

Case No. B-192878

IN THE COURT OF APPEAL
SECOND DISTRICT, DIVISION 3
CALIFORNIA

IN RE RACHEL L. et al.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent.

Los Angeles County Department of
Children and Family Services
Real Parties in Interest.

AFTER A DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT

AMICUS CURIAE OF MEMBERS OF
THE UNITED STATES CONGRESS

MATHEW D. STAVER*
FL Bar No. 0701092
ANITA L. STAVER*
FL Bar No.0611131
LIBERTY COUNSEL
1055 Maitland Center
Commons
Second Floor
Maitland, FL 32751
(800)-671-1776- telephone
(407) 875-0770- facsimile

SARAH E. SEITZ*
VA Bar No. 75401
LIBERTY COUNSEL
1015 15th Str. NW
Suite 1100
Washington, D.C. 20005
(202) 289-1776- telephone
(202) 216-9656- facsimile

MARY E. MCALISTER
CA Bar No. 148570
LIBERTY COUNSEL
100 Mountain View Rd
Suite 2775
Lynchburg, VA 24502
(434) 592-7000- telephone
(434) 592-7700- facsimile

* Motions to Appear *Pro Hac Vice* Filed Simultaneously

TABLE OF CONTENTS

TABLE OF CONTENTS. i

TABLE OF AUTHORITIES. iv

INTEREST OF AMICI. 1

SUMMARY OF ARGUMENT. 2

ARGUMENT. 3

I. HOMESCHOOLING HAS BEEN RECOGNIZED IN FIFTY STATES AND THE DISTRICT OF COLUMBIA AS A VALID FORM OF EDUCATION AND SHOULD CONTINUE TO BE RECOGNIZED AS SUCH IN THIS STATE. 3

A. The Other Forty-nine States And The District Of Columbia Recognize Homeschooling As A Valid Form Of Education.. . . . 3

1. Alabama. 3

2. Alaska. 5

3. Arizona. 7

4. Arkansas. 8

5. Colorado. 9

6. Connecticut. 10

7. Delaware. 11

8. District of Columbia. 12

9. Florida. 13

10. Georgia. 14

11. Hawaii. 15

12. Idaho. 16

13. Illinois. 17

14. Indiana. 17

15. Iowa. 18

16. Kansas. 19

17. Kentucky. 20

18.	<u>Louisiana.</u>	21
19.	<u>Maine.</u>	22
20.	<u>Maryland.</u>	24
21.	<u>Massachusetts.</u>	25
22.	<u>Michigan.</u>	26
23.	<u>Minnesota.</u>	28
24.	<u>Mississippi.</u>	28
25.	<u>Missouri.</u>	29
26.	<u>Montana.</u>	29
27.	<u>Nebraska.</u>	30
28.	<u>Nevada.</u>	31
29.	<u>New Hampshire.</u>	32
30.	<u>New Jersey.</u>	33
31.	<u>New Mexico.</u>	34
32.	<u>New York.</u>	34
33.	<u>North Carolina.</u>	35
34.	<u>North Dakota.</u>	36
35.	<u>Ohio.</u>	38
36.	<u>Oklahoma.</u>	39
37.	<u>Oregon.</u>	40
38.	<u>Pennsylvania.</u>	40
39.	<u>Rhode Island.</u>	43
40.	<u>South Carolina.</u>	43
41.	<u>South Dakota.</u>	45
42.	<u>Tennessee.</u>	45
43.	<u>Texas.</u>	47
44.	<u>Utah.</u>	47
45.	<u>Vermont.</u>	48
46.	<u>Virginia.</u>	49
47.	<u>Washington.</u>	50
48.	<u>West Virginia.</u>	51
49.	<u>Wisconsin.</u>	52
50.	<u>Wyoming.</u>	53

B.	Consistent With The Other Forty-nine States And The District Of Columbia, California Should Recognize Homeschool Instruction As A Valid Form Of Education..	54
-----------	--	-----------

II. THE INITIAL APPELLATE PANEL INCORRECTLY INTERPRETED CALIFORNIA LAW WHEN IT QUESTIONED THIS FAMILY’S PARTICIPATION IN AN INDEPENDENT STUDY PROGRAM.....	55
CONCLUSION.	56
CERTIFICATE OF WORD COUNT.	58
PROOF OF SERVICE	59

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Jeffery v. O'Donnell</i> , 702 F.Supp. 513 (M.D. Pa. 1987).....	41
<i>Pierce v. Society of Sisters</i> , 268 U.S. 510 (1925).	2, 40
<i>Wisconsin v. Yoder</i> , 406 U.S. 205 (1972).	2, 52

STATE CASES

<i>Appeal of Pierce</i> 451 A.2d 363 (N.H. 1982),.....	32
<i>Care & Protection of Charles</i> , 399 Mass. 324, 333-34 (1978).	26
<i>Delconte v. State</i> , 329 S.E.2d 636 (N.C. 1985).	36
<i>In re Interest of Patterson</i> , No. 13477, 13478, (Oct. 1990).....	16
<i>In re Sawyer</i> , 672 P.2d 1093 (Kan. 1983).	19, 20
<i>Kentucky State Board for Elementary & Secondary Education v. Rudasill</i> , 589 S.W.2d 877 (Ky. 1979).....	21
<i>Ohio v. Whisner</i> , 47 Ohio 2d 181 (1976).....	38
<i>People v. DeJonge</i> , 501 N.W.2d 127 (Mich. 1993).....	27
<i>People v. Levisen</i> , 404 Ill. 574, (1950).	17
<i>School Bd. Dist. No. 18 v. Thompson</i> , 103 P. 578 (Okla.1909).....	39
<i>State v. Buckner</i> , 472 So. 2d 1228 (Fla. Dist. Ct. App. 1985).....	14
<i>State v. Massa</i> , 95 N.J. Super. 382 (Morris County Ct. Law Div. 1967)32,33	
<i>State v. Peterman</i> , 70 N.E. 550 (Ind. Ct. App. 1904).	17
<i>Texas Educ. Agency, et al v. Leeper</i> , 893 S.W.2d 432 (Tex. 1994).	47

FEDERAL LEGISLATION

H. Res. 1076..... 1

STATE STATUTES

105 Ill. Comp. Stat. Ann. § 5/26-1..... 17

71 Pa. Cons. Stat., tit. 2401. 42

775 Ill. Comp. Stat. 35/1. 5

Ala. Code 16-28-1(2)..... 3

Ala. Code § 16-28-1(1). 4

Ala. Code § 16-28-1(1)(a)..... 4

Ala. Code § 16-28-1(2). 4

Ala. Code § 16-28-3..... 4

Ala. Code § 16-28-5..... 4

Ala. Code § 16-28-8..... 4

Ala. Const. amend. 622. 5

Alaska Stat. § 14.20.020(b)..... 6

Alaska Stat. 14.30.010..... 5, 6

Alaska Stat. § 14.45.110(a)..... 7

Alaska Stat. § 14.45.200(1)..... 7

Alaska Stat. § 14.45.200(2)..... 7

Ariz. Rev. Stat. § 15-802(B)(2).	7
Ariz. Rev. Stat. § 15-802(C).	7
Ariz. Rev. Stat. § 41-1493.	5
Ark. Code Ann. § 6-15-503(a)(2).	8
Ark. Code Ann. § 6-15-503(a)(3).	8
Ark. Code Ann. § 6-15-503(d).	9
Cal. Educ. Code § 48222.	54, 55
Cal. Educ. Code § 48224.	54
Cal. Educ. Code § 51745.	54
Cal. Educ. Code §§ 33190.	54
Colo. Rev. Stat. § 22-33-104.5(1).	9, 10
Colo. Rev. Stat. § 22-33-104(2)(b).	10
Colo. Rev. Stat. § 22-33-60.5.	10
Conn. Gen. Stat. § 52-571(b).	5
D.C. Code Ann. § 38-202.	12
D.C. Code Ann. § 38-203.	13
D.C. Code Ann. § 38-205.	12
Del. Code Ann. tit. 14.	11, 12
Fla. Stat. Ann. Ch. 617.	14
Fla. Stat. Ann. § 1002.01(1).	13
Fla. Stat. Ann. § 1002.43.	14

Fla. Stat. Ann. §1002.01(2).	13, 14
Fla. Stat. Ann. §1002.41(1)(a).	13, 14
Fla. Stat. Ann. §1002.41(1)(b).	13, 14
Fla. Stat. § 761.01.	5
Ga. Code Ann. § 20-2-690.	15
Ga. Code Ann. § 20-2-690(c)(2).	15
Ga. Code Ann. § 20-2-690(c)(3).	15
Ga. Code Ann. § 20-2-690(c)(6).	15
Ga. Code Ann. § 20-2-690(c)(8).	15
Hawaii Rev. Stat. § 302A-1132(a)(5).	15
Idaho Code § 33-202.	16
Idaho Code § 73-401.	5
Ind. Code Ann. § 20-33-2-20.	18
Ind. Code Ann. § 20-33-2-4(2).	17
Iowa Code Ann. § 299A.1.	18
Iowa Code Ann. § 299A.2.	18
Iowa Code Ann. § 299A.3.	18
Kan. Stat. Ann. § 38-141.	20
Kan. Stat. Ann. § 72-111(a)(2).	19
Kan. Stat. Ann. § 72-53.	19
Ky. Rev. Stat. Ann. § 159.030(1).	20

