

VIRGINIA

Compulsory Attendance Ages: “have reached the fifth birthday on or before ... September 30 ... and who has not passed the eighteenth birthday.” Code of Virginia Annotated § 22.1-254.A. However, “any child who will not have reached his sixth birthday on or before September 30 of each school year whose parent or guardian notifies the appropriate school board that he does not wish the child to attend school until the following year because the child, in the opinion of the parent or guardian, is not mentally, physically or emotionally prepared to attend school” is exempt from attending school. Va. Code Ann. § 22.1-254(H). A child who has obtained a high school diploma or equivalent or GED is exempt from compulsory attendance. Va. Code Ann. § 22.1-254.A, fourth paragraph.

Required Days of Instruction: Generally, 180 days. § 22.1-254 (same number of days as public school).

Required Subjects: None.

Parents have four options from which to choose to home school legally:

Option I: Home School Statute. Va. Code Ann. § 22.1-254.1. “Home Instruction”

1. Parental instruction of children is an acceptable form of education. Va. Code Ann. § 22.1-254.1(A).
2. Parents must annually notify their local superintendent of their intention to home school by August 15. If moving into the school district or if starting home instruction after the school year has begun, parents must notify “as soon as practicable” and thereafter comply with other requirements within thirty days of notice. There is no requirement to use the local school district’s form.
3. Approval is not required. “Approval is automatic so long as a proper notice is filed.” State Supts. Memo No. 105, June 6, 1984. The same is true for families starting after the school year has begun: “...subsequent to providing the school division with a notice of intent, such parents can begin home schooling and they will have 30 days to submit the other information required.” Supts. Memo No. 124, June 9, 2006, referring to the legislature’s 2006 addition of the word “thereafter” to the notice requirement.
4. Parents must satisfy one of four options: (i) have a high school diploma, **or** (ii) be a “teacher of qualifications prescribed by the Board of Education,” **or** (iii) provide a curriculum or program of study, **or** (iv) provide evidence that the “parent is able to provide an adequate education.” State Supt. Memo 105, June 6, 1984, stated that in determining whether a parent can provide an adequate education, a local superintendent should determine “whether the document itself exhibits a mastery of language by the writer; whether it includes plans for instructional activities; and whether it presents a reasonable scope and sequence of content. The [local] superintendent does not have to approve or disapprove the activities or the content and should not pass judgment on whether the curriculum is a satisfactory substitute for that of the public schools. That should be left to the parent.”
5. Parents must submit a “description of curriculum” which is a list of subjects they intend to teach. Families are not required to describe the content of individual courses.
6. Anyone aggrieved by a superintendent’s decision may appeal within 30 days to an independent hearing officer.

Alternative Statutes Allowing for Home Schools:

Option II: Religious Exemption Statute. “A school board shall excuse from attendance at school any pupil who, together with his parents, by reason of bona fide religious training or belief is conscientiously opposed to attendance at school.” § 22.1-254(B)(1). Homeschoolers may receive an exemption under this statute according to § 22.1-254.1(D). This exempts them from *all* requirements under the home school law. § 22.1-254 (H)(5).

In *Johnson v. Prince William County School Board*, 404 S.E.2d 209 (1991), the Virginia Supreme Court agreed with HSLDA’s arguments and ruled that the “sole test is the bona fides of their (a home school family’s) religious beliefs.” The state’s interest in education cannot be considered. The court also held that a

family only has to demonstrate religious opposition to attendance at public school, not opposition to the home school statute or private school attendance. In HSLDA's case, *Dusan v. Cumberland Co. School Board* (Chancery No. 2102, Cumberland Co. Circuit Court, Judge Snoddy, Sept. 15, 1993), the Court agreed with HSLDA and favorably applied the *Johnson* case and reversed the board's denial of the parents' religious exemption.

Families wishing the protection of this exemption should prepare a letter describing their religious beliefs opposing public school attendance, allow us to review it, and then submit it to the school board. Some counties have policies that attempt to impose additional administrative burdens. Contact us if you encounter one of those policies.

Option III. Certified Tutor Statute:

If a parent is certified in Virginia, he need only provide a one-time notice to the local superintendent that he will be tutoring children (the name of the children who will be tutored should not be included) and verify that he is certified. § 22.1-254(A). Two courts have ruled that homeschool parents can use this option. One was HSLDA's case, *Prince William Co. School Board v. Charles Berlin*, No. CH-34982, Prince William Co. Circuit Court, Judge Richard Potter, Nov. 24, 1993. Subsequently, a State Superintendent memo advised all school districts to follow the *Berlin* ruling.

Option IV. Private or Denominational School:

Groups of homeschoolers can create private schools with each home a part of the campus and each parent a teacher. Private schools are not regulated. § 22.1-254. An individual home school cannot be a private school. § 22.1-254.A. A private school can establish a distance program (or virtual program, or satellite program) where a student is enrolled in and under the authority of the private school, but the student is taught primarily by his parents at home.

Teacher Qualifications: None.

Standardized Tests: Only for parents choosing Option I, and only if the child was 6 or older by Sept. 30. By August 1, submit one of the following. Va. Code Ann. § 22.1-254.1(C) **1.** Results of any nationally normed standardized achievement test showing the child attained "a composite score in or above the fourth stanine" (i.e., 23rd percentile); or **2.** An evaluation letter from a person licensed to teach in any state, or a person with a master's degree or higher in an academic discipline, having knowledge of the child's academic progress, stating that the child is achieving an adequate level of educational growth and progress; or **3.** A report card or transcript from a community college or college, college distance learning program, or home-education correspondence school; or **4.** Another type of "evaluation or assessment which the division superintendent determines to indicate that the child is achieving an adequate level of educational growth and progress." If you plan to submit an assessment under test option 4, it is strongly recommended that you discuss this with the school system early in the school year.

