

## VIRGINIA HOME EDUCATION AND THE LAW

There are several ways under the Virginia law which enable parents to home educate their children. GRHE does not endorse any of these as the “preferred status” of home educators. GRHE does not attempt to give legal advice. We recommend that you join Home School Legal Defense Association (HSLDA) and obtain legal counsel from them.

A more in depth discussion of various aspects of the law follows:

Please note: **THE FOLLOWING INFORMATION DOES NOT CONSTITUTE THE GIVING OF LEGAL ADVICE. CONTACT HSLDA FOR LEGAL ADVICE.**

In Virginia, you have three basic options for the home education of your children. Each of these options is discussed in detail following the copy of the section of the law that pertains to them:

1. 1984 Home Instruction Statute
2. Religious Exemption Statute
3. Certified Tutor Statute

We will also discuss the following.

4. Kindergarten Options
5. Health Requirements for Home Instructed Children
6. Home Schooled Students Taking the G.E.D.
7. High School Dual Enrollment at a Community College

### I. 1984 HOME INSTRUCTION STATUTE, including all amendments to date

This statute is found in Section 22.1-254 of the Virginia Code and reads as follows:  
§ 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 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.

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, limited to a list of subjects to be studied during the coming year, and evidence of having met one of the criteria for providing home instruction as required by subsection A. 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 thereafter

comply with the requirements of this section within 30 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 any nationally normed standardized achievement test or (ii) an evaluation or assessment which the division superintendent determines to indicate that the child is achieving an adequate level of educational growth and progress, including but not limited to: (a) 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; or (b) a report card or transcript from a community college or college, college distance learning program, or home-education correspondence school.

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 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 requirement of subsection C shall not apply to children who are under the age of six as of September 30 of the school year.

D. 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 subdivision B 1 of § 22.1-254.

E. Any party aggrieved by a decision of the division superintendent may appeal his decision within 30 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.

F. School boards shall implement a plan to notify students receiving home instruction pursuant to this section and their parents of the availability of Advanced Placement (AP) and Preliminary Scholastic Aptitude Test (PSAT) examinations and the availability of financial assistance to low-income and needy students to take these examinations. School boards shall implement a plan to make these examinations available to students receiving home instruction.

EXPLANATION AND INSTRUCTIONS for operating under the Home School Statute:

As stated earlier, this section of the Virginia Code was passed in 1984 and revised in 2008. **Subsection A.** allows all parents to home educate by qualifying under any one of the categories listed below:

1. **If you hold a high school diploma or higher degree**
2. **If you hold a valid Virginia teaching certificate**
3. **If you provide a program of study or curriculum which may be a correspondence course, or a distance learning program or in any other manner.**
4. **If you submit evidence that the parent is able to provide an adequate education for their child.**

To comply with the home school law, you need to complete a Notice of Intent to Provide Home Instruction Form. You should obtain your form from GRHE, HEAV, or HSLDA, and not from the school system. This will prevent you from giving out more information than is required by the law. The Notice of Intent form is due by **August 15** prior to the school year. Be sure to make a copy of the Notice of Intent and enclosures for your own file. Then mail the originals to the address given for your school district in the section below titled Local School Districts. **Please note** that this should be sent by certified mail with a signed receipt, so that you have a record that they have your information. When your signed receipt arrives, staple it to your Notice of Intent in your file.

On the form, you will select one of the four options listed above. Then you must provide proof that you have met the conditions for the option you have chosen. For Option (1), attach a copy of a high school diploma or transcript, or a copy of a higher degree. The diploma or degree may belong to either the mother or the father. Option (2) can be satisfied by attaching a certificate or letter of eligibility indicating teacher certification. Under option (3), if you are using a correspondence course, distance learning course or college courses, you can send the letter of acceptance, registration form or the payment receipt or a similar proof. If you are providing a program of study or curriculum delivered through another manner, provide documentation of what you are doing. Using option (4), provide a well-written letter stating what you are planning to provide an adequate education for the child. Make sure your letter contains good sentence structure, is grammatically correct, and everything is spelled correctly. Include a statement as to why you are able to provide your child's education.

For each option, you must provide a list of subjects that you will be teaching. The superintendent does not have the power to disapprove your curriculum.

Please note under **Subsection B.** that you may begin home schooling in the middle of the school year, or upon moving into a school district in the middle of the school year. That means that you have the right to pull your child out of school at whatever point you deem necessary. When starting mid-year, you must notify the superintendent of your intentions as quickly as you are able. You then have 30 days from that notification to get your Notice of Intent with all required information to him. If you are beginning mid-year, please refer to our *Checklist for Pulling a Student Out of Public School in the Middle of the Year.*

**Subsection C.** details the requirement for evidence of academic achievement. Following each year of home education, the parent is required to submit evidence of academic achievement. **You do not have to submit anything if your child was not 6 years old by September 30<sup>th</sup> of the school year.** Everyone else home educating under this law must have their evidence of academic achievement in to the superintendent by **August 1** following the school year.