Ky. Rev. Stat. Ann. § 159.030(b).....	20
Ky. Rev. Stat. Ann. § 159.040.....	21
La. Rev. Stat. Ann. § 17:236.	21
La. Rev. Stat. Ann. § 17:236.1(A).....	21
La. Rev. Stat. Ann. § 17:236.1(B).....	21
La. Rev. Stat. Ann. § 17:236.1(C)(1).....	22
La. Rev. Stat. Ann. § 17:236(A).	22
Mass. Gen. Laws Ch. 76.	26
Md. Code Ann., Educ. §7-301.....	24
Me. Rev. Stat. Ann. tit. 20.....	24
Me. Rev. Stat. Ann. tit. 20-A § 5001.....	22, 23
Mich. Comp. Laws § 380.1561(3)(f).....	26, 27
Mich. Comp. Laws § 380.1578.	27
Minn. Stat. Ann. § 120A.22.....	28
Miss. Code Ann. § 37-13-91(3)(c).....	29
Mo. Ann. Stat. § 167.031.2(2)(a).....	29
Mo. Rev. Stat. §§ 1.302.....	5
Mont. Code Ann. § 20-5-102(2)(e).	29
Mont. Code Ann. § 20-5-109.....	29
N.C. Gen. Stat. § 115C-548.....	36
N.C. Gen. Stat. § 115C-552.....	36

N.C. Gen. Stat. § 115C-555 to -562.....	36
N.C. Gen. Stat. §115C-563.	35
N.C. Gen. Stat. § 115C-564.....	36
N.D. Cent. Code § 15.1-23-03.....	37
N.D. Cent. Code § 15.1-20-02.....	36
N.D. Cent. Code § 15.1-23-02.....	37
N.D. Cent. Code § 15.1-23-05.....	37
N.H. Rev. Stat. Ann. § 193-A:5(II).....	32
N.H. Rev. Stat. Ann. § 193-A:6(I).....	32
N.J. Stat. Ann. § 18A:38-25..	33
N.M. Stat. Ann. § 22-1-2.1(C).....	34
N.M. Stat. Ann. § 22-1-2(E).	34
N.M. Stat. Ann. § 28-22-1.....	5
N.Y. Educ. Law § 3204(2).....	34
N.Y. Educ. Law §3204.	35
Neb. Rev. Stat. § 79-1601(3).....	31
Neb. Rev. Stat. § 79-1601.	31
Neb. Rev. Stat. § 79-217.	31
Nev. Rev. Stat. Ann. § 385.007.....	31
Nev. Rev. Stat. Ann. § 392.	32
Nev. Rev. Stat. Ann. § 392.700(2).....	32

Nev. Rev. Stat. Ann. § 392.700(5).....	32
Okla. Const. art. XII § 4.....	39
Okla. Stat. tit. 51.	5
Or. Rev. Stat. § 339.030.....	40
Or. Rev. Stat. § 339.035(2).	40
Pa. Cons. Stat. § 2401.	5
Pa. Stat. Ann. tit. 24.....	41, 42
R.I. Gen. Laws § 16-19-1.....	43
R.I. Gen. Laws § 16-19-2.....	43
R.I. Gen. Laws § 42-80.1-1.	5
S.C. Code Ann. § 1-32-10.	5
S.C. Code Ann. § 59-65-40.	43, 44
S.C. Code Ann. § 59-65-45.	44
S.C. Code Ann. § 59-65-47.	44
S.D. Codified Laws § 13-27-2.....	45
S.D. Codified Laws § 13-27-3.1.	45
S.D. Codified Laws § 13-27-3.....	45
Tenn. Code. Ann. § 49-50-801.	47
Tenn. Code Ann. § 49-6-3050(a).....	46
Tenn. Code Ann. § 49-6-3050(b)(1).	46

Tenn. Code Ann. § 49-6-3050(b)(2).	46
Tenn. Code Ann. § 49-6-3050(b)(4).	46
Tex. Civ. Prac. & Rem. Code Ann. § 110.001.	5
Tex. Code Ann. § 25.086.	47
Utah Code Ann. § 53A-11-101.5.	48
Utah Code Ann. § 53A-11-102(2).	47,48
Va. Code Ann. § 22.1-254.	49,50
Va. Code Ann. § 22.1-254.1(D).	50
Va. Code Ann. § 22.1-254(A).	50
Va. Code Ann. § 22.1-254(B)(1).	50
Va. Code Ann. § 22.1-254.1(A).	50
Va. Code Ann. § 22.1-254.1(B).	50
Va. Code Ann. § 22.1-254A.	50
Vt. Stat. Ann. tit. 16.	48, 49
Vt. Stat. Ann. tit. 16 § 11(a)(21).	48
W. Va. Code § 18-28-1.	52
W. Va. Code § 18-8-1(c).	51, 52
W. Va. Code § 18-8-1(c)(2).	52
Wash. Rev. Code Ann. § 28A.195.010.	51
Wash. Rev. Code Ann. § 28A.225.010(4).	51
Wis. Stat. Ann. § 115.30(3).	52

Wis. Stat. Ann. § 118.15.	52
Wis. Stat. Ann. § 118.165.	53
Wis. Stat. Ann. § 118.165(1).	53
Wyo. Stat. Ann. § 21-2-406.	53
Wyo. Stat. Ann. § 21-4-101(a)(iv).	53
Wyo. Stat. Ann. § 21-4-102(b).	53
Wyo. Stat. Ann. §§ 21-4-102(b).	53

STATE REGULATIONS

Hawaii Admin. Rules § 8-12-13.	16
Hawaii Admin. Rules § 8-12-15.	16
Hawaii Admin. Rules § 8-12-19.	16
Md. Regs. Code tit. 13A.	24, 25
Md. Regs. Code tit. 13A § 10.01.05(B).	25
Ohio Admin. Code § 3301-34-03(A).	38, 39

INTEREST OF AMICI

Amici Curiae Ken Calvert (CA-44), John Campbell (CA-48), David Davis (TN-1), John Doolittle (CA-4), Tom Feeney (FL-24), Randy Forbes (VA-4), Trent Franks (AZ-2), Robin Hayes (NC-8), Wally Herger (CA-2), Jim Jordan (OH-4), Doug Lamborn (CO-5), Dan Lungren (CA-3), Thaddeus McCotter (MI-11), Howard McKeon (CA-25), Gary Miller (CA-42), Marilyn Musgrave (CO-4), Ed Royce (CA-40), Pete Sessions (TX-32), and Mark Souder (IN-3) are members of the Second Session of the 110th United States Congress. They are united in their concern for the effect that an unfavorable decision in California could have on national homeschooling laws, as well as the parental rights protected by such laws.

Following the initial decision by this Court, Representative Howard McKeon (CA-25) introduced H. Res. 1076, calling upon the courts to uphold the fundamental and constitutional right of parents to direct the upbringing and education of their children. These members of Congress represent families across the country who are currently homeschooling their children and who could be negatively affected by an adverse decision in this case. Therefore, they request that their interest in this issue be presented to the Court as Amici Curiae.

SUMMARY OF ARGUMENT

In 1972, the United States Supreme Court recognized that the “primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.” *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). This tradition continues today as over 2,100,000 children are homeschooled throughout the United States.

Currently, all 50 states and the District of Columbia permit home-based education, either under a specific statute or alternative provision. In *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925), the High Court affirmed a principle which has become a cornerstone of homeschool education:

The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations. *Id.* at 535.

California, like the rest of the country, should protect this fundamental right of parents to direct the education of their children by continuing to promote homeschool instructional programs.

ARGUMENT

I. HOMESCHOOLING HAS BEEN RECOGNIZED IN FIFTY STATES AND THE DISTRICT OF COLUMBIA AS A VALID FORM OF EDUCATION AND SHOULD CONTINUE TO BE RECOGNIZED AS SUCH IN THE STATE OF CALIFORNIA.

All 50 states and the District of Columbia have allowed for homeschool education under a specific statute or alternative provision. Each state has upheld its statutory law and has affirmed that parents have a right to direct the education of their children. In conformity with the rest of the country, this Court should uphold California's law providing for homeschooling as a valid alternative to compulsory attendance in the public school system.

A. The Other Forty-nine States And The District Of Columbia Recognize Homeschooling As A Valid Form Of Education.

1. Alabama

Although Alabama does not have a statute which specifically addresses homeschool education, alternative statutes provide two options for parents to teach their children according to this method of study. Under the Church School Option, home schools qualify as church "schools...operated as a ministry of a local church, group of churches, denomination, and/or association of churches on a nonprofit basis which do not receive any state or federal funding." Ala. Code § 16-28-1(2). Every child attending a church school is exempt from the compulsory attendance regulations, provided that the

enrollment and attendance of each child is filed with the local public school superintendent by the parent or guardian on a form provided by the superintendent or his agent, which shall be countersigned by the administrator of the church school. Ala. Code § 16-28-3 and 7. Additionally, the church school must “offer grades K-12, or any combination thereof...” Ala. Code 16-28-1(2), and the primary teacher must keep an attendance register for each day of the school year, Ala. Code § 16-28-8. Teachers at church schools are not required to meet any state mandated qualifications or certifications.

The second homeschooling option in Alabama involves a private tutor. According to Ala. Code § 16-28-5, children in a home school must be taught by a private tutor who is certified by the State Department of Education and who teaches “for at least three hours a day for 140 days each calendar year, between the hours of 8:00 A.M. and 4:00 P.M.” The tutor is required to file with the county superintendent of schools a statement describing the subjects taught and the period of instruction. Finally, the tutor must keep a record of each child’s work, including daily hours of instruction and attendance, and make such reports as the State Board of Education may require.

A home school wishing to qualify as a private school, must meet the requirements of Ala. Code § 16-28-1(1), which include teachers being certified by the State Superintendent of Education. Ala. Code § 16-28-1(1)(a).

Alabama’s Religious Freedom Restoration Amendment (“RFRA”) provides an additional protection for those families who chose to home school their children. Under the RFRA, the burden is on the state to prove that its requirement “furthers a compelling state interest” and is the “least restrictive means” of fulfilling its interest that children be educated. Ala. Const. amend. 622, § V(b)(1) and (2).¹

2. Alaska

Alaska Stat. § 14.30.010(b)(12) states that “if a child is being educated in the child’s home by a parent or legal guardian,” the child is exempt from compulsory attendance. Under this option, there are no state requirements for notice or approval if the parents’ intent to home school. There are no specified teacher qualifications.