Neither the test administrator nor evaluator is required to be approved in advance. Any standardized test can be administered anywhere, anytime, by anybody.

If progress is not shown, the superintendent may place the program on probation for one year. Parents must file "evidence of their ability to provide an adequate education" and a remediation plan addressing any educational deficiency. Home instruction must cease if the superintendent does not accept the remediation plan or if progress as required is not shown by August 1.

AP and PSAT Tests

Public schools are required to make PSAT and AP tests available to homeschoolers. Contact your school system early in September for local deadlines.

Parent-Taught Driver Education

Home schooled students can use a state-approved correspondence course for the classroom instruction, and parents can provide the behind the wheel instruction if certain requirements are met.

Religious Freedom Act: Virginia Code § 57-2.02

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WEST VIRGINIA

Compulsory Attendance Ages: Begins with the school year in which the sixth birthday is reached before September 1, or upon enrolling in a publicly supported kindergarten program, and continues to the sixteenth birthday. West Virginia Code § 18-8-1(a). (Younger and older students are subject to compulsory attendance while actually enrolled in a public school. WV Code §18-5-44(d)(1) and §18-8-1a.)

NOTE: House Bill 4593, which passed March 26, 2010, increased the maximum age of compulsory school attendance from 16 to 17 beginning with the 2011-2012 “freshman cohort class of students.”

Required Days of Instruction: Under “notice” option, none; under “approval” option, 180 days. WV Code § 18-5-45.

Required Subjects: Under “notice” option, none (but students must be tested in certain subjects, see “Standardized Tests” below). Under “approval” option, school board has discretion concerning which subjects are required. WV Code § 18-8-1(c).

Home School Statute: WV Code § 18-8-1(c) creates two homeschool options, “approval” and “notice.”

Option 1. “Approval Option:” Subsection (c)(1) allows a school board to approve homeschooling.

- a. Instruction must be in a place approved by the board;
- b. Instruction must be for a time equal to the school term of the county;
- c. If requested, family must furnish attendance, instruction and progress information;
- d. School board may deny approval for “good and reasonable justification” (denial must be in writing).

Option 2. “Notice Option” – Under subsection (c)(2), a person or persons may homeschool after filing a notice (no particular form is required). If the child is enrolled in a public school, it must be filed two weeks before the start of the home school program.

The notice must state that the person(s) intend to provide home instruction. It must include the child’s name, address, age, and grade level, an outline of a plan of instruction for the year, and evidence of the person(s) high school diploma or equivalent.

Alternative Statutes Allowing for Home Schools:

A group of parents may form a private, parochial, church, religious or “other nonpublic school” under WV Code §18-8-1(k). The school must comply with the requirements of WV Code 18-28-1, et seq.

Teacher Qualifications:

Option 1: Instruction must be by a person who, in the judgment of the county superintendent and county board, is qualified to give instruction in subjects required to be taught in public elementary schools;

Option 2: Person(s) providing home instruction must have high school diploma or equivalent under “notice” option.

Standardized Tests: None for the “approval” option. For the “notice” option, submit an assessment to superintendent by June 30. Four alternatives are available under WV Code §18-8-1(c)(2)(D):

1. Standardized test

- a. Use any nationally-normed, standardized test published not more than 10 years previously;
- b. Must be administered according to instructions of test publisher;
- c. Must cover reading, language, mathematics, science and social studies;
- d. Public school must cover cost if child is tested as part of public school's regular testing program; otherwise, parents pay;
- e. "Acceptable progress" is defined as when the mean of the test results in the required areas is at the 50th percentile or higher OR if there is improvement from the previous year's results; and
- f. Parents are not allowed to administer the test.

2. Portfolio

- a. Certified teacher (must include certification number) must review samples of child's work;
- b. Certified teacher must write a narrative;
- c. Narrative must indicate a portfolio of samples of child's work has been reviewed;
- d. Narrative must include a statement about progress in the areas of reading, language, math, science, and social studies;
- e. Narrative must note if any of those areas show need for improvement or remediation; and
- f. Narrative must indicate that "the child's academic progress for the year is in accordance with the child's abilities" (this constitutes "acceptable progress").

3. State Testing Program

- a. Child may participate in "the testing program currently in use in the state's public schools;"
- b. Test must be administered at local public school; and
- c. "Acceptable progress" definition is based on "current guidelines of the state testing program."

4. Alternative Assessment

- a. If superintendent agrees, child may complete any alternative academic assessment of proficiency; and
- b. "Acceptable progress" must be determined by agreement between superintendent and parents.

If assessment under one of the options above does not show acceptable progress, WV Code 18-8-1(c)(2)(D) states:

- a. County must notify parents in writing of services available to assess eligibility for special education services;
- b. Person(s) providing home instruction must initiate remedial program (it does not need to be submitted to or approved by the school system) to foster acceptable progress; and
- c. If acceptable progress is not shown for a second consecutive year, the person(s) providing home instruction must submit to superintendent "additional evidence" that appropriate instruction is being provided; the superintendent may seek an order from the circuit court denying home instruction which may be granted only if the superintendent shows there is "clear and convincing evidence that the child will suffer neglect in the child's education or ... there are other compelling reasons." WV Code §18-8-1(c)(2).