

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(I)(5). 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:	None.
Required Subjects:	None.

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

Option I: Home Instruction 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(I)(5).

In *Johnson v. Prince William County School Board*, 404 S.E.2d 209 (Va. 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.

The Social Security Administration does not accept religious exemption as proof that the student is continuing to receive a high school education for purposes of continued social security benefits after age 18.

Option III. Certified Tutor Statute:

If a parent is licensed to teach in Virginia, he can send a copy of his license and ask the local superintendent to approve him as a tutor through the date his license will expire. The parent should not include the names of the children who will be tutored and should not refer to homeschooling. § 22.1-254(A). The superintendent's scope of approval is limited to confirming the tutor has a valid license. The Virginia Department of Education's publication “Guidelines for Home Instruction in Virginia says: “To meet the qualifications prescribed by the Board of Education, the tutor must have a valid Virginia teaching license in any area.”

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 School:

If the five parameters below are satisfied, anyone can establish a private school attendance at which would satisfy compulsory attendance, but the attendance would physically take place in the student's own home.

1. It must be a bona fide school;
2. the student must attend for the same number of hours as the local public school provides instruction;
3. the student must attend the same number of days in a school year as the local public school;
4. the student must attend during the same period of each year as the local public school;
5. Virginia law states that individual parents instructing their own children in their own home is explicitly not a private school. Va. Code §22.1-254.A.

The student, the school, or both, should maintain records necessary to demonstrate compliance with (1) through (5). Attendance at a private school by means of a virtual, distance, remote, satellite or correspondence program is not inconsistent with these parameters.

Other laws, regulations and ordinances not related to compulsory attendance may apply depending on the particulars of the private school's operations. Since a private school may resemble a small business in some respects, in order to prevent unpleasant surprises, it is advisable to consult with a small business attorney prior to starting a private school and periodically as the school grows and changes.

See House Bill 829 enacted March 23, 2018, effective July 1, 2018, Chapter 486, Laws of Virginia, 2018.

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 any 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). The ACT, SAT and PSAT are included in this category, and a composite score (i.e., average or overall of all test sections) on these equivalent to the 4th stanine or 23rd percentile is passing (as the result of the 2015 enactment of SB 1403 and HB 1754). Parents do not need to seek school system approval, or provide notice, for the test they choose, or who administers, scores, or evaluates it. The test administration protocols and procedures established by the test publisher should be followed.
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.

3. A report card or transcript from a community college or college, college distance learning program, or home-education correspondence school.
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.” A group of International Baccalaureate exam results with an appropriate score should be acceptable under this category. 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.

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, PreACT, and AP tests available to homeschoolers, and to notify homeschoolers of registration deadlines and financial assistance availability.

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: Va. Code Ann. § 57-2.02.

Parental Rights Act:

Under Virginia Code §1-240.1, a parent has a fundamental right to make decisions concerning the upbringing, education, and care of the parent's child. The enacting clauses in SB 908 and HB 1642 (2013) state that it is the expressed intent of the General Assembly to codify the opinion of the Supreme Court of Virginia in *L.F. v. Breit*, issued on January 10, 2013, as it relates to parental rights.