In addition to the above statute, Alaska provides four alternative means for parents to homeschool their children. First, under Alaska Stat. § 14.30.010(b)(1)(B), a child may be tutored by a certified teacher. To be eligible for certification, an individual must have earned a bachelor’s degree from an accredited college or university, unless he or she was employed in the

¹

In addition to Alabama, twelve other states have enacted a Religious Freedom Restoration Act. Arizona, Ariz. Rev. Stat. § 41-1493 *et seq.*; Connecticut, Conn. Gen. Stat. § 52-571(b); Florida, Fla. Stat. § 761.01 *et seq.*; Idaho, Idaho Code § 73-401 *et seq.*; Illinois, 775 Ill. Comp. Stat. 35/1 *et seq.*; Missouri, Mo. Rev. Stat. §§ 1.302 and 1.307; New Mexico, N.M. Stat. Ann. § 28-22-1 to -5; Oklahoma, Okla. Stat. tit. 51, §251; Pennsylvania, 71 Pa. Cons. Stat. § 2401, *et seq.*; Rhode Island, R.I. Gen. Laws § 42-80.1-1 *et seq.*; South Carolina, S.C. Code Ann. § 1-32-10 *et seq.*; and Texas, Tex. Civ. Prac. & Rem. Code Ann. § 110.001 *et seq.*

state public school system on September 1, 1962; or he or she was issued an emergency certificate. The individual must submit to fingerprinting and background investigations and pay any fees required by the board. Finally, an individual must complete three semester hours in multi-cultural education or cross-cultural communications. Alaska Stat. 14.20.020(b),(c),(h).

Secondly, Alaska Stat. § 14.30.010(b)(10) provides for enrollment in “a full-time program of correspondence study approved by the school board,” if “the request for excuse is made in writing by the child’s parents and guardian and approved by the principal or administrator of the school the child attend.”

Thirdly, Alaska Stat. § 14.30.010(b)(11) states that upon written request for excuse from school attendance, a child “is equally well-served by an educational experience approved by the school board.”

Finally, a homeschool may qualify as a “religious or other private school” if the child’s parent files an annual notice of enrollment with the local superintendent by the first day of public school, the “Private and Denominational Schools Enrollment Report” and “School Calendar” forms with the Department of Education before October 15 of each year; maintains monthly attendance records for each student showing 180 days of attendance each year; and maintains and certifies to the Department of Education that

records of immunizations, courses, standardized testing, academic achievement, and physical exams are kept. Alaska Stat. §§ 14.45.110(a) and (b), 14.45.130.

A ‘private school’ is “a school that does not receive direct state or federal funding.” Alaska Stat. § 14.45.200(1). A ‘religious school’ is “a private school operated by a church or other religious organization that does not receive direct state or federal funding.” Alaska Stat. § 14.45.200(2).

3. Arizona

Within 30 days of the commencement of homeschool instruction, parents must file an affidavit of intent with the county school superintendent stating that the child is receiving educational instruction from home. Ariz. Rev. Stat. § 15-802(C). The affidavit must include the child’s name, date of birth, the current name of the school the child is attending, and the names, telephone numbers, and addresses of the parents or guardians who currently have custody of the child. Ariz. Rev. Stat. § 15-802(B)(2). An affidavit is not required thereafter unless the homeschool is terminated and then resumed. Ariz. Rev. Stat. § 15-802(C). The parent or guardian shall notify the county school superintendent within 30 days if the child is no longer being educated at home.

Id.

There are no state mandated teacher qualifications in Arizona.

4. **Arkansas**

Parents or guardians must notify the local public school superintendent of their intent to home school their children no later than August 15 for homeschooling in the fall semester, or by December 15 for homeschooling beginning in the spring semester. Ark. Code Ann. § 6-15-503(a)(1)(A) and (B). Parents who begin homeschooling after the start of the semester must provide notice of intent fourteen days prior to withdrawal of the child from public school and each year thereafter at the beginning of the school year; however, the superintendent or local school board may waive this fourteen-day waiting period. Ark. Code Ann. § 6-15-503(a)(1)(C).

Parents or guardians moving into the school district during the school year, must deliver, in person, notice of their intent to homeschool within 30 days of establishing residency within the district. At this time, the parent or guardian must also sign a waiver acknowledging that the state is not liable for the education of their children during the time they choose to provide homeschool instruction. Ark. Code Ann. § 6-15-503(a)(2). The notice must include the child's name, date of birth, grade level, and name and address of the school last attended; the location of the homeschool; the basic core curriculum and proposed schedule of instruction; and the qualifications of the parent-teacher. Ark. Code Ann. § 6-15-503(a)(3).

A public school student currently under disciplinary action for violation of a school policy is not eligible to begin homeschool instruction unless the superintendent or local school board allows the student to enroll; the disciplinary action has terminated or the school semester ends, whichever occurs first; or the student was expelled from public school. Ark. Code Ann. § 6-15-503(d).

There are no state mandated teacher qualifications in Arkansas.

5. Colorado

Colo. Rev. Stat. § 22-33-104.5(1) provides:

It is the primary right and obligation of the parent to choose the proper education and training for children under his care and supervision. It is recognized that home-based education is a legitimate alternative to classroom attendance...The General Assembly further declares that non-public home-based educational programs shall be subject only to minimum state controls which are currently applicable to other forms of non-public education.

Homeschool instruction may be provided by a parent, guardian, or an adult relative designated by a parent. Colo. Rev. Stat. § 22-33-104.5(2)(a) and (b). Home-based education must be provided a minimum of 172 days, with an average of four hours of instruction each day. Colo. Rev. Stat. § 22-33-104.5(3)(c). Parents must keep records of attendance, test results, and immunizations, and produce such records upon fourteen days notice if the superintendent has probable cause to believe the homeschooling program is

not in compliance with state law and requests the records. Colo. Rev. Stat. § 22-33-104.5(3)(g).

Parents must provide notice fourteen days prior to starting homeschooling and annually thereafter. Notification of the intent to homeschool is not required until the child is seven years of age and is not required after the child is sixteen. Colo. Rev. Stat. § 22-33-104.5(3)(e). The notice must include the child's name, age, residence, and hours of attendance. *Id.*

Colorado also has two alternative statutes under which parents may chose to homeschool their children. First, parents can enroll their children for a minimum of 172 days in an "independent school," but teach them from home. Colo. Rev. Stat. § 22-33-104(2)(b). The independent school must be comprised of at least two homeschool families. Parents are required to keep minimal records and teach in the areas of reading, writing, speaking, mathematics, history, civics, literature, and science. *Id.* A second option involves a parent or other adult who is certified in Colorado to teach under § 22-33-60.5.

6. Connecticut

On November 7, 1990, in the "Revised Procedures Concerning Requests From Parents To Educate Their Child At Home," the State Board of

Education acknowledged the right of parents to instruct their children at home as an alternative to public school attendance. The state of Connecticut does not have a homeschooling statute. However, the Department of Education passed procedures for parents who choose to educate their children in this manner. Parents must file notice with the superintendent of their intent to homeschool their child within ten days of the commencement of instruction. Such notice is effective for one school year. An annual review will be held with the parents to determine if proper instruction has been given throughout the year. There is no state mandate regarding teacher qualifications.

7. **Delaware**

In Delaware, there are three types of homeschools. A ‘multi-family homeschool’ is “the education of children, primarily by the parent(s) or legal guardian(s) of such children mainly in one or several residences, or other facilities, when such children are not related to each other as brother or sister.” Within this system, a person must act as a liaison to the Department of Education for purposes of reporting enrollment and attendance for all families involved. Del. Code Ann. tit. 14, § 2703(A)(2). A ‘single-family school’ is “the education of one’s own child(ren) primarily by the parent(s) or legal guardian(s) of such child(ren) mainly in their own residence.” Del. Code Ann. tit. 14, § 2703(A)(1) Lastly, a ‘single-family homeschool coordinated with the

local school district' is "the education of child(ren) primarily by the parent(s) or legal guardian(s) of such child(ren) mainly in their own residence using a curriculum approved by the local superintendent or the local superintendent's designee." The superintendent shall determine whether the parent(s) or legal guardian(s) are able to provide the student(s) regular and thorough instruction in the prescribed subjects. Del. Code Ann. tit. 14, § 2703(A)(3)

There are no state mandated teacher qualifications in Delaware.

8. **District of Columbia**

Although the District of Columbia does not have a specific homeschool statute, parents may homeschool their children under the authority of an alternative statutory provision. Pursuant to D.C. Code Ann. § 38-202, "every parent, guardian, or other person who resides permanently or temporarily in the District during any school year and who has custody or control of a minor child...shall place the minor in regular attendance in public, independent, private, or parochial school, or in *private instruction*" (emphasis added). Section 38-205 state that "each teacher who gives private instruction, shall...report to the Board the name, address, sex, and date of birth of each minor who resides permanently or temporarily in the District, who transfers between schools, or who enrolls in or withdraws from his or her school." The Board has never adopted any rules to implement this statute, so no report is

presently required. Finally, Section 38-203 requires that “an accurate daily record of the attendance of all minors...shall be kept...by every teacher who gives instruction privately.”

There are no state mandated teacher qualifications in the District of Columbia.

9. **Florida**

A ‘home education program’ is defined as “sequentially progressive instruction of a student directed by his parent or guardian.” Fla. Stat. Ann. § 1002.01(1). Under this statute, parents must notify the county superintendent of their intent to teach their children from home within 30 days of establishing the homeschool. This notice must include the names, addresses, and dates of birth of all homeschool students. Fla. Stat. Ann. §1002.41(1)(a) and (b). Finally, parents must maintain a portfolio consisting of “a log of educational activities that is made contemporaneously with the instruction and that designates by title any reading materials used.” Fla. Stat. Ann. §1002.41(1)(b). This record must also contain samples of writings, worksheets, workbooks, or other materials used for student development. The portfolio must be preserved for two years and made available for inspection by the superintendent upon fifteen days notice. *Id.* A parent teaching under a ‘home education program’

“is not required to hold a valid regular Florida teaching certificate.” Fla. Stat. Ann. §1002.41(1).