You may prove progress of educational achievement in a number of ways. Most people choose to give their child(ren) a nationally normed achievement test and submit the scores. We recommend that if your child does not have problems testing, that you use the achievement test, because it leaves no room for the superintendent to question your child's progress. Standardized test scores show legal evidence of instruction when the composite score is at or above the 4<sup>th</sup> stanine (which translates to a minimum score of the 23<sup>rd</sup> percentile). Testing early (in April or May) is highly recommended in order to get your test scores in on time and to allow time for retesting if necessary. You only need to show a composite score in language arts and math and no other subjects.

Again, when sending in your test scores keep the original in your file and send a copy to the superintendent's office by certified mail with a return receipt. When you receive the receipt, staple it to your test scores.

If you do not want to do an achievement test for submission, then you may have an evaluation done by a licensed teacher or a person with a masters degree or higher in an academic discipline that indicates that the child is making adequate growth and progress. That person then submits a letter stating their evaluation findings.

If you are using the correspondence course, community college or college distance learning option, a copy of your final report card should be sufficient.

## **2. RELIGIOUS EXEMPTION STATUTE**

Section 22.1-254 (B)(1) of the Virginia Code reads, **"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 essential political, sociological or philosophical views or a merely personal moral code;"**

We are fortunate in Virginia in that the compulsory attendance law, via the religious exemption clause, recognizes the right of parents to refrain from sending their children to school, without registration and control of the state. The religious exemption clause allows those who have a bona fide religious conviction to teach their children at home. GRHE strongly advises that any family taking religious exemption join HSLDA for your legal protection. Please note that there is no procedure in the law for declaring religious exemption. Therefore, you may choose either to notify authorities or not to do so. If you are pulling your children out of public school, you will need to write a letter stating your religious convictions to the school board in your district. You may do that by sending it "in care of" the local school system. HSLDA provides members with a packet of instructions for writing this letter. We advise you to join HSLDA and follow their instructions very carefully if you decide to notify authorities. Some districts are now asking families declaring religious exemption to fill out a form. It is very important that

you have HSLDA review this form to be sure you are not being asked for information not required by law. Each school district deals with religious exemption families in their own way, and HSLDA will be able to help you know what to expect and how to deal with officials. You only declare religious exemption one time. You do not have to make a yearly declaration. The state takes its hands off you and you, alone before God, are responsible for your child. You do not turn in test scores to the school district, or seek the counsel of the public school system after that. By its very nature, a religious exemption means that you will not be putting your children in a public school in the future. You are, in effect, making a complete break from the public school system.

Notice that, according to the law, you must have a bona fide religious belief and be conscientiously opposed to attendance at public school. The Virginia Supreme Court ruled in 1991 that a family only has to demonstrate religious opposition to the public school, not to the school attendance law or the private school option. This must be a conviction, not merely a preference. According to David Gibbs of the American Law Association, the legal difference between a conviction and a preference (what will hold up in court) is that a conviction does not change, no matter what the change in circumstances. If there is any circumstance you can imagine that would cause you to put your children in a public school (death of husband, loss of income, threat of jail, etc.), you hold a preference, not a conviction.

Home Educators Association of Virginia (HEAV) says, "A religious belief must be one held in relation to a Supreme Being. Your entire belief system must be dependent on a supernatural God and His revelation ... You must have a conviction that it would be a sin to send your child to a public school; that it would never be an option to do so ... You do not qualify for religious exemption because you disagree with the curricula or the methods of teaching in a public school, you are concerned about safety issues, you do not like Family Life Education, there is a lack of character instruction in the public schools, you do not want to test or evaluate your child annually, or you just want to avoid government entanglement." If these are your reasons for home educating, you need to proceed under the Home Instruction Law.

Please also note that the law states, "...any pupil who together with his parents ... religious training or belief ..." After talking with HSLDA, we believe that a child under the age of fourteen (14) does not have to share your religious conviction, but is covered under religious training. However, if your child is fourteen (14) or older, he falls under the "together with his parents and a belief" rather than training. Therefore, at this age, he must share your bona fide religious conviction in order for you to legally claim the religious exemption. If your child does not have this conviction at age fourteen (14) and beyond, you need to home school under another option. HSLDA says that parents choosing this option need to prove (i) they have sincere, not fraudulent, beliefs that are (ii) religious, not merely philosophical, which (iii) demonstrate their objection to the public schools. Claiming religious exemption is a serious matter, not to be undertaken lightly, and we recommend that if you and your spouse are not absolutely sure where you stand on this issue that you pursue one of the other routes available to home educators.

