



# Compulsory Education

©2009 eNotes.com, Inc. or its Licensors. Please see [copyright information](#) at the end of this document.

- [Background](#)
- [Statutory Exemptions from Compulsory Attendance Laws](#)
- [Court Case Exemptions from Compulsory Attendance Laws](#)
- [Early United States Supreme Court Challenges](#)
- [Home Schooling as an Alternative to Public School Education](#)
- [Home Schooling Constitutional Defenses](#)
- [Access of Home Schooling Students to Public School Facilities and Activities](#)
- [Keeping Current on New Developments in Your State](#)
- [Additional Resources](#)
- [Organizations](#)

## Background

### ***What are Compulsory Attendance Laws?***

Compulsory attendance laws are statutes put into force by state governments that require parents to have their children go to a public or state accredited private or parochial school for a designated period. Each state by law determines when this period starts and ends. Almost all states require a child to begin attending school at an age ranging from five to seven years. The age when a child may stop going to school varies from sixteen to eighteen.

To learn about the age requirements for your state, look in the telephone directory under the listing for state government agencies for either the department or board of education or the office or department of public instruction.

### ***History and Development of Compulsory Attendance Laws***

Modern compulsory attendance laws were first enacted in Massachusetts in 1853 followed by New York in 1854. By 1918, all states had compulsory attendance laws. One reason for the acceptance by the states of these laws was the belief that the public school was the best means to improve the literacy rate of the poor and to help assimilate an immigrant population that grew at a high rate between the mid nineteenth to the early twentieth centuries. Another explanation is that as children were required to attend school for a number of years, factory owners found it more difficult to exploit the cheap and plentiful child labor. This argument is substantiated by Alabama's decision for a period of time to [REPEAL](#) its compulsory attendance law due to pressure put upon state authorities by a company opening a large textile mill in that state. This industry was notorious for its use of child labor.

### ***Penalties for Non-Compliance***

Failure to comply is a [MISDEMEANOR](#) in almost every state. The penalties include fines for the first offense ranging from \$20 to \$100 and increasing thereafter for subsequent offenses from \$250 to \$1000 depending upon the [JURISDICTION](#). Most states also have the option of sentencing parents for as long as 30 days in

jail. Some states provide for alternatives such as community service or counseling. In the case of home schooling, although the prosecution is not required to show the parent intended to break the law, it must still prove in some jurisdictions that home education does not provide an adequate alternative.

## Statutory Exemptions from Compulsory Attendance Laws

### *Child's Circumstances*

Most states will not enforce these laws against parents whose children are physically or mentally disabled, are employed, or have received a designated education level, typically a high school diploma or its equivalent.

### *Equivalent Education*

Equivalent Education may be obtained in a state accredited private school or a parochial school. According to a ruling by the U. S. Supreme Court in *Pierce v Society of Sisters*, states must recognize these schools as providing an education equivalent to that of the public schools so long as they follow state laws and regulations that bear a reasonable relationship to the interest the state has in educating its citizens and do not burden the religious practices of the parochial schools. These conditions placed upon non-public schools, including home schools, are permitted under the United States Constitution because the public schools must follow these regulations as well.

All non-public schools must qualify under the laws of that state as schools in order to be considered capable of providing an equivalent education. The criteria used include such factors as whether the school is established, the quality of the teaching, the soundness of the curriculum, how many hours per day are spent for instruction, how many days of the year the school is engaged in teaching, and whether the teachers are certified. A private, parochial, and home schools may have to comply with any combination of the above factors.

## Court Case Exemptions from Compulsory Attendance Laws

### Exemptions Accepted by Some Courts

- A threat to the health, safety, or welfare of a student if the parents can show the threat is imminent.
- The child has reached the age of majority.
- The child becomes mentally or physically disabled. However, this ground is now used less frequently because of special services for the disabled mandated by federal law.
- The parent objects to classes because the content violates their religious beliefs or practices.
- Either hazardous conditions are present between the child's home and his designated public school or the distance between the student's home and the school exceeds a distance provided by [STATUTE](#).

### Exemptions Rejected by Some Courts

- A parent's belief a given teacher is incompetent or otherwise not qualified to teach.
- A parent's belief the school is doing a poor job of educating his or her children.
- Objections to racial integration by the parents on religious grounds.