In addition to this statute, Florida also has two alternate provisions allowing parents to homeschool their children. Fla. Stat. Ann. §1002.01(2) states that a child who attends a private, parochial, religious, or denominational school is exempt from compulsory attendance. In *State v. Buckner*, 472 So. 2d 1228 (Fla. Dist. Ct. App. 1985), the court held that one homeschool does not qualify as a private school by itself; however, groups of homeschools may file as private schools under Fla. Stat. Ann. Ch. 617 or 623. Chapter 617 schools must incorporate and file an annual data base form. Chapter 623 schools must file a charter with their local circuit court and file an annual data base form.

Homeschools in Florida may also operate under Fla. Stat. Ann. § 1002.43, the private tutor law. An individual may teach a child if he or she holds a valid Florida teaching certificate; keeps all records and makes all reports required by the state and the school district; and requires all students to be in attendance for 180 days or the equivalent on an hourly basis.

10. **Georgia**

In order to homeschool in Georgia, parents must submit a declaration of intent to the superintendent within 30 days of the commencement of the program and by September 1 every year thereafter. The declaration must

include the names and ages of the students, the address of the homeschool, and the time in which the parents designate as their school year. Ga. Code. Ann. § 20-2-690(c)(2).

“Parents or guardians may teach only their own children in the home study program...but the parents or guardians may employ a tutor who holds at least a high school diploma or a GED equivalency diploma to teach such children.” Ga. Code. Ann. § 20-2-690(c)(3). Parents must keep and submit attendance records to the superintendent on a monthly basis. Ga. Code. Ann. § 20-2-690(c)(6). Parents must also write an annual progress report and retain it for three years. Ga. Code. Ann. § 20-2-690(c)(8). Finally, each school day must consist of four and one-half hours. Ga. Code Ann. § 20-2-690(c)(4).

The teaching parent must have at least a high school diploma or a GED equivalency diploma or the parents may employ a private tutor who also must have a high school diploma or GED equivalency diploma. Ga. Code Ann. § 20-2-690(c)(3).

11. **Hawaii**

Parents have two options in Hawaii in which to homeschool their children. Under Hawaii Rev. Stat. § 302A-1132(a)(5), a child is exempt “if notification of intent to home school has been submitted to the principal of the public school which the child would otherwise be required to attend...” The

notice of intent must include the name, address, telephone number, birth date, and grade level of the child. Hawaii Admin. Rules § 8-12-13. Parents must keep a record of the planned curriculum which must include the beginning and ending date of the program, the numbers of hours per week of instruction, the subjects taught, methods used to determine mastery, and a list of textbooks or other materials. Hawaii Admin. Rules § 8-12-15. “A parent teaching the parent’s child at home shall be deemed a qualified instructor.” Hawaii Admin. Rules § 8-12-19.

The second choice is found in Hawaii Rev. Stat. § 302A-1132(a)(5), which states that a child is exempt from compulsory attendance when “enrolled in an appropriate alternative educational program as approved by the superintendent.” Under this option, instructors must have a bachelor’s degree.

12. **Idaho**

Homeschools in Idaho are governed by Idaho Code § 33-202 which exempts children from compulsory attendance who are “otherwise comparably instructed.” ‘Comparably’ is not defined by statute, and as a result, the term varies from district to district. In *In re the Interest of Patterson*, No. 13477, 13478 (Oct. 2, 1990), the court held that the school district, not the parents, has the burden to show lack of comparable instruction. There are no statutory requirements regarding teacher qualifications.

13. **Illinois**

If a child is “attending a private or a parochial school where children are taught the branches of education taught to children of corresponding age and grade in public schools, and where the instruction of the child in the branches of education is the English language,” the child is exempt from Illinois’ compulsory attendance regulations. 105 Ill. Comp. Stat. Ann. § 5/26-1. Homeschools which meet these two requirements are deemed legal private schools. The court in *People v. Levisen*, 404 Ill. 574, (1950), held that a private school is “a place where instruction is imparted to the young, that a number of persons being taught does not determine whether a place is a school.” *Id.* at 576.

There are no state-mandated qualifications for homeschool teachers.

14. **Indiana**

Ind. Code Ann. § 20-33-2-4(2) provides that a child may attend “another school which is taught in the English language.” In *State v. Peterman*, 70 N.E. 550 (Ind. Ct. App. 1904), the court held that:

The result to be obtained, and not the means or manner of attaining it, was the goal which the lawmakers were attempting to reach. The [compulsory attendance] law was made for the parent who does not educate his child, and not for the parent who...so places within the reach of the child the opportunity and means of acquiring an education equal to that obtainable in the public schools...*Id.* at 552.

Parents who homeschool their children must keep attendance records “solely to verify the enrollment and attendance of the particular child upon request of the state superintendent...or the superintendent of the school corporation in which the private school is located.” Ind. Code Ann. § 20-33-2-20. There are no statutory qualifications for those teaching in homeschools.

15. **Iowa**

Iowa Code Ann. § 299A.1 states that “the parent, guardian, or legal custodian of a child of compulsory attendance age who places the child under private instruction shall provide, unless otherwise exempted, competent private instruction.” Competent private instruction means “private instruction provided on a daily basis for at least one hundred forty-eight days during a school year...by or under the supervision of a licensed practitioner.” Iowa Code Ann. § 299A.1. A licensed practitioner providing competent instruction must have a valid license issued by the state. Iowa Code Ann. § 299A.2.

To participate in competent private instruction, the parent, guardian, or legal custodian must complete the required form, ensure the child is evaluated annually to determine whether the child is making adequate progress, and ensure that the results of the annual evaluation are reported to the school district. Iowa Code Ann. § 299A.3. There are no specified teacher qualifications for those who are homeschooling in Iowa.

16. **Kansas**

Kansas does not have a separate homeschooling statute. However, there are two options by which parents may choose to educate their children at home. The first involves the use of a non-accredited private school. To do so, “the official custodian of every private elementary or secondary school shall register the name and address of the private elementary or secondary school with the state board of education.” Kan. Stat. Ann. § 72-53,101.

The teacher of a private must be a “competent instructor” and instruction must be provided for a period of time “substantially equivalent” to public school. Kan. Stat. Ann. § 72-111(a)(2). Pursuant to an opinion penned by the Kansas Attorney General, home-based education must be planned, scheduled, and periodic testing must occur in order for the home instruction to qualify as a private school. Kansas Attorney General Opinion No. 85-159 (1985); *citing In re Sawyer*, 672 P.2d 1093 (Kan. 1983). The State Department of Education has no authority to approve or disapprove non-accredited private schools. This interpretation has been upheld by many trial courts: *In re Jost*, No. 84-JC-88 (Marion County Dist. Ct. 1985); *In re Ahlman*, No. 83-JC-1366 (Harvey County Dist. Ct. April 11, 1984); *In re Hardon*, No. 85-JC-9 (Rawlins County Dist. Ct. Jan 17, 1986); *In re Hastings*, 83-JC-1365 (Harvey County Dist. Ct. 1984); and

In the Interest of Zephyrus White, 82-J-08, (Cloud County Dist. Ct., July 2, 1982) cited in *Sawyer* 672 P.2d at 1097.

The second option for homeschooling in Kansas is to operate as a “satellite” of an existing private school within the state.

Finally, the Parental Rights Act of 1996 further protects parents who choose to homeschool their children. “It shall be the public policy of this state that parents shall retain the fundamental right to exercise primary control over the care and upbringing of their children in their charge.” Kan. Stat. Ann. § 38-141.

17. **Kentucky**

Kentucky does not have a specific homeschooling statute, but the board of education of the local school district “shall exempt from the requirement of attendance upon a regular public day school every child of compulsory school age... [w]ho is enrolled and in regular attendance in a private, parochial, or church regular day school.” Ky. Rev. Stat. Ann. § 159.030(1). A homeschool qualifies as a private, parochial, or church school if the local board is notified of those students in attendance in such school. Ky. Rev. Stat. Ann. § 159.030(b). All private and parochial schools must maintain attendance and scholarship records and such schools “shall at all times be open to inspection

by directors of pupil personnel and officials of the Department of Education. Ky. Rev. Stat. Ann. § 159.040.

Regarding teacher qualifications, the court in *Kentucky State Board for Elementary & Secondary Education v. Rudasill*, 589 S.W.2d 877 (Ky. 1979), “is an indicator of the level of achievement, but it is not a *sine qua non*, the absence of which establishes private and parochial school teachers are unable to teach their students to intelligently exercise the elective franchise.” *Id.* at 884.

18. Louisiana

There are two options for homeschooling in Louisiana. First, La. Rev. Stat. Ann. § 17:236 states that “a child who participates in a home study program approved by the Board of Elementary and Secondary Education” is exempt from the compulsory attendance law. To qualify, parents must apply to the Board of Education for approval of the home study program within fifteen days of the commencement of instruction. La. Rev. Stat. Ann. § 17:236.1(A). In order to meet approval, the parent must certify “that the home study program will offer a sustained curriculum of quality at least equal to that offered by public schools.” La. Rev. Stat. Ann. § 17:236.1(B). A renewal application must be submitted by October 1 of the school year, or twelve months following the initial approval, whichever is later. La. Rev. Stat. Ann. § 17:236.1(A). In

addition to the renew application, parents must include documentation of a course outline for each subject taught, a list of textbooks and other materials, copies of the student's work, copies of standardized tests, and statements of third parties who observed the child's progress. La. Rev. Stat. Ann. § 17:236.1(C)(1).

In the alternative, a homeschool may operate as a private school if it has an "adequate physical plant," has "instructional staff members," operates for a minimum of 180 days, and receives no direct or indirect federal or state funding. La. Rev. Stat. Ann. § 17:236(A).

