

Filing the Private School Affidavit

2021-2022 School Year

Updated July 26th, 2021

When the 2021-2022 Private School Affidavit becomes available on the CDE website on or around October 1st, we will review the new affidavit in conjunction with Home School Legal Defense Association (HSLDA) and send out an email reminding you (if you are on our email list) to file the affidavit and advise you of any changes.

Do not contact any public school official about filing an affidavit. Also, while the California Department of Education (CDE) provides some information related to homeschooling on their website, any explanations or suggestions that are not explicitly in the law are only someone's opinion and can be ignored. For instance, the CDE has held the erroneous position that private schools are either businesses or non-profit organizations.

For legal questions, we at FPM urge you to refer to Home School Legal Defense Association's [website](#) and if you have further questions, call them as a member at (540) 338-5600 ([apply now to join](#) or renew your membership). For general information on private homeschooling in California, see our (FPM's) [Legal Fact Sheet](#) and CHEA's [California Homeschool Manual](#) (www.cheaofca.org).

We thank God that we still retain our freedom to educate our children at home privately under the private school exemption. As of the writing of this article, no laws have changed affecting the legality of private home education in California. The information in our [Legal Fact Sheet](#) on our website is current and accurate.

Before You File

Parents who are withdrawing at least one child from a public school or a private campus school to begin homeschooling can help avoid unnecessary legal contacts by following the instructions in our article [Withdrawing Your Child From School](#).

Age of Required School Entry

California's compulsory attendance laws, as they apply to this 2021-2022 and following school years, require that children be enrolled in a school at the beginning of the school year in which they turn six on or before September 1st of the year in which the new school year begins (i.e., a child who turns six on or after September 2, 2021, does not need to be formally enrolled in school until the fall of 2022). A new school year typically begins in either August or September.

Enrolling your compulsory-age child in a private school (whether home-based or campus-based) that has filed a current private school affidavit exempts your child from compulsory attendance at a public school, according to California Education Code Sections 48222 and 33190.

Even though the term “homeschool” is commonly used throughout our state, the nation, and the media, there is no legally-defined entity known as a “homeschool” in California law. In order to be consistent with the law of our state, we do not use the term “homeschool” with public school officials. California is one of twelve states in which homeschoolers operate as private schools. Private schools can be legally established and operated in the home just as some private schools operate on a campus.

County offices of education and school districts do not have any legal authority to go beyond simply verifying the filing of the affidavit, such as during an investigation of alleged truancy. Neither can they require private schools, regardless of whether they are campus-based or home-based, to furnish material that they are not legally required to furnish. Any additional information requested (e.g., “proof” that the teachers are “capable of teaching,” their course of study, etc.) can only be required by court order. Members of the Home School Legal Defense Association (HSLDA) should follow HSLDA’s directions on all legal questions.

While no laws have changed and establishing a home-based private school remains legal, confusion about or opposition to private homeschooling in some counties and local school districts is expected to continue. There is still the possibility that some local school districts could try to investigate homeschoolers. Additionally, a few parents who are homeschoolers have been falsely reported in the past for alleged child abuse or neglect. While the frequency of these reports is lower for homeschooled children than for children attending campus schools, it is still a threat for which every homeschooler should be prepared.

Membership in HSLDA is absolutely vital regardless of the size of the private home-based school in which your child is enrolled. Please encourage every family who is already a member of HSLDA to keep their membership current! We strongly recommend that you **[apply for \(or renew\) your membership with HSLDA](#)** as soon as possible and before you file your affidavit. **You can join HSLDA at any time but you must do so before you receive a legal contact.**

[Join](#) the Home School Legal Defense Association for only \$130/12 months. HSLDA also has discounted rates, including those that are available to members of CHEA and other HSLDA discount groups. Contact HSLDA at P.O. Box 3000, Purcellville, VA 20134; Phone: (540) 338-5600; or www.hslda.org.

When To File

California Education Code (E.C.) Section 33190 requires that every private school file a private school affidavit with the Superintendent of Public Instruction (California Department of Education – CDE) between October 1 and 15 each year. If anyone establishes a new private school at any time after October 15th, they can file an affidavit at that time.

