

# HOMESCHOOL ASSOCIATION OF CALIFORNIA

February 2010

**To whom it may concern**

**Re: Private Home Education in California**

Ladies and Gentlemen:

The Homeschool Association of California ("HSC") is a state-wide homeschooling advocacy and support organization. We assist families who are interested in teaching their children at home.

Questions often arise about whether it is legal for parents to teach their own children completely outside of the public school system. The purpose of this letter is to discuss this issue.

**Compulsory Attendance Laws** California law requires children between the ages of 6 and 18 years of age to attend a public, full-time, day school unless they are otherwise exempted. Cal. Educ. Code §48200. Many parents enroll their children in independent study programs offered by their local district or in home-based study programs offered by charter schools. Children enrolled in these programs are, for legal purposes, attending public school, and any questions about a child's attendance at that school should be directed to the directors of the program.

A child can be exempted from attendance at a full-time, public day school if he or she is attending a private full-time day school as provided in Cal. Educ. Code §48222 or if he or she is being tutored in accordance with Cal. Educ. Code §48224. Many parents in California educate their children through private schools they establish in their homes, and their children are exempt from compulsory attendance if the private school meets the requirements in Cal. Educ. Code §48222. This ability of parents to teach their children at home by this method was also confirmed by the California Court of Appeal for the Second District in the recent case involving homeschooling, *Jonathan L. v. Superior Court*, 165 Cal. App. 4th 1074 (2008). Because of the more burdensome nature of the §48224 tutoring exemption, very few families use it, and we will not discuss it in this letter. If you have any questions about the applicability of the tutoring exemption, please feel free to contact us.

**Regulations Applicable to Home-based Private Schools** All private schools in California, whether large, brick and mortar schools or small, home-based schools must comply with certain requirements. Although all private schools must comply with these requirements, the state only has the power to verify a school's compliance with certain of them. These requirements fall into two distinct categories, as discussed below.

**Requirements that can be verified:** Cal. Educ. Code Ed. Code §33190 requires each private school to file a Private School Affidavit annually with California Department of Education ("CDE") between October 1 and 15 of each school year. In addition, Cal. Educ. Code §48222 requires private schools to maintain attendance registers in which all student absences are

clearly marked. Student attendance officers or other interested persons *are* entitled to ask to see the affidavit filed by a private school as well as the attendance register in order to determine whether a child qualifies for the §48222 exemption from compulsory attendance. See the section entitled “Truancy Allegations” below for more information about this process.

Questions often arise about whether students attending schools that have not yet filed their affidavits (such as inquiries made before October 1 in a school year) or schools that filed their affidavits after the end of the October filing period are attending legal schools. In the first instance, it should be noted that the CDE will not accept any affidavit filings before October 1. Obviously, this filing period opens well after the ordinary start of the school year. No one would take the position that every private school student is truant until October 1, and this makes sense given the true purpose of the filing period as discussed further below.

The more difficult issue arises with respect to schools that existed during the October filing period but were late in filing, or schools that came into existence after the October filing period and either filed one after October 15 or did not file an affidavit at all. In both of these cases, the students are still exempt from compulsory attendance.

We have recently confirmed with the CDE two points. First, the filing of the affidavit does not create a private school, it merely notifies the state of its existence. Private schools are created by following all of the requirements set out in the statute with respect to teachers, courses of study and the like, as discussed below in this letter. The CDE has, for example, confirmed to us that new schools can be established after October 15, and that students enrolled in such newly-formed schools are exempt from compulsory attendance if the schools meet all of the requirements other than the filing of the affidavit in the October time window. In fact, we were told by the CDE that they believe that such schools do not need to file the affidavit for that school year at all, but can instead wait until the following school year to file. It would seem curious to us that the state would believe that students enrolled in a school which had not filed an affidavit at all were not truant, yet those enrolled in a school which filed late were truant. You may confirm these statements by speaking with anyone in the Private School office at the CDE.

The CDE has also told us that it believes that the October 1-15 filing window is for ministerial purposes only, and that the purpose of requiring all schools existing at the beginning of the school year to file by this deadline is so that the CDE can, on a timely basis, compile the directory of private schools as required by law,. But private schools with fewer than six students are not even included in this directory, so filings that are tardy or, in the case of new schools, not made until the following school year have not negatively impacted the state’s ability to carry out its duties.

**Requirements that may not be verified:** The more substantive requirements that apply to California private schools are set out in Educ. Code §48222. These requirements include (a) that the school be a full-time day school, (b) that the teaching be done by “persons capable of teaching”, (c) that instruction be made in the English language, and (4) that instruction be offered in the several branches of study required to be taught in the public schools of the state. The question that often arises with respect to these requirements is what power, if any, state officials have to verify whether any particular private school is complying with them.