There is no statutory mandate regarding qualifications for teachers.

19. Maine

Students enrolled in a home instruction program are exempt from the regulations regarding compulsory attendance. Me. Rev. Stat. Ann. tit. 20-A, § 5001-A(3)(A)(c-1). The parent or guardian must provide notice of intent to homeschool with the local superintendent within ten days of the commencement of instruction. The notice must contain the name, signature, and address of the parent or guardian; the name and age of each student; the commencement date of the home instruction; a statement of assurance that students will be taught for at least 175 days in the areas of English, language arts, mathematics, science, social studies, physical education, health, library

skills, fine arts, and in at least one grade from grades six to twelve, Maine studies; and a statement of assurance that the parent or guardian will submit a year-end assessment. Me. Rev. Stat. Ann. tit. 20-A § 5001-A(3)(A)(4)(a). Each subsequent year, by September 1, the parent or guardian must submit a letter to the superintendent and state commissioner of education enclosing the year-end assessment and stating their intent to continue home-based instruction. Me. Rev. Stat. Ann. tit. 20-A § 5001-A(3)(A)(4)(b).

A second option is for parents of at least two unrelated students to form a Non-Public Approved Private School (“NAPS”). Me. Rev. Stat. Ann. tit. 20-A § 5001-A(3)(A)(1)(b). Annually, by October 1, the chief administrative official of the NAPS must file a letter with the Commissioner of Education and Cultural Services, stating that the school complies with applicable state and local safety, fire, and health laws; listing the names, addresses, and grade levels of all students; stating that the school will operate at least 175 days and will provide appropriate instruction; assuring that all teachers have been approved for competence; and confirming that the parents will be given annual progress reports and will be informed as to methods of assessment and student progress. Commissioner of Education and Cultural Services, memo, “Guidelines for Equivalent Instruction in Non-Approved Private Schools.”

20. **Maryland**

Md. Code Ann., Educ. § 7-301(a) states that public school attendance is not required for a child who is “otherwise receiving regular, thorough instruction during the school year in the studies usually taught in the public schools to children of the same age.” Under Md. Regs. Code tit. 13A, § 10.01.01-.05, the Department of Education enacted regulations which interpret Md. Code Ann., Educ. § 7-301(a) as applying to home schools. According to these regulations, parents have three options under which they can homeschool their children.

The first involves supervision by the public school superintendent. The homeschool must provide regular and thorough instruction in the required subject areas. The parents must maintain a portfolio including instructional and reading materials and examples of the child’s work product. The local superintendent may review such portfolio at a mutually agreeable time and place, not more than three times per year. If the superintendent finds from review of the portfolio that the child is not receiving regular and thorough instruction, he shall notify the family of the deficiencies. The family then has 30 days in which provide evidence that such deficiencies have been remedied or the family must cease home-based instruction. Md. Regs. Code tit. 13A, § 10.01.01(F).

A second option involves instruction under the supervision of a “school or institution offering an educational program operated by a bona fide church organization.” Md. Regs. Code tit. 13A, § 09.09.01(C). The church must send a letter to the superintendent declaring its compliance with the applicable requirements and provide documentation that supports its bona fide church status. The church must supervise instruction with pre-enrollment conferences, textbook and lesson plan reviews, an annual visit to the physical place of instruction, and periodic conferences with parents. Md. Regs. Code tit. 13A, § 10.01.05(A)(1).

A third option entails the child’s instruction being offered “under the supervision of a ... nonpublic school with a certificate of approval from the State Board of Education.” The Board has supervision over “textbooks, lesson materials, and other instructional materials, or equipment to be used ... by the pupil and assignment of a school-based teacher to assist the home teacher ... and to assist the pupil by issuing progress reports, marking papers, and grading tests.” Md. Regs. Code tit. 13A § 10.01.05(B).

There are no state mandated qualifications for homeschool teachers.

21. **Massachusetts**

Homeschooling in Massachusetts is considered private education: “School committees shall approve a private school [homeschool] when satisfied

that the instruction in all the studies required by law equals in thoroughness and efficiency, and in the progress made therein, that in the public schools in the same town, but shall not withhold such approval on account of religious teaching. . . .” Mass. Gen. Laws Ch. 76, § 1. The court in *Care & Protection of Charles*, 399 Mass. 324, 333-34 (1978), outlined four areas in which a superintendent may examine in the determination of whether to approve home-based instruction. First, the superintendent may examine the proposed curriculum and hours of instruction for each subject area. *Id.* at 601. Second, he may look to the competency of the parents to teach their children. *Id.* Third, the superintendent may review the textbooks and other instructional materials, lesson plans, and teaching manuals. *Id.* at 602. Finally, the superintendent may require periodic assessments to ensure academic progress. *Id.*

If a home school is rejected after seeking approval, the burden of proof shifts to the school authorities to show that the proposed home-based education fails to equal “in thoroughness and efficiency, and in the progress made therein, that in the public schools in the same town.” *Id.* at 601. There are no state mandated qualifications for homeschool teachers.

22. Michigan

Pursuant to Mich. Comp. Laws § 380.1561(3)(f), “a child is not required to attend public school if ‘the child is being educated at the child’s home by his

or her parent or legal guardian in an organized educational program in the subject areas of reading, spelling, mathematics, science, history, civics, literature, writing, and English grammar.” In regard to teachers, the court in *People v. DeJonge*, 501 N.W.2d 127 (Mich. 1993), held that “the teacher certification requirement is an unconstitutional violation of the free exercise clause of the First Amendment as applied to families whose religious convictions prohibit the use of certified instructors. Such families, therefore, are exempt from the dictates of the teacher certification requirement.”

Mich. Comp. Laws§ 380.1561(3)(a) provides an alternative. “A child who is attending regularly and is being taught in a state approved, nonpublic school, which teaches subjects comparable to those taught in the public schools to children of corresponding age and grade...” is exempt from public school attendance. A homeschool may operate under this option if it provides the superintendent with the following information: the name and age of each child enrolled, including those not in regular attendance and the name and address of the parent and the number or name of the school district in which the parent resides. Mich. Comp. Laws§ 380.1578. Homeschoolers utilizing this method of teaching and who are opposed to teacher certification based on sincerely held religious beliefs may claim a religious exemption pursuant to the *DeJonge* case.

23. **Minnesota**

Minn. Stat. Ann. § 120A.22, subd. 10, affirms that “the parent of a child is primarily responsible for assuring that the child acquires knowledge and skills that are essential for effective citizenship.” In order to homeschool in Minnesota, the instructor must meet one of six requirements. He must hold a Minnesota teaching license; or be directly supervised by a licensed teacher; or successfully complete a teacher competency exam; or provide instruction in a school that is accredited or recognized by the state board; or hold a baccalaureate degree; or finally, be the parent of a child who is assessed according to a nationally norm-referenced standardized achievement examination. *See id.*

By October 1 of each school year, the parent-instructor must report the name, date of birth, and address of each student to the superintendent. The report must also include evidence of meeting one of the above six requirements.

24. **Mississippi**

In order to provide home-based education, the parent, guardian, or custodian of the children must file a “certificate of enrollment” including names, address, and telephone number of parents and children, dates of birth of children, and a “simple description of the type of education the children are receiving.” The certificate must be submitted by September 15 of each school

year to the school attendance officer where the child resides. Miss. Code Ann. § 37-13-91(3)(c).

There are no requirements for teacher certification.

25. **Missouri**

In Missouri, a homeschool is one which has as its primary purpose the provision of private or religious-based instruction; enrolls students between the ages of seven and sixteen, of which no more than four are unrelated; and does not charge or receive tuition or fees. Mo. Ann. Stat. § 167.031.2(1)(a)-(c).

A homeschool must maintain a record of subjects being taught; and a portfolio containing samples a child's work product; and a report on a child's academic progress; or any other written, credible evidence equivalent to the previous three standards. Mo. Ann. Stat. § 167.031.2(2)(a). There are no requirements for teacher certification.

26. **Montana**

In Montana, a homeschool is defined as “the instruction by a parent of his child, stepchild, or ward in his residence.” Mont. Code Ann. § 20-5-102(2)(e). The homeschool must maintain attendance and immunization records; be in a building that complies with local health and safety regulations; provide at least the minimum aggregate hours of instruction as are required for

public school; annually notify the superintendent of the intent to homeschool; and provide a course of study. Mont. Code Ann. § 20-5-109.

There are no requirements for teacher certification

27. Nebraska

Any private, denominational or parochial school may “elect not to meet state accreditation or approval requirements.” A home school is considered “a private school.” Parents may assert either religious or non-religious objections to state requirements, but the state has one set of rules and forms for non-religious objections (Rule 12) and another for religious objections (Rule 13).

To operate a homeschool under Rules 12 or 13, parents must annually file the Parent or Guardian Form (Form A), stating under oath that the requirements for approval and accreditation either “interfere with the decisions directing my child’s education,” Tit. 92, Neb. Admin. Code, ch. 12, or “violate sincerely held religious beliefs of the parents of legal guardians.” Tit. 92, Neb. Admin. Code, ch. 13.

Form A also requires parents to affirm under oath that home-based instruction includes language arts, mathematics, science, social studies, and health. Parents filing under Rule 12 must also affirm that they understand that

their school must comply with the vaccination requirements under Neb. Rev. Stat. § 79-217.

An adult must also annually file a notarized Parent Representative Form (Form B). The Parent Representative must affirmatively accept the duty to submit information regarding student enrollment, attendance, and course instruction. Neb. Rev. Stat. § 79-1601; Tit. 92 Neb. Admin. Code, ch. 12 and 13. The Parent Representative must also file an Information Summary which includes a calendar indicating the minimum number of hours of instruction; a list of all instructional monitors in the homeschool; and a scope and sequence for each grade level.