## Early United States Supreme Court Challenges

### ***Meyer v. Nebraska (1923)***

This decision struck down a state law prohibiting any instructor, either in a public or a private school, from teaching in a language other than English. The Court took this action because of the arbitrary interference from state officials of the right of parents to provide education for their children as they saw fit. The statute was arbitrary because it bore no relationship to a legitimate state purpose and violated the part of the Due Process clause of the 14th Amendment to the Constitution that says no person may be deprived of liberty without [DUE PROCESS OF LAW](#). In this case, the right of the parents to employ a teacher to instruct their children in their native language fell under the right to determine how they were to be educated.

### ***Pierce v. Society of Sisters (1925)***

In this case, the Court said an Oregon law was unconstitutional which made it mandatory for parents to send their children to public school. As in *Meyer*, this law was unrelated to the legitimate state goal of educating children because it interfered with the fundamental right of parents to exercise control over how their children were to be taught. Forcing parents to have the educational options for their children limited to public schools infringed upon the above right and was an abuse of the state's police power to insure the health, safety, and morality of all localities in that jurisdiction. This standardization went against the sentiment of the Court often quoted in the part of their opinion that declares a child is not the creature of the state and that the responsibility for educating children should rest with the parents.

This decision is also important because it made clear that state governments had to permit private schools to operate. No challenge has since been made on this point.

### ***Farrington v. Tokushige (1927)***

The Hawaii legislature had passed a law strictly regulating hours, textbooks, and curriculum of schools that taught in the native language of the students. In striking down this law, the Court was indicating that this amount of regulation of private schools was unreasonable and that parents had the right to exercise control over how their children were educated without restrictions that were unrelated to any rational state goal.

## Home Schooling as an Alternative to Public School Education

### ***Why Parents Home School and its Acceptance by State Governments***

Eighty-five percent of the parents surveyed indicated they home schooled out of the religious [CONVICTION](#) that the authority and power to instruct their children should remain with them and not be given to outside authority. Another reason cited was the declining academic standards of public schools as indicated by decreasing scores on standardized tests beginning in the 1960s. Some parents objected to what was being taught on religious, moral, or philosophical grounds.

### ***Legislative Requirements for Home Schools***

Parents choosing to home school face many of the same hurdles encountered by parochial and private schools. In addition, the question may arise as to whether home instruction in a given state will come under the exemption routinely given to private schools because a home school is not established in the same way as are other non-public schools. In states in which laws remain unclear about what qualifies home instruction to be

considered a school, the courts have given the term "school" a broad meaning as a place where instruction of children takes place. This definition eliminates the requirement that a school have its own facilities. So long as the home school meets the standards applied to schools established in the normal sense, the home school comes under the private school exemption.

Once a home school is considered by state statute or [CASE LAW](#) to be a school, it must comply with regulations to insure that students taught at home have an equivalent education. First, many states require parents to notify appropriate authorities, often the local school superintendent, of their intention to instruct their children at home. At this point, some states also make it mandatory for parents to obtain approval from designated local officials of the content of their curriculum and other aspects of how they will teach before they begin instructing their children. Some home school parents have gone to court claiming these officials are not objective in assessing home school programs because public school funding is often determined by the number of students enrolled. The courts have rejected these claims because of the difficulty in proving school officials' [BIAS](#) caused their negative decisions and the deference courts give to decisions of administrative officials.

The second requirement home schools face is that they must meet the time or durational requirements as well as at a minimum for their curriculum teach a list of designated subjects. They must do so according to the standards applied to public schools or by those required of home schools.

Third, a number of states require the parent to be certified as a teacher. When parents home school for religious reasons and challenge such laws in court as interfering with their religious practices, the courts have decided to uphold such laws. The courts side with the state officials because they believe the interest of the state in education outweighs the burden on religious practices. The courts contend that if parents do not meet the certification requirements public school teachers are subject to, they are unable to meet the burden of proof of showing they are able to provide an equivalent education as required by state law and regulation.

Fourth, state regulations often require the progress of the students instructed at home to be measured by standardized tests that are widely recognized as valid indicators. The tests must be taken at designated times in the student's studies. In some jurisdictions, the parents must maintain a portfolio of their children's work that is evaluated by state certified teachers.

In addition to these requirements, home schools are subject in some states to visits by state officials to assess the quality of the instruction. This practice is considered permissible by the courts so long as the visits do not hinder parents' efforts to instruct and that these appearances do not occur often. If parents do not wish to consent to these visits, they are given in some jurisdictions the option of going to court to convince a judge an equivalent education is being given.

