



# **Virginia:**

## Homeschool Law and Background

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## Overview

Virginia has three legal options. First, parents may homeschool under Virginia's homeschool statute. Parents must provide annual notice to the division superintendent, have a high school diploma or GED (or provide evidence of the parent's ability to provide an adequate education), offer 180 days of instruction, maintain attendance records, and have their children assessed annually (by standardized test or portfolio review). While there are no subject requirements, assessments must be turned into the division superintendent who will begin a remediation process if a homeschooled student is not receiving an "adequate education." Second, parents who have religious objections to school attendance may opt out of all education requirements by providing one-time notice of their objections to the division superintendent. Third, parents may homeschool under the private tutor law. The parent providing instruction must have a teaching certificate, and must file a copy with the district superintendent, provide 180 days of instruction, and maintain immunization records. There are no subject or assessment requirements.

### (1) Homeschool Statute

Virginia's homeschool statute states that "instruction of children by their parents is an acceptable alternative form of education" and that parents "may elect to provide home instruction in lieu of school attendance." See [Va. Code Ann. § 22.1-254.1](#).

**Notification:** Parents must provide annual notice to the division superintendent by August 15 of each year. This notice must include the intent to homeschool, a list of subjects to be studied during the coming year, and evidence that the parent has the necessary qualifications. Parents who move or begin homeschooling during the school year must provide notice "as soon as practicable." Each division superintendent must notify the Superintendent of Public Instruction of the number of students in the division being homeschooled. See [Va. Code Ann. § 22.1-254.1\(B\)](#).

**Qualifications:** A parent may provide home instruction in lieu of school attendance if he "(i) holds a high school diploma; or (ii) is a teacher of qualifications prescribed by the Board of Education; or (iii) provides a program of study or curriculum which may be delivered through a correspondence course or distance learning program or in any other manner; or (iv) provides evidence that he is able to provide an adequate education for the child." See [Va. Code Ann. § 22.1-254.1\(A\)](#).

- Days or hours:** Home instruction must take place “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.” This is generally 180 days or 990 hours. See [Va. Code Ann. § 22.1-254\(A\)](#).
- Subjects:** None. However, students must achieve either the 23rd percentile on a nationally standardized achievement test or have an evaluation with a standardized teacher or other qualified individual showing “an adequate level of educational growth and progress.” See [Va. Code Ann. § 22.1-254.1\(C\)](#).
- Bookkeeping:** Parents must submit documentation of compliance with immunization requirements upon the request of the division superintendent. See [Va. Code Ann. § 22.1-271.4](#).
- Assessment:** By August 1 following each school year, each homeschool parent must provide the division superintendent with either (1) evidence that the child has achieved at least the 23rd percentile (fourth stanine) on a nationally standardized achievement test; or (2) an evaluation that the division superintendent demonstrates that the child “is achieving an adequate level of educational growth and progress” including (a) an evaluation from a licensed teacher, or an individual with a master’s degree or higher, stating that they are familiar with the child and can attest to their progress; or (b) a report card or transcript from an institution of higher education or a correspondence school. See [Va. Code Ann. § 22.1-254.1\(C\)](#).
- Intervention:** If the required evidence of progress is not submitted, the homeschool is placed on probation for one year. Parents must provide the division superintendent with “evidence of their ability to provide an adequate education for their child” and a remediation plan for the 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.” “Any party aggrieved by a decision of the division superintendent may appeal his decision within 30 days to an independent hearing officer.” See [Va. Code Ann. § 22.1-254.1\(C\)](#). The district superintendent must compare lists of enrolled students with lists provided by the State Registrar of Vital Records and Health Statistics. The local attendance officer will investigate any cases of children not enrolled in school and not excused under the state’s homeschooling law. See [Va. Code Ann. § 22.1-261](#). Failure to educate is not included under the state’s definition of neglect. Individuals suspecting a homeschool parent of educational

neglect should report their concerns to the division superintendent rather than to Virginia’s Child Protective Services.

**Other:**

Violation of the homeschool statute is a Class 3 misdemeanor. See [Va. Code Ann. § 22.1-263](#). The statute explicitly states that it is not meant to interfere with a student and his parents obtaining religious exemptions from school attendance. See [Va. Code Ann. § 22.1-254.1\(D\)](#). Parents must “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.” See [Va. Code Ann. § 22.1-271.4](#).

## (2) Religious Exemption

Virginia law exempts from compulsory school attendance “Any pupil who, together with his parents, by reason of bona fide religious training or belief is conscientiously opposed to attendance at school.” The statute further clarifies that “For purposes of this subdivision, ‘bona fide religious training or belief’ does not include essentially political, sociological or philosophical views or a merely personal moral code.” See [Va. Code Ann. § 22.1-254\(B\)\(1\)](#) and [§ 22.1-254.1\(D\)](#).

**Notification:**

Parents must obtain a religious exemption from the division superintendent. This exemption must be based on a bona fide religious objection to school attendance by both parent and child.

**Qualifications:**

None.

**Days or hours:**

None.

**Subjects:**

None.

