Esq.

Parents in California may legally educate their children themselves, or "homeschool", using a number of different choices. They can use public independent study or charter school programs, home-based or campus based private schools (including schools just for that family's children), or tutor their children, if they have a credential. This short overview focuses first on the legal requirements for establishing a small, usually home-based, private school. Second, it provides a brief overview of other legal options, such as private satellite programs, tutoring, public school independent study options and charter schools. It concludes with a brief look at some of the other legal issues facing homeschoolers, including divorce, contacts from government officials and access to welfare benefits.

I. Compulsory Attendance

All school age children must attend school or they are truant. The California Education Code states: "[A]ll children between the ages of 6 and 18 must attend a public full-time day school unless otherwise exempted." (§48200) There are two statutory exemptions: First, the private tutoring exemption for children who are instructed at least three hours each day; 175 days a year by a teacher holding a valid California teaching credential for the grade taught (§48224); and second, the private school exemption for children enrolled in a full-time private school (§48222) that complies with certain statutory requirements. Any child who will be six on or before December 2 of the school year is subject to the compulsory school requirements (§48010).

Homeschooling families in California comply with the compulsory attendance law in one of several ways: (a) home-based private schools that comply with the statutory requirements (§48222 exemption); private school satellite programs for homeschoolers (§48222 exemption); using a private tutor (§48224 exemption); using a public school independent study (public school); or using a public charter school independent study, distance learning, or homeschool program (public school).

II. Home-Based Private Schools

Children are exempt from compulsory attendance if they "are being instructed in a private full-time day school by persons capable of teaching." For the exemption to be valid, the school must comply with the requirement in the statute regarding filing of an affidavit. (§48222) A private school has been defined as "any school, whether conducted for profit or not, giving a course of training similar to that given in a public school at or below the twelfth grade, including but not limited to schools owned or operated by any church." (Vehicle Code §492.) This broad definition includes home-based private schools as well as private school cooperatives and private school satellite programs. While some of the programs offered by private schools operated by others have some benefits for some families, many families establish their own private schools.

In California, any individual may establish a private school in any location without a teaching credential or a business motive as long as they follow the statutory requirements in the Education Code. Once it has been established, the school must file a private school affidavit annually (§33190.) The affidavit contains certain information about the school (address, number of students, names of certain administrators) and requires the person filing to affirm, under penalty of perjury, that the statements in the affidavit are true.

Home-based private schools are required to keep the following records: (a) attendance records (§48222); courses of study offered (§33190); faculty qualifications (§33190); criminal record summaries (§§33190 and 44237); Immunization records or waivers (Health and Safety Code §120335.); and the private school affidavit (formerly known as an R-4) (§33190)

A government official, such as an attendance officer, is legally entitled to see a copy of the filed private school affidavit, the attendance records, and a letter verifying that the children are enrolled in and attending the school. Although private schools are required to keep the other records in the above list, no public official is entitled to see them without a subpoena.

There are no statutory requirements for documenting the work completed at private schools. Homeschoolers often do keep work samples or summaries of work. Families operating private schools should keep

records to confirm work completed to prepare transcripts for transfer to another school or college applications.

A. Attendance and School Hours

The private school may set length the school day and year, and when it is in session. California law does not require that private school students attend classes at any particular hours or on any particular days. A student who is out in public during times when public school students are normally inside a school building is not necessarily doing anything inappropriate, and is certainly not doing anything illegal (unless the community has a daytime curfew ordinance).

B. Courses of Study

California law requires that instruction in private schools be in English and "in the several branches of study required to be taught in the public schools" (§48222). How or what private schools teach within those branches is up to the school. The "adopted course of study for grades 1 to 6" is set forth in §51210, and the adopted course of study for grades 7 to 9 " is set forth in §§51220, 51220.5, and 51221 (these lists are fairly general and far less specific than scope and sequence lists that public schools must follow). Although instruction must be offered in those areas by the school, it is not necessary to offer them in the same years, or in the same sequence, as the public school, except as specifically noted in the statute.

Many private schools attempt to duplicate as closely as possible what is taught in the public schools, and use the same textbooks and materials, but this is not required. The state laws do not require that private schools use any particular curriculum materials; it is up to the private school to design its curriculum. While some parents use a "boxed" curriculum available from any number of vendors, many parents use a wide variety of materials, not just conventional educational materials but also literature, practical experience, and materials available over the internet. Some parents also follow a philosophy known as "unschooling", in which the children are permitted to take on learning tasks as they naturally become ready and interested. While the parents are watching closely to see that material in all fields of learning is available and to facilitate learning whenever possible, they do not require the children to engage in particular activities.

C. Faculty and Employees

Teachers in private schools do not need teaching credentials. §48222 requires that the teachers be "capable of teaching," but this phrase is not defined. Some states require that homeschooling parents have a high school diploma or college degree; California has not adopted legislation about who may teach in private schools.

Because parents teaching their own children generally have a very good understanding of their children's learning styles, needs, and intellectual strength and weaknesses, and because they generally are not dealing with large numbers of children at any time, the specialized training that is given as part of the credentialing process isn't really applicable to parents.

