

Virginia Statutes for Homeschooling

22.1-254. Compulsory attendance required.

A. Except as otherwise provided in this article, every parent, guardian, or other person in the Commonwealth having control or charge of any child who will have reached the fifth birthday on or before September 30 of any school year and who has not passed the eighteenth birthday shall, during the period of each year the public schools are in session and for the same number of days and hours per day as the public schools, send such child to a public school or to a private, denominational or parochial school or have such child taught by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the division superintendent or provide for home instruction of such child as described in § 22.1-254.1. As prescribed in the regulations of the Board of Education, the requirements of this section may also be satisfied by sending a child to an alternative program of study or work/study offered by a public, private, denominational or parochial school or by a public or private degree-granting institution of higher education. Further, in the case of any five-year-old child who is subject to the provisions of this subsection, the requirements of this section may be alternatively satisfied by sending the child to any public educational prekindergarten program, including a Head Start program, or in a private, denominational or parochial educational prekindergarten program. Instruction in the home of a child or children by the parent, guardian or other person having control or charge of such child or children shall not be classified or defined as a private, denominational or parochial school ...

22.1-254.1. Declaration of policy; requirements for home instruction of children.

A. When the requirements of this section have been satisfied, instruction of children by their parents is an acceptable alternative form of education under the policy of the Commonwealth of Virginia. Any parent of any child who will have reached the fifth birthday on or before September 30 of any school year and who has not passed the eighteenth birthday may elect to provide home instruction in lieu of school attendance if he (i) holds a baccalaureate degree in any subject from an accredited institution of higher education; or (ii) is a teacher of qualifications prescribed by the Board of Education; or (iii) has enrolled the child or children in a correspondence course approved by the Superintendent of Public Instruction; or (iv) provides a program of study or curriculum which, in the judgment of the division superintendent, includes the standards of learning objectives adopted by the Board of Education for language arts and mathematics and provides evidence that the parent is able to provide an adequate education for the child.

B. Any parent who elects to provide home instruction in lieu of school attendance shall annually notify the division superintendent in August of his intention to so instruct the child and provide a description of the curriculum to be followed for the coming year and evidence of having met one of the criteria for providing home instruction as required by subsection A of this section. Effective July 1, 2000, parents electing to provide home instruction shall provide such annual notice no later than August 15. Any parent who moves into a school division or begins home instruction after the school year has begun shall notify the division superintendent of his intention to provide home instruction as soon as practicable and shall comply with the requirements of this section within thirty days of such notice. The division superintendent shall notify the Superintendent of Public Instruction of the number of students in the school division receiving home instruction.

C. The parent who elects to provide home instruction shall provide the division superintendent by August 1 following the school year in which the child has received home instruction with either (i) evidence that the child has attained a composite score in or above the fourth stanine on a battery of achievement tests which have been approved by the Board of Education for use in the public schools or (ii) an evaluation or assessment

which, in the judgment of the division superintendent, indicates that the child is achieving an adequate level of educational growth and progress. In the event that evidence of progress as required in this subsection is not provided by the parent, the home instruction program for that child may be placed on probation for one year. Parents shall file with the division superintendent evidence of their ability to provide an adequate education for their child in compliance with subsection A of this section and a remediation plan for the probationary year which indicates their program is designed to address any educational deficiency. Upon acceptance of such evidence and plan by the division superintendent, the home instruction may continue for one probationary year. If the remediation plan and evidence are not accepted or the required evidence of progress is not provided by August 1 following the probationary year, home instruction shall cease and the parent shall make other arrangements for the education of the child which comply with § 22.1-254. The requirements of subsection C shall not apply to children who are under the age of six as of September 30 of the school year. D. For purposes of this section, "parent" means the biological parent or adoptive parent, guardian or other person having control or charge of a child. Nothing in this section shall prohibit a pupil and his parents from obtaining an excuse from school attendance by reason of bona fide religious training or belief pursuant to § 22.1-254 B 1. E. Any party aggrieved by a decision of the division superintendent may appeal his decision within thirty days to an independent hearing officer. The independent hearing officer shall be chosen from the list maintained by the Executive Secretary of the Supreme Court for hearing appeals of the placements of children with disabilities. The costs of the hearing shall be apportioned among the parties by the hearing officer in a manner consistent with his findings.

22.1-255. Nonresident children.

Any person who has residing with him for a period of sixty days or more any child within the ages prescribed in § 22.1-254 whose parents or guardians reside in another state or the District of Columbia shall be subject to the provisions of § 22.1-254 and shall pay or cause to be paid any tuition charges for such child that may be required pursuant to § 22.1-5 or shall return such child to the home of his parents or legal guardians.

22.1-263. Violation constitutes misdemeanor.

Any person violating the provisions of either § 22.1-254, except for clause (ii) of subsection A, §§ 22.1-255, 22.1-258, 22.1-267, or the parental responsibility provisions relating to compulsory school attendance included in § 22.1-279.3, shall be guilty of a Class 3 misdemeanor. Upon a finding that a person knowingly and willfully violated any provision of § 22.1-254, except for clause (ii) of subsection A, or any provision of §§ 22.1-255, 22.1-258, or § 22.1-267 and that such person has been convicted previously of a violation of any provision of § 22.1-254, except for clause (ii) of subsection A, or any provision of §§ 22.1-255, 22.1-258 or § 22.1-267, such person shall be guilty of a Class 2 misdemeanor.

22.1-271.4. Health requirements for home-instructed, exempted, and excused children.

In addition to compliance with the requirements of subsection B, C, or H of § 22.1-254 or § 22.1-254.1, any parent, guardian or other person having control or charge of a child being home instructed, exempted or excused from school attendance shall comply with the immunization requirements provided in § 32.1-46 in the same manner and to the same extent as if the child has been enrolled in and is attending school. Upon request by the division superintendent, the parent shall submit to such division superintendent documentary proof of immunization in compliance with § 32.1-46. No proof of immunization shall be required of any child upon submission of (i) an affidavit to the

division superintendent stating that the administration of immunizing agents conflicts with the parent's or guardian's religious tenets or practices or (ii) a written certification from a licensed physician that one or more of the required immunizations may be detrimental to the child's health, indicating the specific nature of the medical condition or circumstance that contraindicates immunization.

32.1-46. Immunization of children against certain diseases; authority to share immunization records.

Text of the code relating to immunization of children and exemptions from these requirements.

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 *Virginia* VA-2 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.