Again, we strongly recommend that any family choosing to home educate under the religious exemption clause seek the advice of HSLDA. They have the experience and knowledge to direct your actions properly and with the least conflict.

### **3. CERTIFIED TUTOR STATUTE**

This is found in the compulsory attendance law Section 22.1-254(A) of the Virginia Code and gives the option of having **“...such child taught by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the division superintendent...”**

Under this section, if a parent is certified in Virginia, he need only notify the local superintendent that they are tutoring their child and send with the letter a copy of teacher certification. There are no further requirements to meet. You do not have to turn in test scores or send in yearly notification. Members of HSLDA can obtain, through them, a sample letter. We recommend you join HSLDA to use this option as school systems may fight your right to do so, or attempt to impose further requirements.

### **4. KINDERGARTEN OPTIONS**

Section 22.1-256(4) of the Virginia Code states, **“...any child who will not have reached his sixth (6th) birthday on or before September 30th 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, may delay the child’s attendance for one year.”** And as above in 22.1-254-1(C), **“...The requirements of subsection C (testing and evaluation) shall not apply to children who are under the age of six (6) as of September 30 of the school year.**

This statute allows you to opt out your five (5) year old, if you wish, to give your child more time to mature. In the past, parents chose this option so that they would not have to test their child for another year. However, the law no longer requires you to turn in test scores or an evaluation for the child who began the year as a five (5) year old. The procedure for delaying kindergarten is to go to the school where your child would attend and submit a letter that you are opting them out of kindergarten. If you choose this option, you may list him as either a kindergartner or first grader the following year. This gives you opportunity to see how well your child is picking up academics before having to test. If your child is struggling, you can register him as a kindergartner the next year, and then give him the easier test. This does not mean that he will have to graduate a year later than normal. You are free to graduate your child whenever he is ready. Students can take the GED as early as age sixteen.

## **5. HEALTH REQUIREMENTS FOR HOME INSTRUCTED CHILDREN**

Section 22.1-271.4 of Virginia law states, “...any parent, guardian ... having control or charge of a child being home instructed ... shall comply with the immunization requirements provided in Section 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 Sec. 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 circumstances that contraindicates immunization.”**

## **6. HOME SCHOOLED STUDENTS TAKING THE G.E.D.**

§ 22.1-254.2 of the Virginia Code allows home-educated students to take the G.E.D. at age 16. This used to be a requirement for home schooling students if they wanted to take courses at the community college for credit. However, that is no longer necessary. If you are interested in having your student take the G.E.D., contact your local GED office.

## **7. HIGH SCHOOL DUAL ENROLLMENT AT A COMMUNITY COLLEGE**

High School students who would like to take college courses for credit no longer need to have a G.E.D. certificate to do so. They may attend and receive credit as a dual enrolled high school student. Many of our area home-educated students accumulate a large number of college credits before they graduate from their home school. If you want your child to take courses for college credit from Virginia Western Community College or another community college, you must provide them with evidence that you are a home educator in good standing. That means that they want a copy of your letter from the school system acknowledging that you are currently home educating according to the law. If you are educating under the religious exemption statute, you will have to give them a copy of the school board’s response to your declaration. If you have trouble documenting this and you are a member of HSLDA, they will assist you in getting this accomplished. Beyond that, you just apply, register and pay for your classes like a regular college student.

## Conclusion

Home educators in our area are using all four of the teaching options outlined in the Home Instruction Law as well as the religious exemption and tutor options. The use of standardized tests is the most common means of evaluation. Many parents administer the test for their own students, although there are some group testing or private testing opportunities available.

One of the criticisms of the 1984 law is that its effect is to transform a parental right into a parental privilege. As a privilege, home instruction is subject to evaluation and approval of the state. Although public school authorities have been reasonable in the execution of the 1984 law in our area, we hasten to point out that administrations change and attitudes toward home education with them. With this, and the wide latitude of authoritative judgment given to public school superintendents by the law, we recommend that every home educating family apply for membership in the Home School Legal Defense Association (HSLDA). Your most responsible personal defense is to know and understand the law yourself in detail.

**Info: [www.GRHE.org](http://www.GRHE.org) or [grhemsg@gmail.com](mailto:grhemsg@gmail.com)**

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Websites for further information:

Home Educators of Virginia- <http://heav.org/>

Home School Legal Defense Association - <http://hslda.org/>

VA Homeschoolers -- <http://vahomeschoolers.org/>

Greater Roanoke Home Educators - <http://grhe.org>

Greater Roanoke Home Educators email - [grhemsg@gmail.com](mailto:grhemsg@gmail.com)

Greater Roanoke Home Educators Face book - Homeschooling Roanoke GRHE

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