There are no requirements for teachers unless the homeschool teacher is “employed” by the family. Neb. Rev. Stat. § 79-1601(3).

28. Nevada

A ‘homeschooled child’ is one who “receives instruction at home and who is exempt from compulsory attendance.” Nev. Rev. Stat. Ann. § 385.007. The parent must file with the superintendent a notice of intent to engage in homeschool instruction. The Department will provide a standard form which must be filed prior to the commencement of the homeschool education or not later than ten days following withdrawal of the child from public school or not

later than thirty days after establishing state residency. Nev. Rev. Stat. Ann. § 392.700(2).

The notice of intent to homeschool must include the name, age, and gender of each child; the name and address of each parent filing a notice of intent; a statement signed by each parent filing such notice that he or she has control of the child and the legal right to direct the child's education; and an educational plan including instruction in English, mathematics, science, and social studies. Nev. Rev. Stat. Ann. § 392.700(5).

A further protection for homeschoolers is found in Nev. Rev. Stat. Ann. § 392, which states, "no regulation or policy of the State Board...may infringe upon the right of a parent to educate his child based on religious preference unless it is essential to further a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest."

There are not statutorily mandated requirements for teachers.

29. New Hampshire

The legislative history of N.H. Rev. Stat. Ann. § 193-A states "that it is the primary right and obligation of a parent to choose the appropriate educational alternative for a child under his care and supervision, as provided by law." The court in *Appeal of Pierce*, 451 A.2d 363 (N.H. 1982), held "Home education is an enduring American tradition and right. . . . Thus approval

requirements for non-public school education may not unnecessarily interfere with traditional parental rights.”

To homeschool in New Hampshire, a parent must file a notice of intent within 30 days of the annual commencement of the home-based instruction or the withdrawal of the student from public school or moving into the district. N.H. Rev. Stat. Ann. § 193-A:5(II). Notice must include the names, addresses, and birth dates of all students. *See id.*

Parents must maintain a portfolio consisting of a record of reading materials used and samples of the child’s work product. Such portfolio must be retained for a period of two years. N.H. Rev. Stat. Ann. § 193-A:6(I).

There are no mandated teacher qualifications in New Hampshire.

30. New Jersey

The child must attend a public school “or a day school in which there is given instruction equivalent to that provided in the public schools for children of similar grades ... or receive equivalent instruction elsewhere than at school.” N.J. Stat. Ann. § 18A:38-25. Home schooling is generally allowed under the “elsewhere than at school” portion of the statute.

In *State v. Massa*, 95 N.J. Super. 382 (Morris County Ct. Law Div. 1967), the court held that “the number of students does not determine a school and further, that a certain number of students need not be present to attain an

equivalent education.” *Id.* at 256. Regarding teacher certification, the court held “perhaps the New Jersey Legislature intended the word ‘equivalent’ to mean taught by a certified teacher elsewhere than at school. However, I believe there are teachers today teaching in various schools in New Jersey who are not certified. . . . Had the legislature intended such a requirement, it would have said so.” *Id.*

31. **New Mexico**

Homeschooling in New Mexico is “the operation by the parent of a school-age person of a home study program of instruction that provides a basic academic educational program...” N.M. Stat. Ann. § 22-1-2(E).

Parents must notify the superintendent of their intent to provide home-based education within 30 days of the establishment of the homeschool and by April 1 of each subsequent year. To qualify to teach, parents must possess at least a high school diploma or its equivalent. N.M. Stat. Ann. § 22-1-2.1(C).

32. **New York**

A child “may attend a public school or elsewhere.” Instruction given to a minor “elsewhere” must be “at least substantially equivalent to the instruction given to minors of like age or attainments at the public schools.” N.Y. Educ. Law § 3204(2).

Parents must submit notice of intent to homeschool to the superintendent by July 1, or within fourteen days of the commencement of homeschool instruction during the middle of a school year. Parents must also complete an Individualized Home Instruction Plan (“IHIP”) containing the child’s name, age, and grade level; a list of syllabi, course materials, or plan of instruction; the dates for submission of quarterly reports; and the name of the individuals providing the instruction. Finally, parents are required to maintain records of attendance; file quarterly reports containing hours of instruction, material covered in each subject, and an evaluation for each subject; and file an annual assessment with the last quarterly report.

Regarding teacher qualifications, instruction must be provided by a competent teacher. N.Y. Educ. Law §3204. A parent is deemed “competent” if the regulations above are followed.

33. North Carolina

Pursuant to N.C. Gen. Stat. §115C-563, “Home school means a nonpublic school in which one or more children of not more than two families or households receive academic instruction from parents, or legal guardian, or a member from either household.” The North Carolina Supreme Court held, “The legislature has historically insisted only that the instructional setting, whatever it may be, meet certain standards which can be objectively determined

and which require no subjective or philosophical analysis of what is or what is not a “school.” *Delconte v. State*, 329 S.E.2d 636, 646 (N.C. 1985).

All new homeschools must notify the State Director of the Division of Nonpublic Education of their intent to operate. Such notice shall include the name and address of the school and the owner and chief administrator of the school. N.C. Gen. Stat. § 115C-552. A homeschool must meet for a nine calendar month school term and maintain attendance and immunization records. N.C. Gen. Stat. § 115C-548.

Homeschools must elect to operate either under the qualifications of a “private church school or school of religious character (N.C. Gen. Stat. § 115C-547 to -554) or under a “qualified nonpublic school” (N.C. Gen. Stat. § 115C-555 to -562).

A parent must have high school diploma or a GED. N.C. Gen. Stat. § 115C-564.

34. **North Dakota**

Compulsory attendance requirements do not apply to a child receiving home-based education. N.D. Cent. Code § 15.1-20-02.

The parent must file an annual statement of intent to homeschool with the superintendent at least fourteen days prior to the commencement of the home instruction or within fourteen days of the establishment of residency in

the district. The statement must include the names and addresses of the children and the parent who will supervise the home education; the dates of birth and grade levels of the children; and the qualifications of the parents who will supervise the instruction. The statement must also include any public school courses in which the child intends to participate and the school district offering the courses, and any extracurricular activities in which the child intends to participate and the school district or approved nonpublic school offering the activities. N.D. Cent. Code § 15.1-23-02.

Every parent must maintain an annual record of courses and the child's academic progress assessments. N.D. Cent. Code § 15.1-23-05.

A parent is qualified to teach home-based education if he or she is certified to teach in North Dakota; or has a baccalaureate degree; or has a high school diploma or a GED certificate and is monitored by a certified teacher during the first two years of home instruction, and thereafter in succeeding years, unless the basic composite score on the required standardized achievement test is at least at the 50th percentile; or, has met or exceeded the cut-off score of the national teacher exam given in North Dakota, or any other state if North Dakota does not offer such a test. N.D. Cent. Code § 15.1-23-03.

35. **Ohio**

“‘Home education’ is ‘education primarily directed and provided by the parent.’” Ohio Admin. Code § 3301-34-01(B). In *Ohio v. Whisner*, 47 Ohio St.2d 181 (1976), the court held “. . . it has long been recognized that the right of a parent to guide the education, including the religious education, of his or her children is indeed a fundamental right guaranteed by the Due Process Clause of the Fourteenth Amendment.” *Id.* at 214.

Parents must provide annual notification of their intent to homeschool to the superintendent. Such notice shall include the name and address of the parent and name of birth date of the child; name and address of the individual who will be teaching the child, if different from the parent; assurance that the homeschool will cover the required subjects (“except that home education shall not be required to include any concept, topic, or practice that is in conflict with the sincerely held religious beliefs of the parent”); an outline of the intended curriculum and list of textbooks or other teaching materials; and assurance of hours of attendance and teacher qualifications. Ohio Admin. Code § 3301-34-03(A).

The homeschool teacher must have a high school diploma or GED or test scores which demonstrate high school equivalence, or the parent must “work under the direction of a person holding a baccalaureate degree...until children’s

test results demonstrate reasonable proficiency...Ohio Admin. Code § 3301-34-03(A)(9).

36. **Oklahoma**

Oklahoma is the only state with a constitutional provision guaranteeing the right to homeschool. The legislature shall provide for the “compulsory attendance at some public or other school, unless other means of education are provided of all children in the State who are sound in mind and body, between the ages of eight and sixteen, for at least three months each year.” Okla. Const. art. XII, § 4.

The Oklahoma Supreme Court in *School Brd. Dist. No. 18 v. Thompson*, 103 P. 578, 581 (Okla. 1909), upheld parental rights against the public school’s authority. “Under our form of government ... the home is considered the keystone of the governmental structure. In this empire, parents rule supreme during the minority of their children ... they may ... withdraw them entirely from public schools and send them to private schools, or provide for them other means of education.”

There are no state mandated teacher qualifications.

37. **Oregon**

Children are exempt from compulsory attendance regulations if they are “being educated in the children’s home by a parent or legal guardian.” Or. Rev. Stat. § 339.030 (1)(d).

Parents opting to homeschool their children must notify the education service district within ten days of the commencement of home-based instruction or of the day the child is withdrawn from public school. Or. Rev. Stat. § 339.035(2). The notice must include the child’s and parent’s names and addresses, the child’s date of birth, and the name of the school the child is presently attending or last attended. Or. Admin. R. § 581-021-0026(1)(f).

In *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925), the United States Supreme Court struck down an Oregon law which required all children to attend public school. The Court held that “the child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Id.* at 535.

There are no state mandated teacher qualifications.

38. **Pennsylvania**

In Pennsylvania, parents have four options under which to homeschool their children. “Parents have a substantial constitutional right to direct and

control the upbringing and development of their minor children.” *Jeffery v. O’Donnell*, 702 F.Supp. 513, 515 (M.D. Pa. 1987).