## Home Schooling Constitutional Defenses

### ***Due Process Fundamental Rights***

In *Meyer v. Pierce* and *Farrington v. Tokushige*, U.S. Supreme Court cases of the 1920s, the fundamental right of parents to direct the education of their children was established. These decisions are still heavily cited today by those claiming the right to home school in federal and state courts. They contend that because these decisions have given parents this right, its denial violates the right of due process. If a right is deemed to be fundamental, it is based on the premise that it is provided for in the U. S. Constitution.

### ***Due Process Vagueness***

Under the Due Process clause, parents of home schooled children have contended the compulsory attendance statutes of their state were so vague and ambiguous, they were unconstitutional because a reasonably intelligent person would not be able to determine when he was violating the law and the person deciding whether such violation had occurred had no clear standards to go by in making his ruling.

Frequently, the [LITIGATION](#) in this area revolves around the meaning of such terms as "equivalent education" or "private school." The meaning of these terms are important in these cases because it is upon these and other similarly worded phrases that states have granted exemptions from their compulsory attendance laws and their penalties.

### ***Due Process Arbitrariness***

The Due Process clause has also been used to challenge these laws by claims that officials have too much leeway in performing their duty to apply the law. Although court cases involving this issue have not been decided in favor of the parents, the U. S. Supreme Court in a context other than home instruction has said that any decision involving a fundamental right must be made by an [IMPARTIAL](#) party. In spite of subsequent U. S. Supreme Court cases which affirmed this principle in home schooling cases, the parents were unsuccessful.

### ***Free Exercise***

By definition, a claim for exemption based on free exercise can only be used, if at all, by those who have home instruction for religious reasons. The only U. S. Supreme Court case that has ever decided any case involving home teaching is *Wisconsin v. Yoder*. Decided in 1972, it involved a group of Amish who challenged the compulsory attendance laws of their state. For three centuries, the members of this religious sect taught their children at home in accordance with their religious belief that education in a public school would violate the tenets of their faith. The Amish pointed out this home education gave their children the skills to function effectively in a society that was isolated from the general public.

Unlike the decisions in *Meyer v. Pierce*, and *Farrington v. Tokshige* the Amish in *Yoder* did not rely upon due process grounds, but on the belief that compulsory attendance laws of Wisconsin violated the Free Exercise clause of the U. S. Constitution prohibiting interference by the government with practices found to be religious and not just personal preferences. The Court balanced the interest of the state in educating children against the right of the Amish to practice their religious beliefs and concluded the state of Wisconsin had failed to show the state interest of educating its citizens in what is clearly the society of the general public outweighed the interest of the Amish in not having governmental interference with their religious practices.

In weighing and balancing the interests of these opposing parties, the Court sharply limited the use of *Yoder* to persons engaged in home schooling for future cases. The Court noted the three-century tradition of home education and that its content did enable Amish children to be able to function as adults in their separate society. Therefore, the state interest present in this case was rendered irrelevant by the Amish isolation from the general society. Through the use of this balancing test and its limited application of the Free Exercise clause to an unusual religious group, the court could affirm the interest of the state in educating its citizens, allowing the compulsory attendance laws to stand. In fact, lower federal court cases subsequent to *Yoder* have decided against other religious groups that instruct their children at home because they lacked the isolation of the Amish from modern life.

With this decision, a principle was established giving in theory greater protection to those who gave home instruction for religious reasons. However, the requirement that the belief of the party claiming Free Exercise protection was religious, and not one of personal preference or philosophy, and that the compulsory

attendance law would severely impact such a belief would in practice be difficult to satisfy. The weight of cases subsequent to *Yoder* indicates it is far easier for the state to show the regulation fulfills a compelling or merely legitimate interest.

Only two state supreme court cases decided after *Yoder* involving home schooling parents using the Free Exercise clause resulted in a successful conclusion for them. Those states are Michigan in *Michigan v. DeJonge*, decided in 1993, and North Carolina in *Delconte v. State of North Carolina*, rendered in 1985.

### ***Free Speech***

There have been few successful cases on such claims, but a notable example is *In re Falk*, a New York Family Court case decided in 1981. So far there have been no state or United States Supreme Court cases upholding the use of the right of free speech under the 1st Amendment as a defense by parents against these laws.

### ***Right to Privacy***

The few cases that have used this defense for prosecution under compulsory attendance laws have not found courts to be receptive to it. The one case decided in favor of the parents was a trial court decision in Massachusetts that is not binding outside the state or to any great extent within that jurisdiction.

### ***Ninth Amendment***

The Ninth Amendment says that the rights of the citizens of each state are not limited by those listed in the Constitution. The contention by parents that a right to home school is implied by this provision has only been agreed with by *Perchemlides v. Frizzle*, the case mentioned under the right of privacy.