**Bookkeeping:**

Parents must submit documentation of compliance with immunization requirements upon the request of the division superintendent. See [Va. Code Ann. § 22.1-271.4](#).

**Assessment:**

None.

**Intervention:**

None.

**Other:**

Parents must “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.” See [Va. Code Ann. § 22.1-271.4](#).

### (3) Private Tutor

Virginia exempts from public school attendance any child who is taught by “a tutor or teacher of qualifications prescribed by the Board of Education and approved by the division superintendent.” See [Va. Code Ann. § 22.1-254\(A\)](#). [Parents are allowed to serve as tutors for their own children.](#)

- Notification:** Parents should provide the division superintendent with a one-time notice verifying that the parent is certified and stating that the parent will be tutoring his or her children.
- Qualifications:** The parent or other tutor must hold a state teaching certificate.
- Days or hours:** Tutoring must take place “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.” This is generally 180 days or 990 hours. See [Va. Code Ann. § 22.1-254\(A\)](#).
- Subjects:** None.
- Bookkeeping:** Parents must submit documentation of compliance with immunization requirements upon the request of the division superintendent. See [Va. Code Ann. § 22.1-271.4](#).
- Assessment:** None.
- Intervention:** None.
- Other:** Parents must “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.” See [Va. Code Ann. § 22.1-271.4](#).

### Services Available to Homeschooled Students

- Part-time enrollment:** **Yes, at the district’s discretion.** Some districts allow part-time enrollment of homeschoolers in public school. Homeschoolers with a religious exemption and those using the tutoring option are not eligible.
- Extracurriculars:** **Yes, at the district’s discretion.** Many sports and extracurriculars in Virginia are governed by the Virginia High School League (VHSL), which requires participants to have passed five courses at the participating school during the previous

semester and be enrolled in five courses during the current semester, making it impossible for homeschoolers to participate. However, some districts may allow homeschoolers to participate in other extracurriculars not controlled by the VHSL.

**Special needs:** **No.** While all public schools must offer special needs testing to any students within their districts, public schools in Virginia have no obligation to provide additional services to homeschooled students with special needs.

## Background:

In 1908, school attendance became [compulsory](#) in Virginia for children age 8-12 as a measure to curb child labor; this age range was later expanded to ages 5-17. After the U.S. Supreme Court case *Wisconsin v. Yoder* in 1972, which [required](#) that “states must provide alternatives for parents with religious objections to compulsory school attendance,” Virginia enacted its [own version](#) of a religious exemption from compulsory attendance in 1976:

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. For purposes of this subdivision, “bona fide religious training or belief” does not include essentially political, sociological or philosophical views or a merely personal moral code . . . Virginia Code, §22.1-254(B)(1), [originally](#) §22.1-257(B)(2)

The passage of this law coincided with the beginning of the homeschooling movement. Virginia’s pioneer homeschooling parents, Daniel and Theo Giesy of Norfolk, were friends of John Holt in the 1970s and began to homeschool around 1977. As Theo Giesy describes in [The Legacy of John Holt](#) (Farenga & Ricci 2013),

We read the law in Virginia, which said: Parents must send their children (1) “to a public school,” or (2) “to a private, denominational or parochial, school,” or (3) have the children “taught by a tutor or teacher of qualifications prescribed by the State Board of Education and approved by the division superintendent in a home.” I chose option 3 and applied to the superintendent [of Virginia Beach, where we were then living,] for permission to teach [my children] at home. That was rejected because I was not a certified teacher. . . .

[I applied again after we moved to Norfolk.] When authorities came [to the house] we said we had applied and had not heard back. We reapplied and I

spoke to the superintendent. I said that giving us permission would not cause a mass exodus from the schools, that most people want to send their children to school and that we felt that this was something extra we could do for our kids. He refused and charges were brought against us for failure to send our children to school. I looked into what it took to open a private school in Virginia and found that Virginia has almost no regulations for private schools, only that they meet the same number of hours a day and days a year as the public schools. So we started Brook School, with our kids as the students and me as the teacher. . . .

[T]he Norfolk Public Schools' reaction to enrolling our children in Brook School was not to drop the case but to press charges. Our hearing was in April 1979. Leading up to it, we were on every local talk show [where] the responses were all supportive. In a one-day hearing in which the prosecutor tried to prove that I didn't conduct school for the same number of hours a day and days a year as the public schools, all he could prove was that I was a very busy person. The judge's opinion was that leaving private schools so much leeway was a legislative choice and not an oversight, and that courts do not make law, but only rule on existing law. So he dismissed the charges...The schools turned to the legislature to "close the loophole in the law." This began a five-year lobbying effort that led to the Virginia Homeschooling law.

At the beginning of the lobbying effort the established private schools were represented in force saying, "Don't define or restrict private schools." They felt it was okay to stop homeschooling but not by making any laws about private schools. That slowed the legislature enough for the homeschooling movement to make its case. . . .

Since there was so much interest in homeschooling in the area, I asked John [Holt] about coming to speak. He told me that all he required was his travel expenses and a place to stay. I arranged for a room at Old Dominion University for him to speak, publicized the talk, and got an audience and enough funds to cover his travel.