The short answer is that the state has no authority to verify anything other than the filing of the affidavit. The only mention of “verification” in the statute appears in Cal. Educ. Code §48222, which states as follows: “Exemptions [from compulsory attendance] under this section

shall be valid only after verification by the attendance supervisor of the district, or other person designated by the board of education, that the private school has complied with the provisions of Section 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.” Please note that the plain language of this statute authorizes the attendance supervisor to verify the **filing** of the affidavit, not the accuracy of any of the statements made in the affidavit or the compliance or non-compliance by the school with any of the requirements in the statute other than the filing of the affidavit.

We will discuss later how this verification power is actually interpreted, but we want to discuss now why it is the case that no state official, whether an attendance officer, a CPS representative, a peace officer or any other person, can ask for proof that the school is complying with these rules. Many school officials and other state personnel think that they have a right to require a private school, particularly a home-based private school, to show what curriculum it is using, to demonstrate that the teachers (parents) are properly qualified, that the necessary subjects are covered, and the like. While we appreciate the desire of many state officers to ensure that California children are receiving an adequate education, the truth of the matter is that they have no authority to make these inquiries.

In 2008, there was a court case in which the state challenged the right of a family to teach its children at home in a small private school without state supervision. In that case, *Jonathan L. v. Superior Court*, 165 Cal. App. 4th 1074, the Court of Appeal for the Second District clarified this exact point of the state’s right to verify compliance. On page 20 of its opinion, the Court of Appeal sets out the requirements in Cal. Educ. Code §§48222 and 33190 that all private schools must follow. It then states, in the footnote on that page, “We note here that the school district verifies only if a private school affidavit has been filed; the district is granted no authority by this provision to confirm that the private school is in compliance with the other requirements of the private school exemption.” It should be observed that, in this case, there were serious allegations of the adequacy of the teaching materials and the competence of the parents to teach; nevertheless, even in the face of these serious concerns, the Court held that state officials had no further power. This limitation on state authority applies equally to small home-based private schools and to large, brick and mortar private schools. Many people are naturally inclined to trust that large schools comply with the law, but feel less inclined to trust parents. They believe that the state must have some authority to make sure the parents are actually doing a decent job. But no such authority exists. We believe that had the legislature intended for the local districts to have the power to verify the statements made in private school affidavits, it would explicitly have said so. Whether any substantive oversight authority will be granted in the future is up to the Legislature.

**Verification language in §48222:** It is a curious matter that Educ. Code §48222 seems to say that students enrolled in private schools are exempt from the compulsory attendance laws only after local officials have verified that their schools have filed their affidavits, and until that date are truant. This is a case where the law seems to require something that, as a practical matter, is never done. It is an indisputable fact that local districts do not make it a regular practice to verify each year that *every* private school within their attendance area, large and small, has filed an affidavit. We are aware of no district that does so. Nor are we aware of any district that has declared truant all students attending private schools whose affidavit filing had not yet been verified. We believe that it is the standard practice of school districts in this state not to verify filing of affidavits unless an issue, such as an allegation of truancy, has arisen. .

***Truancy Allegations*** Sometimes, genuine questions arise of whether a particular student is truant. Cal. Educ. Code §48260ff set out how truancy cases are to be handled. But §48260 begins by stating that “Any pupil subject to compulsory full-time education [ . . . ] who is absent from school without valid excuse three full days in one school year . . .,” so the first question in any truancy investigation must be whether the pupil is, in fact, subject to compulsory attendance or is exempt. In any case of potential truancy, the public school officials have an obligation to ascertain whether a child not in public school is truant or is being privately educated in accordance with an exemption from the compulsory education laws. How would the officials know if a child is exempt? If a parent can produce (a) a letter indicating that the child is enrolled in and attending a private school, (b) the private school affidavit filed by the school and (c) the attendance register for that child, then the parent has shown that the child is attending a full-time private day school and that child is exempt from compulsory attendance. In such a case, the officials must conclude that the child is not truant, that their inquiry has ended, and that any proceedings under truancy laws must be dismissed.

***Conclusion.*** We believe it is well settled under federal constitutional principles that parents have the absolute right to determine the appropriate school placement for their children, including private education, so long as the choice meets state compulsory education laws. If a parent has properly formed a private school under California law, children enrolled in this school are meeting these compulsory education laws and cannot be considered truant.

The overwhelming majority of parents in this state who educate their children at home do so with the best interests of their children at heart. Although their methods may look unorthodox and nothing like “school”, they are conscientiously making sure that their children are learning what they need to in order to become productive citizens and participants in the modern world.

HSC maintains a website at [www.hsc.org](http://www.hsc.org) with a wealth of information for families as well as for those who come into contact with homeschooling families, such as professionals working with the families. The articles available at <http://www.hsc.org/prointro.php> may be particularly helpful to those who are not familiar with homeschooling and who are concerned whether it can be a good choice for a child, whether academically, socially or emotionally.

If you should you have any questions regarding the means or legality of home education in California, please write to the HSC legal team at the address or email address below. We would be happy to answer them.

Sincerely,

The HSC Legal Team