## **Access of Home Schooling Students to Public School Facilities and Activities**

### ***Home School Parents' View***

Parents who choose to home school cope with a number of disadvantages. These include isolation, the lack of opportunity to participate in scholastic sports and other extra curricular activities, and the lack of resources available in public schools, such as a library or instruction in specialized courses. In surveys, a majority of home school parents expressed the desire to have their children enroll in a public school on a part-time basis in order to take special courses that are beyond the parents' ability to teach or to participate in extra-curricular activities including athletics. Most of the litigation on part-time enrollment involves whether these children should be allowed to play on the athletic teams of public schools.

### ***Oppositions' View***

Opposition to access of public schools by those students not enrolled full-time is strong at the local, state, and national levels. Town and city boards of education, state athletic associations, and national trade groups, such as the National School Boards Association, have been against access by outside students because of fairness and administrative reasons. They argue the accessibility by non-enrolled students, including those home schooled, is unfair because since these students have chosen not to enroll, they should not be entitled to benefit from the limited resources of public schools. From an administrative point of view, the public schools would be faced with additional burdens such as providing supervision to a greater number of students participating in a class or activity and having perhaps to transport some students at times different from those

of full-time enrolled students.

Furthermore, they argue that the U. S. Constitution does not provide a right for someone not enrolled in a public school to participate in any of its classes or other activities, including athletics. Home school parents have challenged these policies in the courts by using the Free Exercise clause of the First Amendment and the Due Process and EQUALPROTECTION provisions of the 14th Amendment.

### ***Constitutional Arguments Raised in Court***

Judges have, with few exceptions, been unreceptive to the claims of home school parents. Their unwillingness to grant the parents and their children what they want is based on the general principle cited by school administrators and others that there is no constitutional right to participate in any public school program, including athletics. Instead, whether a student is allowed to join a club or athletic team of a public school is a privilege local school officials can choose to grant or deny at their discretion. Courts agree with them that sports and other extracurricular activities are an integral part of a student's education in a public school, and this legitimate objective would be frustrated if students not enrolled full time were allowed to participate.

In regard to the specific constitutional arguments put forth by home school parents, courts have said that because there is no burden placed on the religious faith and practices of those in home schools, there is no violation of the Free Exercise clause. Fourteenth Amendment claims based on Equal Protection and Due Process have also generally failed. The interest of the public school officials in efficiently carrying out their administrative responsibilities outweighs any concern of the home school students' not being treated equally. Due Process claims also are usually unsuccessful because denial of access to public schools and their programs does not amount to a denial of a fundamental right under the U. S. Constitution. The liberty the parents are entitled to under the U. S. Constitution is inapplicable here because, since participation by home school children in public school activities and programs is a privilege that may be granted or denied, parents only have an expectation their offspring will be allowed to participate. Therefore, no constitutional claim under Due Process is viable.

In addition, courts view the parents' decision to educate their children at home as an exercise of their constitutional rights, and it is inconsistent for the parents to benefit from the public education they have chosen to reject.

### ***Legislative Action***

In recent years, a number of states have chosen to address this problem through their legislatures. Oregon, Idaho, and Florida have enacted laws allowing children educated at home to take part in what is offered by the public schools. Each of these states places conditions on these [STATUTORY](#) provisions which may require submission to a greater degree of oversight and monitoring than home school students and parents would experience otherwise. For example, a student may have to submit additional documentation to prove to the satisfaction of local school officials that the state home school regulations are being followed. They may also have to obtain a designated minimum score on a standardized test considered credible by that state as well as to satisfy all the district eligibility and other requirements governing the behavior and performance expected of students enrolled full-time in public schools.

What is unique about the Florida statute is that it openly recognizes a state interest in the participation in public school programs and activities of students educated at home. This is significant because the outcome of many court cases involving children educated at home turns on the view of the courts as to whether the rights of these children are outweighed by the interests of the state in public education. Because these statutes have been passed only recently, it is difficult to assess their impact. However, making participation an interest of the state may result in less opposition to the presence of students who are not enrolled full-time.

Other jurisdictions, such as Maine, provide for access to the public school by children educated at home by obtaining approval from the local school superintendent. The decision to allow a home school student to participate will continue to be made on a case-by-case basis. However, the Maine statute and others similar to it require the superintendent not to make these decisions arbitrarily.