Who Should File

If you have a child who is six years old or older by September 1, 2021, and not yet 18 years old, and you are establishing your own private school in your home, you will need to file a private

school affidavit this year. This must be done in order to be legally recognized as a private school in California and for your children to be exempt from having to attend a public school.

Families enrolled in any **Out-of-State** school or program are still required by state law to be enrolled in a California private school (single home-based or satellite program/PSP) with a California address for its physical location. It is unnecessary and unwise to voluntarily mention enrollment in out-of-state schools/programs to public school officials. It is not illegal in California to be enrolled in an out-of-state program. These programs may serve as a source of curriculum or services but not as a means of legal compliance with the private school law.

If you are joining a California-based private school satellite program (PSP) or “umbrella” program for homeschool families, you should not file your own affidavit because the administrator of the PSP is responsible for filing an affidavit on behalf of all pupils enrolled in their private school.

On your Private School Affidavit, where you are asked to enter the “Range of students’ ages,” do not indicate enrollment of any children who are under 5 years of age. The reason for this is that the California Department of Social Services, Community Care Licensing Division, rather than the Department of Education, has jurisdiction over the licensing of all private preschools and daycare centers for children younger than four years and nine months of age. The California Code of Regulations, Title 22, Division 12, Chapter 21 contains the regulations for the licensing, evaluation, and employee qualifications for such private preschools and daycare centers.

Also, while you will notice that there is a space for the number of students enrolled in kindergarten, it is important to recognize that kindergarten is not mandatory in California. Therefore, if you have a child who is younger than compulsory school age (is not age 6 by September 1, 2021, and whom you may consider being at a kindergarten or first grade level), you are not required to enroll him in your school or count him on your school’s affidavit.

Schools in which kindergarteners are enrolled are routinely contacted by the Health Department to verify immunizations and school entry health exams. Therefore, for this 2021-2022 school year, we recommend that homeschoolers avoid the extra paperwork by not enrolling their children formally into their schools until they reach the age of compulsory attendance.

As previously noted, California’s compulsory attendance laws currently only require that children be enrolled this current 2021-2022 school year if they turn six on or before September 1, 2021. This means that a child who turns six on or after September 2, 2021, does not need to be formally enrolled in school until the next year, when your 2022-2023 school year begins (usually in August or September). You may, of course, teach your children who are under compulsory attendance age at home. They simply are not formally a part of your private school and are not to be included in the number of enrolled students indicated on the affidavit form.

How To File An Affidavit

The Private School Affidavit form for the 2021-2022 school year will be available online again this year at the [CDE’s website](#) for filing during the regular October 1-15 filing period.

Rather than duplicating efforts, we are referring you to HSLDA's excellent step-by-step instructions on filing the private school affidavit. For detailed instructions for filing the affidavit, go to the [HSLDA website](#).

Legal Contacts

As mentioned above, parents who are withdrawing at least one child from a public school or a private campus school to begin homeschooling can avoid an unnecessary legal contact by following the instructions in our article [*Withdrawing Your Child From School*](#).

If a public school official were to contact you to see if your child is enrolled and in regular attendance at a private school, your responses should be courteous and professional. If they already have the name of your child, you can confirm that the child is enrolled and is in regular attendance in your private school. Otherwise, parent teachers of home-based private schools, as well as administrators of private school satellite programs (PSPs), should keep the names of their students and families confidential.

HSLDA members should always follow the counsel of HSLDA and call them anytime they are contacted about their homeschooling by public officials.

Private schools with five or fewer students have not been listed in the California Private School Directory (which lists K-12 private schools in the state) since 1990. This is due entirely to budget restrictions on compiling information on small private schools and in no way affects the legal status of your small private school based in your home.

It is important to remember that the affidavit is not an application requiring approval, but is only a "notice of operation." This affidavit, which serves as a notice of operation, does not require you to reveal the names of your children or the names of the students in your school.

This article was written in consultation with attorneys at HSLDA. For legal questions, we encourage you to contact HSLDA as a member at (540) 338-5600.

This document is available at fpmca.org for your use personally or for distribution.

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