D. Criminal Record Summary

§44237 states that the criminal record summary is not required for parents teaching only their children. Parents who do hire others to teach their children in their home may need to obtain criminal record summary information on them.

E. Immunizations

Health and Safety Code (hereinafter H&S) §§120335 and 120375 require private schools to obtain documentation that each pupil has received early childhood, tetanus, and hepatitis B immunizations. Immunization records can be obtained from the child's doctor. If a parent files a letter or affidavit with the school that the immunization is contrary to his or her beliefs, the child is exempted from the immunization requirement. (H&S §120365.) A medical exemption can be obtained from the child's doctor if the physical condition of the child is such that the immunizations are not considered to be safe (H&S §120370).

F. The Private School Affidavit

After the private school has been established and all of the required documentation as described above has been prepared, then the school must file a private school affidavit and then renew it annually. Affidavits are usually filed online at the Department of Education website. The filing requirements are the same regardless of the size of the school.

The private school affidavit must be filed between October 1 and 15 each year. The CDE does not accept early filings. If a school is established

after October 15 but before the summer break, the affidavit should be filed when the school is established. The fact that the affidavits are filed after the school year typically starts is not a problem. No private school can file before October 1, and the state does not claim that every private school student is truant between mid-August and October 1.

G. California Department of Education Letters

The California Department of Education changed its policy in 2003 and no longer takes the position that parents may not establish and operate their own private schools for their own children. See the Department's website at <http://www.cde.ca.gov/sp/ps/cd/psfaq.asp#psfaqs12> for information about their position. For more information about the legality of homeschooling, please see the essay, *The Legality of Homeschooling Using the Private School Option*, available online at www.hsc.org.

H. Business Licenses and Health Codes

Parents operating private schools to educate only their own children are not required to obtain city business licenses. Anyone enrolling a child outside the family and charging tuition should consult counsel to see what the tax and permit ramifications would be. Most jurisdictions have ordinances regarding health and safety issues at schools, but these generally apply only to schools with large numbers of students (such as 50).

I. Private School Cooperatives

Some homeschoolers set up cooperative private schools. A cooperative is a group of parents joining together to start a school. The requirements are essentially the same as starting a home-based private school.

Unless the cooperative school holds formal and regular classes with one of the parent-teachers teaching a group of children who are not their own, the criminal record summary required by §44237 is not required. However, if the school has traditional classes where a parent is working with other children, then the school must obtain a criminal record summary for all teachers.

J. California Statutes Applicable to Private Schools

A number of California statutes apply to private schools. These include the requirements for establishing a private school, as well as miscellaneous safety and health requirements. HSC has a separate booklet available on request, and on its website, entitled "[Selected California Statutes Applicable to Homeschooling](#)" listing many of these statutes.

III. Private Satellite Programs

In addition to the private schools operated by one family for its own children, there are a number of other types of private schools offering programs for families wanting to homeschool. These range from the cooperatives mentioned above, to for-profit PSPs that file paperwork and collect records for a fee, to site-based day schools that offer independent study, to distance learning programs. All satellite programs offered by private schools fall under the same legal option as parents establishing their own private school, and the exemption from compulsory attendance is only valid if the private school has complied with the statutory requirements for California private schools.

Private programs vary widely in offerings, philosophy and structure. Some offer complete curricula and home study assignments; others serve only as administrative record keepers for independent homeschooling. Some families appreciate the structure, the record keeping, and the anonymity the private PSPs may offer.

Private out-of-state PSPs, while useful for curricular support, only satisfy the legal requirements for public school exemption if the school has filed its own affidavit in California and complies with all other legal requirements for a private school in this state.

IV. Tutoring

Parents with a valid teaching credential can act as a tutor for their children, or parents may employ a credentialed teacher. However, tutors and parents who choose to tutor their own children must fulfill all of the requirements of §48224. These rules are far more restrictive than those applicable to private schools, and for this reason this option is not often used, even by those parents who hold credentials.

It is the California Department of Education's position that a person holding a Multiple Subject Credential, which ordinarily is only deemed

suitable for elementary education, may tutor in all subjects K-12 on the theory that, in a tutoring situation, the classroom is "self contained".

V. Public School Independent Study Programs

Enrolling a child in a public school independent study program is the legal equivalent to enrolling him in public school. These are the "home study" programs offered by many school districts. Public ISPs vary widely from school to school in the level of control they exert over their students and the services they offer. Many districts offer no independent study options, and in many other districts, the ISP is true to its historical roots - it is remedial in nature, or is intended for delinquent students. Other districts have vibrant programs aimed directly at the growing numbers of homeschooling families.

These programs can be appealing for a wide variety of reasons. Some offer children the chance to compete on a school sports team, or give ongoing social opportunities and classes. Some families prefer the structure or guidance provided by a credentialed teacher, and some schools provide the curriculum (and may require assignments, worksheets, grades and standardized testing). Some school districts offer "split-site" options, where students can attend a few classes at the local school and the remainder through independent study.