## Keeping Current on New Developments in Your State

Compulsory education laws and their impact on home schooling are subject to frequent changes in any jurisdiction. New laws passed by the legislature, administrative regulations handed down by those state agencies given the responsibility over educational matters, and new court decisions can all affect parents who educate their children at home. Organizations, especially the Home School Legal Defense Association, monitor closely new developments at the state and federal level. In addition, every state now has web sites where you can access recent court decisions as well as the code of laws for that jurisdiction. Many states have also made their code of administrative regulations available to the public. These materials are generally searchable by key words in court decisions, administrative regulations, and the code of laws. The best way to access these kinds of materials for a particular state is to log on to <http://www.findlaw.com>. A number of links will appear that pertain to different categories of materials. Click on "State Resources" and separate links for each state will appear. A breakdown for each state will direct you to those separate links for the state code of laws, recent court decisions, and administrative regulations.

## Additional Resources

*A Review of Home School Research: Characteristics of Families and Legal Outcomes.* Brian D. Ray, National Home Education Research Institute, 1990.

*Home Centered Learning Annotated Bibliography.* Fourth Edition. Brian D. Ray, National Home Education Research Institute, 1994.

*Home Education Magazine.* Mark and Helen Hegnor, 1983.

*Home Schooling and Research Guide for Fifty States.* Ninth Edition. Steve Deckard, Vision Publishing, 1998.

*Home Schooling on the Threshold: A Survey of Research at the Dawn of the New Millenium.* Brian D. Ray, National Home Education Institute, 1999.

*Home School Digest.* Wisdom's Gate, 1987.

*The Home School Report.* Christopher J. Klinka, Home School Legal Defense Association, 1985.

*Home Schooling in the United States: A Legal Analysis.* Revised Edition. Christopher J. Klinka, Home School Legal Defense Association, 1999.

*Home Schooling: Political, Historical, and Pedagogical Perspectives.* Jane Van Galen and Mary Ann Pitman, Abex Publishing, 1991.

*Home Schooling Today.* S Squared Productions, 1992.

*School Law Reporter.* National Organization on Legal Problems in Education, 1987.

## Encyclopedia of Everyday Law: Compulsory Education

*The Law of Homeschooling*. William M. Gordon and Charles J. Russo, National Organization on Legal Problems in Education, 1994.

*The Right to Home School: A Guide to the Law on Parents' Rights in Education*. Christopher J. Klinka, Carolina Academic Press, 1998.

*The Yearbook on Education Law*. National Organization on Legal Problems in Education, 1988.

## Organizations

### ***Genesis Institute***

740 S. 128 St.  
Seattle, WA 98168-2728 USA  
Phone: (206) 246-5575  
Primary Contact: Rev. Walter Lang, D.D, Director

### ***Home School Legal Defense Association***

P.O. Box 3000  
Purcellville, VA 20139-9000 USA  
Phone: (540) 338-5600  
URL: <http://www.hslda.org/>  
Primary Contact: Charles L. Hurst, Office Manager

### ***National Association for Legal Support of Alternative Schools***

P.O. Box 2823  
Santa Fe, NM 87504 USA  
Phone: (505) 471-6928  
Primary Contact: Ed Nagel, Coord.

### ***National Home Education Research Institute***

P.O. Box 13939  
Salem, OR 97309 USA  
Phone: (503) 364-1490  
Primary Contact: Brian Ray, Ph.D., President

### ***National Homeschool Association***

P.O. Box 327  
Webster, NY 14580-0327 USA  
Phone: (513) 772-9580  
Primary Contact: Susan Evans, Office Coordinator.

### ***National Organization for Legal Problems in Education***

300 College Park  
Dayton, OH 45469-2280 USA  
Phone: (937) 229-3589  
Primary Contact: Robert Wagner, Executive Director

### ***Parents Rights Organization***

12571 Northwinds Drive

## Encyclopedia of Everyday Law: Compulsory Education

St. Louis, MO 63146-4503 USA  
Phone: (314) 434-4171  
Primary Contact: Mae Duggan, President

### ***Rutherford Institute Legal Department***

P.O. Box 7482  
Charlottesville, VA 22906-7482 USA  
Phone: (804) 978-3888  
Primary Contact: John W. Whithead, President

### **Copyright Notice**

©2009 eNotes.com, Inc.

ALL RIGHTS RESERVED.

No part of this work covered by the copyright hereon may be reproduced or used in any form or by any means graphic, electronic, or mechanical, including photocopying, recording, taping, Web distribution or information storage retrieval systems without the written permission of the publisher.

For complete copyright information, please see the online version of this work:  
<http://www.enotes.com/everyday-law-encyclopedia>