First, parents may file a notarized affidavit with the superintendent prior to the commencement of the home instruction and annually thereafter. The affidavit must include the name of the parent/supervisor, name and age of children, address, and telephone number; assurance that subjects are taught in English; an outline of educational objectives for each subject; evidence of immunization; receipt of health and medical services required by law; and a certification that the parent/supervisor, all adults living in the home, and any other persons having legal custody of the children have not been convicted of a certain criminal offenses within the last five years. Pa. Stat. Ann. tit. 24, § 13-1327.1(1).

A parent/supervisor must annually maintain and provide the superintendent with a portfolio including a “log...which designates reading materials used, samples of any writing, worksheets, workbooks or creative materials used by the student.” Pa. Stat. Ann. tit. 24, § 13-1327.1(e)(1). The parent/supervisor must also maintain and provide an annual written evaluation of the student’s educational progress by a licensed psychologist, teacher certified by the state, or a non-public school teacher or administrator. Pa. Stat. Ann. tit. 24, § 13-1327.1(e)(2).

Second, parents may homeschool their children if they are a ‘properly qualified private tutor.’ Such person is one who is “certified by the Commonwealth of Pennsylvania to teach in the public schools of Pennsylvania; who is teaching one or more children who are members of a single family; who provides the majority of the instruction to such child or children; and who is receiving a fee or other consideration for such instructional services.” Pa. Stat. Ann. tit. 24, § 13-1327(a).

As a third option, parents may homeschool their children if the home is a satellite of a religious day school. Children must be enrolled in a day school which is operated by a bona fide church or other religious body and which provides a minimum of 180 days of instruction. Pa. Stat. Ann. tit. 24, § 13-1327(b).

Finally, homeschoolers may invoke the Religious Freedom Protection Act to demonstrate a substantial burden on the parents’ free exercise of religion. 71 Pa. Cons. Stat. tit. § 2401, *et. seq.*

The parent/supervisor must have a high school diploma or its equivalent if students are not enrolled in a day school. Pa. Stat. Ann. tit. 24, § 13-1327.1(a).

39. **Rhode Island**

A child may receive a “course of at-home instruction approved by school committee of the town wherein the child resides” if attendance is “substantially equal” to that of the public schools; an attendance register is kept; and teaching in the required subjects is “thorough and efficient.” R.I. Gen. Laws § 16-19-2. In some school districts, parents may present a certificate that their child attends a local private school’s satellite program in lieu of complying with the home school statute described above. R.I. Gen. Laws § 16-19-1.

There are no state requirements for teacher qualifications.

40. **South Carolina**

Parents “may teach their children at home if the instruction is approved by the district board of trustees.” S.C. Code Ann. § 59-65-40. The board shall approve the program if the parent has at least a high school diploma or GED equivalent or has earned a baccalaureate degree; the instructional day is at least four and one-half hours and the year at least 180 days; the curriculum includes the state required subjects; educational records include a plan book of subjects taught, a portfolio of the child’s work product, and semiannual progress reports; the student has access to library facilities; the student participates in the annual statewide testing program, including the Basic Skills Assessment Program; and the parents release the district from liability regarding the child’s education. *See id.*

Second, “in lieu of the requirements of Section 59-65-40, parents or guardians may teach their children at home if the instruction is conducted under the auspices of the South Carolina Association of Independent Home Schools (“SCAIHS”).” Membership and continued compliance with the academic standards of SCAIHS exempts the homeschool from the further requirements of Section 59-65-40. Under this option, parents or guardians must hold at least a high school diploma or GED equivalent; the instructional year must be at least 180 days; and the curriculum must include the subjects required by the state. S.C. Code Ann. § 59-65-45.

As a final option, S.C. Code Ann. § 59-65-47 states that “parents or guardians may teach their children at home if the instruction is conducted under the auspices of an association for home schools which has no fewer than fifty members and meets the requirements of this section.” Membership and continued compliance with the standards of the associations exempts the homeschool from the further requirements of Section 59-65-40 or Section 59-65-45. Under this provision, parents or guardians must hold at least a high school diploma or GED equivalent; the instructional year must be at least 180 days; the curriculum must include the subjects required by the state; and educational records include a plan book of subjects taught, a portfolio of the child’s work product, and semiannual progress reports. S.C. Code Ann. § 59-65-47

Regarding teacher qualifications, parents must have a high school diploma or GED equivalent.

41. **South Dakota**

“A child shall be excused from school attendance, pursuant to S.D. Codified Laws § 13-27-2, because the child is otherwise provided with alternative instruction for an equivalent period of time, as in public schools, in the basic skills of language arts and mathematics.”

Parents homeschooling their children must submit a notarized application for an excuse to the superintendent. Such application must include the names of teachers, place of instruction, and description of the basic skills taught. S.D. Codified Laws § 13-27-3. Upon first filing, parents must include with the application a certified copy of the child’s birth certificate, or an affidavit witnessed or notarized by two or more witnesses swearing or affirming that the child for whom the excuse is being requested is the same as the person “appearing on the child’s birth certificate.” S.D. Codified Laws § 13-27-3.1.

There are no state mandated teacher qualifications.

42. **Tennessee**

To homeschool in Tennessee, parents must submit notice of intent to the superintendent by August 1 of each school year. Such notice must include the name, number, age and grade level of children involved; location of the school; curriculum offered (no particular subjects required in grades K-8) and the

proposed hours of instruction; and the qualifications of the parent-teacher. In grades 9-12, the notice must include whether a college preparatory or general course of education will be taught and a description of the courses to be taught in each year. Tenn. Code Ann. § 49-6-3050(b)(1) and (8).

Parents must maintain attendance records, provide four hours of instruction each day, and submit proof of vaccination. Tenn. Code Ann. § 49-6-3050(b)(2),(3),(9). The parent-teacher must have a high school diploma or a GED to teach grades K-8 and have a baccalaureate degree to teach grades 9-12 or request an exemption from the Commissioner of Education. Tenn. Code Ann. § 49-6-3050(b)(4), (7).

“Home schools who teach grades K-12, whose parents are associated with an organization that conducts church-related schools shall be exempt” from the home school requirements above. Tenn. Code Ann. § 49-6-3050(a)(2)(A). Children in grades 9-12 must be registered with the local school district. § 49-6-3050(a)(2)(C)(I). A ‘church-related school’ means “a school operated by denominational, parochial or other bona fide church organizations.” Such schools must meet the standards of accreditation or membership “of the Tennessee Association of Christian Schools, the Association of Christian Schools International, the Tennessee Association of Independent Schools, the Southern Association of Colleges and Schools, the Tennessee Association of Non-Public Academic Schools, the Tennessee

Association of Church Related Schools, or a school affiliated with Accelerated Christian Education, Inc.” Tenn. Code. Ann. § 49-50-801. If parents conducting a home school are associated with a church-related school, there are no qualifications for teaching grades K-8, but parents must have a high school diploma or GED to teach grades 9-12. Tenn. Code Ann. § 49-6-3050(a)(2)(B).

Finally, parents may have their children attend a church-related school where the home is a satellite or extension of the church-related school. Tenn. Code Ann. § 49-50-801. Unlike option two, students in a satellite campus program need not register with the school district for grades 9-12. There are no teacher requirements under this option.

43. **Texas**

“Any child in attendance upon a private or parochial school which shall include in its course a study of good citizenship” is exempt from the requirements of compulsory attendance. Tex. Code Ann. § 25.086(a)(1). In *Texas Educ. Agency, et al v. Leeper*, 893 S.W.2d 432 (Texas 1994), the Texas Supreme Court held that homeschools can operate as private schools under the law. There are no teacher qualifications specified by statute.

44. **Utah**

A child “shall be excused from attendance” at the public school if the child’s parent annually files a signed affidavit with the minor’s school district. Utah Code Ann. § 53A-11-102(2). The parent must file an affidavit for each

minor child taught at home each year. Such affidavit must include assurance that the child will be taught the State Board of Education required subjects and that the child will be instructed for the same amount of time as required for public schools. Utah Code Ann. § 53A-11-102(2)(b).

As an alternative, groups of homeschoolers have established themselves as a “regularly established private school” under Utah Code Ann. § 53A-11-101.5. According to the Department of Education, it has no jurisdiction over private schools. The only requirement that may apply is obtaining a business license.

The state does not require specific teacher qualifications.

45. Vermont

A child is exempt from the compulsory attendance regulations if he is attending “a home study program for the full number of days for which that school is held.” Vt. Stat. Ann. tit. 16, § 1121. A ‘home study program’ is “an educational program offered through home study which provides a minimum course of study and which is offered to not more than children residing in that home; and children not residing in that home who either are two or fewer in number or who are from one family.” Vt. Stat. Ann. tit. 16 § 11(a)(21).

Written enrollment notice must be sent to the state commissioner for each child. Such notice must include the child’s name and age; names, mailing addresses, town of legal residence, and phone numbers of parents or guardians;

an assessment of progress for each child enrolled in the previous year; an “independent professional evidence on whether the child has a disability” for each child not previously enrolled in a Vermont public school or Vermont home study program; a detailed outline or narrative which describes the content to be approved in each subject area of the minimum course of study; names, addresses, telephone numbers, and signatures of all individuals providing instruction in any required subject other than physical education, health, and fine arts; and signatures of all custodial parents or guardians who are legally authorized to make educational decisions for the student. Vt. Stat. Ann. tit. 16, § 166b(a)

There are no required teacher qualifications in Vermont.

46. **Virginia**

Pursuant to Va. Code Ann. § 22.1-254.1(A), parental instruction of children is an acceptable form of education and Virginia provides four options from which parents may choose to homeschool their children. First, parents must annually notify the superintendent of their intent to provide home-based instruction. Va. Code Ann. § 22.1-254.1(B). Parents must have a high school diploma; or be a “teacher of qualifications prescribed by the Board of Education;” or enroll the child in a “correspondence course approved by the Board of Education;” or provide a curriculum that includes state standards of learning objectives for language arts and mathematics; or provide evidence that

the “parent is able to provide adequate education.” Va. Code Ann. § 22.1-254.1(A). Finally, parents must submit a “description of curriculum” which includes the subjects taught. Va. Code Ann. § 22.1-254.1(B).