ISP programs may, or may not, use the same curriculum materials as their regular district schools. More innovative programs work with parents to develop a curriculum meeting the needs and interests of that family's children.

VI. Charter Schools

The newest method of homeschooling is using independent study, distance learning, and homeschooling programs developed by various charter schools throughout the state. Again, these programs vary widely. Charters are limited to serving students in their home county or contiguous counties. Some charter schools offer students the opportunity to compete on public school sports teams, while others are only distance learning programs using the Internet.

VII. Testing and Accountability

Many parents are opposed to standardized testing for their children. They feel that because they are teaching their children and with them every

day, they are well aware of their children's progress and know what their children's strengths and weaknesses are. Many also believe that the very process of taking a standardized test is objectionable.

Children in public school programs, including charter schools, may or may not be required to take the usual state standardized tests as a condition of enrolling in the program. Programs that receive or are affiliated with districts that receive federal funding are under increased pressure to require that all students test. Although parents in California do have the guaranteed option under state law of excusing their children from standardized tests, programs are finding that they have to condition enrollment on agreeing to test, which is negatively impacting enrollment in the public programs.

State law does not require that children in private schools take any standardized tests. The legislature chose to let parents determine whether their children are being educated satisfactorily. Of course, many private schools offer or require some form of testing, mostly because the parents expect it. Families that operate their own private schools and wish to test do have the ability to locate testing services that will test their children.

Because California law has no "accountability" rules for any of its private schools, large or small, there will not necessarily be any customary "proof" of student achievement from these schools. The larger schools tend to follow the public schools in their testing and grading habits, but many more experimental schools or home-based schools do not use customary testing or grading at all, but rely instead on close, personal evaluation of the children.

VIII. Special Situations

A. Withdrawing A Child from Public or Private School Mid-Year

Parents have the absolute right to withdraw their child from public school and use any other legal option to educate their child. Some children receive special services under an IEP; the IEP may have requirements that parents and children follow certain agreed procedures, but the parents may withdraw their children and find the services their children need independently.

B. Homeschooling after a Divorce

Although it is legal to homeschool after a divorce or in a situation where the other parent does not agree with homeschooling, the ultimate decision as to whether a parent can homeschool may be up to the Family Law Court. The judge will make a decision based upon the evidence presented at the court hearing regarding what is in the child's best interest. As homeschooling grows in popularity, we find that attorneys and judges are more willing to learn about its benefits and consider it when making educational decisions.

Two primary obstacles to homeschooling after a divorce are (1) opposition by one parent and (2) lack of accountability. First, the parent who wants to homeschool and any legal representatives should try to educate the other parent about the benefits of homeschooling. Usually the benefits are both to the child and to the child's relationship with that parent. If that is not possible, then the parent who wants to homeschool should decide whether homeschooling is worth the battle with the other parent. The parent needs to consider whether homeschooling over the other parent's objection is in the child's best interest.

Second, in order to prevail on the homeschooling issue in a custody case, accountability must be documented. Unlike most homeschooling situations, the homeschooling parent must be prepared to document the academic learning and social development of the child. This documentation can be done in several ways: (1) enrollment in a public or private homeschooling program where educators other than the parent document the child's progress; (2) enrollment in a public charter school; (3) hire an independent tutor; (3) consult with a professional educational consultant who will write progress reports; or (4) use independent testing sources. While these suggestions can help document the child's school progress, there is no guarantee that a court will accept it or allow a parent to homeschool.

When a court gets involved in the homeschool decision, its responsibility is to do what it believes to be in the best interest of the child based on the evidence and its information about homeschooling. The court wants to make the right decision, and needs to be given enough information to help it. It must be given evidence about the specific homeschooling situation and reliable homeschooling information, in as concise a form as

possible. By providing this information, the court has the best chance to reach the right decision for the child.

C. Truancy Investigations

The compulsory attendance laws are enforced by attendance officers, usually at the district level, and sometimes by the county office of education. An attendance supervisor (truant officer) is only authorized to verify that the student is enrolled in and attending a legal school. If the child is in a public program, the parent should give them the administrator's name. If the child is in a private school operated by someone else, the parent should have a copy of the letter confirming the child's attendance. The attendance officer needs to contact the school administrator for other information. If the parent operates a private school, then the officer is entitled to verify that the child is attending the private school and that the "private school has complied with the provisions of §33190 requiring the annual filing by the owner or other head of a private school of an affidavit or statement of prescribed information with the Superintendent of Public Instruction." (§§48321.5 and 48415.). The officer or a social worker has no authority to obtain additional information or records.

D. Children's Protective Services

Educational neglect alone cannot be a basis for an investigation and police officers and CPS workers cannot enter a home without a warrant or a reasonable belief that the child is in imminent danger of physical harm. Psychological harm is not enough.

E. Welfare Benefits

Welfare benefits cannot be denied just because a family is homeschooling their children as long as they are using one of the legal options. It should be enough for the homeschool family to provide a verification of enrollment and attendance in school to the child support agency, together with a copy of the private school affidavit if the family operates its own school.

All references to code sections are to the California Education Code unless otherwise noted.