Though the Giesys had used the lack of a definition for private schools in Virginia's code to establish their homeschool as a private school, this method did not work elsewhere in Virginia. In 1980, a judge [ruled against](#) religious homeschooling parents Robert and Vicky Grigg of Chesapeake who had tried to establish their homeschool as a private school; the case went to the Virginia State Supreme Court, which [again ruled](#) against the Griggs on December 3, 1982. It was around this time that the Home Educators' Association of Virginia ([HEAV](#), est. 1983), a statewide Christian homeschooling organization, was founded.

As a result of [activism](#) by a [number](#) of [homeschoolers](#), Virginia's homeschooling statute, HB 535, [passed](#) in early 1984. It forbade homeschools from being registered as private schools while at the same time providing for homeschooling. It included a correspondence school option, an annual requirement for notification and description of curriculum, and an annual assessment requirement with steps for intervention and an appeals process. The homeschool statute also provided several options for parental qualifications: the parent could possess a Bachelor's degree or a teaching certification<sup>1</sup>, or could "[provide] a program of study or curriculum which, in the judgement [sic] 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." The homeschool statute pointedly stated that it did not interfere with the religious exemption option.

Throughout the 1980s, then, the major issue in Virginia homeschooling became the application of the religious exemption, which grew more common as the homeschooling movement expanded to include evangelical and fundamentalist Christians. Each county had a [slightly different application](#) of the religious exemption law: "While some counties freely grant[ed] religious exemptions, some refuse[d], and others simply ignore[d] requests." In 1985, the [Snider](#) family's application for a religious exemption was refused, and they took the case to the Supreme Court of Virginia. The Home School Legal Defense Association ([HSLDA](#), est. 1983) had by 1985 moved its offices to Virginia and [was engaged in a number of religious exemption cases](#) from 1987 onwards. Notably, HSLDA attorney Chris Klicka [argued](#) the *Johnson v. Prince William County School Board* case before the State Supreme Court in 1991. Though Klicka [lost the case](#), it was later used as legal precedent by HSLDA to argue that local school boards had no authority to judge the quality of education religiously exempted children were receiving; their only authority was to judge whether or not the family's religious views were bona fide.

By 1993, HSLDA had [convinced](#) most counties to grant religious exemptions without review; only Prince William and Fairfax Counties continued to insist on interviewing older children to determine if their religious beliefs coincided with their parents'. Around that time, HEAV Vice President Will Shaw left the organization to team up with Jay Phaup, the president of a local homeschooling group, the Christian Home Educators Association of Fluvanna. Though they were evangelical Christians homeschooling under the religious exemption, Shaw and Phaup were dissatisfied with HEAV's exclusively Christian stance. In response, they formed a more inclusive statewide organization, the [Virginia Home Educators Association](#) ([VHEA](#), est. 1993, renamed the Organization of Virginia Homeschoolers in 2004), which also welcomed secular homeschoolers.

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<sup>1</sup> Although note that, according to HSLDA's interpretation, homeschooling parents who held a teaching certificate [were not required](#) to follow the annual assessment requirement. This interpretation was [challenged](#) in 1994 in *Berlin v. Prince William County*, although the Prince William County Circuit Court [ruled](#) in favor of HSLDA.

In August 1993, State Superintendent Joseph Spagnolo [released](#) a memo which called for a census of religiously exempt homeschoolers. “It is expected that legislation will be introduced to the General Assembly in the 1994 session that would remove the provision excusing children from attendance by reason of a religious exemption,” Spagnolo wrote. As a result, HSLDA began a [campaign](#) of aggressive lobbying to oppose the legislation, sending “an alert to its membership requesting that they contact their delegates and senators”—after which hundreds of homeschoolers did so—and commissioning a [study](#) to provide evidence that repealing the religious exemption was unnecessary. After HSLDA won the support of Republican Governor George Allen, who committed to veto any such legislation, Spagnolo backed down and the attempt to repeal the religious exemption was dropped.

In 1996, [HSLDA](#), [HEAV](#), and [VHEA](#) collaborated to defeat a proposed daytime curfew. In 1997 VHEA [successfully](#) lobbied for [HB 1860](#), which enabled public schools to [offer](#) part-time courses to homeschoolers. The last major change to the homeschooling statute [occurred](#) in 2004, when the passage of HB 675, sponsored by Delegate Rob Bell, removed the requirement that homeschooling parents have a Bachelor’s degree—now only a high school diploma or GED was required.

## **Resources:**

[Va. Code Ann. § 22.1-254](#)

[Va. Code Ann. § 22.1-254.1](#)

[Va. Code Ann. § 22.1-271.4](#)

[Compulsory Attendance and Home Instruction Related Statutes](#)

[Private Schools & Home Schooling, Virginia Department of Education](#)

[Home Instruction Handbook: Guidelines for Home Instruction in Virginia](#)

[Sample Notice of Intent to Provide Home Instruction](#)

[Statistics: Home Schooled Students & Religious Exemptions](#)

[Virginia, International Center for Home Education Research](#)

***This overview is for informational purposes only and does not constitute the giving of legal advice. Last updated January 20, 2014.***