Second, “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.” Va. Code Ann. § 22.1-254(B)(1). Homeschoolers may receive an exemption under this statute according to Va. Code Ann. § 22.1-254.1(D), exempts them from all requirements under the homeschool law, Va. Code Ann. § 22.1-254 (H)(5).

Third, 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 and verify that he is certified. Va. Code Ann. § 22.1-254(A).

Finally, according to Va. Code Ann. § 22.1-254A, an individual homeschool does not qualify as a private school; however, groups of homeschoolers may create private schools with each home being a part of the campus and each parent acting as a teacher. Private schools are not regulated by the state. Va. Code Ann. § 22.1-254.

47. **Washington**

Home-based instruction consists of “planned and supervised instructional and related educational activities, including a curriculum and instruction in the basic skills...provided for a number of hours equivalent to the

total annual program hours per grade level established for approved private schools.” Wash. Rev. Code Ann. § 28A.225.010(4).

Instruction may only be provided by a parent who is either teaching only his child and is supervised by a certificated person; or teaching only his child and has either forty-five college credits or has completed a course in home-based education at a post-secondary institution or vocational-technical institute or is deemed sufficiently qualified to provide home-based education by the superintendent. Wash. Rev. Code Ann. § 28A.225.010(4)(a)-(c).

As an alternative, an approved private school may operate an extension program for parents, guardians, or persons having legal custody of a child to teach children in their custody. These students are considered to be private school students. Wash. Rev. Code Ann. §§ 28A.225.010(1)(a), 28A.195.010(4). Under this option, instruction may be provided by a parent who is instructing his child only and is supervised by a certificated person. Wash. Rev. Code Ann. § 28A.225.010(4)(a).

48. **West Virginia**

In West Virginia, there are two homeschool options, “approval” and “notice.” W. Va. Code § 18-8-1(c). Under the “approval” option, instruction must be in a place approved by the board and must be for a time equal to that of the county; and upon request, the family must furnish attendance, instruction, and progress information. Instruction must be provided by a person who is

qualified, in the judgment of the superintendent, to give instruction in the required subjects for public elementary schools.

Under the “notice” option, W. Va. Code § 18-8-1(c)(2) provides that a person or persons may homeschool after filing a notice. If the child is enrolled in a public school, it must be filed two weeks before the start of the home school program. The notice must state the intent to homeschool and must include the child’s name, address, age, and grade level; an outline of a plan of instruction for the year; and evidence of the person(s) high school diploma or equivalent.

As an alternative, a group of parents may form a private, parochial, church, religious or “other nonpublic school” under W. Va. Code §18-8-1(k). The school must comply with the requirements of W. Va. Code § 18-28-1, *et seq.*

49. **Wisconsin**

A “home-based private educational program” is a program of educational instruction provided to a child by the child’s parent or guardian or by a person designated by the parent or guardian. Wis. Stat. Ann. § 118.15(4). In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the United States Supreme Court recognized that the “primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.” *Id.* at 232.

By October 15 each year, the parents must submit a statement of enrollment to the Department of Public Instruction, indicating whether the home school meets all the requirements under Wis. Stat. Ann. § 118.165. Wis. Stat. Ann. § 115.30(3). Such requirements include that “the primary purpose of the program is to provide private or religious-based education;” “the program is privately controlled” and provides at least 875 hours of instruction; the program “provides a sequentially progressive curriculum of fundamental instruction” in the required subjects; and the program is not operated in order to circumvent the compulsory attendance regulations. Wis. Stat. Ann. § 118.165(1).

There are no required teacher qualifications.

50. **Wyoming**

To homeschool in Wyoming, parents must annually submit a curriculum providing for a “basic academic educational program” to the local board of trustees. Wyo. Stat. Ann. § 21-4-102(b).

As an alternative, Wyo. Stat. Ann. § 21-4-101(a)(iv) provides that if a home school is “one operated under the auspices or control of a local church or religious congregation or a denomination,” it may be regarded as a parochial, church, or religious school. The statute further notes that “nothing contained in Wyo. Stat. Ann. §§ 21-4-102(b), 21-2-401, or 21-2-406 grants to the state of Wyoming...any right or authority to control, manage, [or] supervise...any

parochial, church, or religious school.” Therefore, such school is exempt from state regulation.

There are no statutorily mandated teacher qualifications.

B. Consistent With The Other Forty-nine States And The District Of Columbia, California Should Recognize Homeschool Instruction As A Valid Form Of Education.

Like fourteen other states, California does not have a specific homeschool statute; however, there are four alternatives by which parents may choose to homeschool their children. First, pursuant to Cal. Educ. Code § 48222, an individual homeschool may opt to qualify as a private school by filing an annual private school affidavit, which must be filed with the Superintendent of Public Instruction between October 1 and October 15 of each year. Cal. Educ. Code §§ 33190, 48222. Such affidavit must provide assurance that all instructors are capable of teaching; instruction will be conducted in English; instruction must span the branches of study required in public schools; and an attendance will be kept by the instructor. Cal. Educ. Code § 48222.

Second, home-based education can be provided by a certified private tutor. Cal. Educ. Code § 48224.

Third, parents may enroll their child in an independent study program at homes, using the public school curriculum. Cal. Educ. Code § 51745. Under this option, the child is considered a student of the public school system and must adhere to the rules and policies of the public school.

Finally, homeschoolers may enroll in a private school satellite program and participate in “independent study” through the private school. Such “independent study program” must comply with Cal. Educ. Code § 48222, discussed in option one.

There are no statutorily mandated teacher qualifications unless the homeschool parent chooses to qualify as a private tutor.

II. THE INITIAL APPELLATE PANEL INCORRECTLY INTERPRETED CALIFORNIA LAW WHEN IT QUESTIONED THIS FAMILY’S PARTICIPATION IN AN INDEPENDENT STUDY PROGRAM.

California parents, like the parents in this case, have been permitted to home-school their children utilizing the alternatives described in the Education Code for many years. The initial appellate panel incorrectly interpreted the Education Code when it held that this family’s enrollment in the Sunland Christian School independent study program was not a permissible form of home education, and when it held that at least one of the parents had to be a certified teacher.

California Educ. Code § 48222 provides:

Children who are being instructed in a private full-time day school by persons capable of teaching shall be exempted. Such school shall...be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of the state. The attendance of the pupils shall be kept by private school authorities in a register, and the record of attendance shall indicate clearly every absence of the

pupil from school for a half day or more during each day that school is maintained during the year.

Here, the parents enrolled their children in the Sunland Christian School. Under this statute, the instructor need only be “capable of teaching;” not certified as a teacher as the initial panel held. By enrolling in a private school, the parents in this case complied with the Education Code and are able to participate in an independent study program regardless of whether either is a credentialed teacher.

CONCLUSION

This Court should uphold and honor the fundamental right of parents to direct the upbringing and education of their children, by continuing to recognize four valid options for engaging homeschool instruction.

Respectfully Submitted,

MATHEW D. STAVER*

FL Bar No. 0701092

Anita L. Staver*

FL Bar No.0611131

LIBERTY COUNSEL

1055 Maitland Center Commons

Second Floor

Maitland, FL 32751

Attorneys for Amici Curiae

MARY E. MCALISTER

CA Bar No. 148570

LIBERTY COUNSEL

100 Mountain View Rd

Suite 2775

Lynchburg, VA 24502

Attorney for Amici Curiae

*Applications to Appear Pro Hac Vice
Filed Simultaneously

SARAH E. SEITZ*
VA Bar No. 75401
LIBERTY COUNSEL
1015 15th Str. NW
Suite 1100
Washington, D.C. 20005

Attorney for Amici Curiae

*Application to Appear Pro Hac Vice
Filed Simultaneously

CERTIFICATE OF WORD COUNT

Pursuant to California Rule of Court 14(c)(1), counsel for Amicus Curiae Ken Calvert (CA-44), John Campbell (CA-48), David Davis (TN-1), John Doolittle (CA-4), Tom Feeney (FL-24), Randy Forbes (VA-4), Trent Franks (AZ-2), Robin Hayes (NC-8), Wally Herger (CA-2), Jim Jordan (OH-4), Doug Lamborn (CO-5), Dan Lungren (CA-3), Thaddeus McCotter (MI-11), Howard McKeon (CA-25), Gary Miller (CA-42), Marilyn Musgrave (CO-4), Ed Royce (CA-40), Pete Sessions (TX-32), and Mark Souder (IN-3) certifies that the number of words contained in the foregoing Amicus Brief, including footnotes but excluding the Table of Contents, Table of Authorities and this Certificate is 12,253 as calculated using the word count feature of the computer program used to prepare the brief.

Dated: May 19, 2008

Mary E. McAlister

PROOF OF SERVICE

I am over eighteen (18) years of age. I am not a party to this action. I am employed in the City of Lynchburg and my office address is 100 Mountain View Road, Suite 2775, Lynchburg, Virginia 25402.

On May 19, 2008, I served the following document(s), described as Amici Brief of Ken Calvert (CA-44), John Campbell (CA-48), David Davis (TN-1), John Doolittle (CA-4), Tom Feeney (FL-24), Randy Forbes (VA-4), Trent Franks (AZ-2), Robin Hayes (NC-8), Wally Herger (CA-2), Jim Jordan (OH-4), Doug Lamborn (CO-5), Dan Lungren (CA-3), Thaddeus McCotter (MI-11), Howard McKeon (CA-25), Gary Miller (CA-42), Marilyn Musgrave (CO-4), Ed Royce (CA-40), Pete Sessions (TX-32), and Mark Souder (IN-3) on the parties of record in this case by placing true and correct copies thereof enclosed in sealed envelopes, with first class postage thereon prepaid, addressed as stated in the attached service list.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on May 19, 2008 at Lynchburg, Virginia.

Mary E. McAlister

