

## Filing An Affidavit Revised for 2009-2010

Updated October 1, 2009

(This article is available to download at [www.pheofca.org](http://www.pheofca.org) for your use.)

**NOTICE** - The information in this article is current as of the writing of this article. The homeschool-related Appellate Court case (In re Jonathan L.) in 2008 did not change anything affecting the filing of the Affidavit for the 2009-2010 school year. There have only been minor changes, none of which are critical, to the online Private School Affidavit form.

Do not contact any public school official about filing an affidavit. Also, while the CDE provides some information on their website in a recent series of new FAQ's concerning "Schooling at Home", any explanations or suggestions that are not explicitly in the law are only someone's opinion and can be ignored. For instance, private schools do not come under the authority of the public schools, and no private school is required to provide their school records to public officials without a court order. Our *Legal Fact Sheet* ([www.pheofca.org](http://www.pheofca.org)) and CHEA's *An Introduction to Home Education* ([www.cheaofca.org](http://www.cheaofca.org)) are reliable sources of information on private home schooling in California. For legal questions, you should always contact HSLDA.

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

### Before You File

California's compulsory attendance laws require that children be enrolled in a school by their sixth birthday in the school year in which they turn six on or before December 2 (i.e., a child who turns six on December 3, of 2009, does not need to be formally enrolled in school until the fall of 2010).

Enrolling your compulsory-age child in a private school (whether home-based or campus-based), which has filed a current private school affidavit, exempts your child from compulsory attendance at a public school, according to California Education Code Sections 48222 and 33190. In California, there is no legally-defined entity known as a "homeschool." In order to be

consistent with the law of our state, we do not use the term "homeschool" with public school officials. California is one of twelve states in which homeschoolers operate as private schools. Private schools can be legally established and operated in the home just as some private schools operate on a campus.

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

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

Membership in the Home School Legal Defense Association (HSLDA) is absolutely vital regardless of the size of the private home-based school in which your child is enrolled. Please encourage every family who is already a member of HSLDA to keep their membership current! We strongly recommend that you **apply for membership with HSLDA by early August** so your membership can be confirmed before your school year begins and before you file the affidavit.

Join the Home School Legal Defense Association (HSLDA) for only \$115/12 months. HSLDA also has discounted rates that are available to members of CHEA and other HSLDA discount groups. Contact HSLDA, at

P.O. Box 3000, Purcellville, VA 20134; Phone: (540) 338-5600; or [www.hsllda.org](http://www.hsllda.org).

### When To File

California Education Code (E.C.) Section (§)33190 requires that every private school file a private school affidavit with the Superintendent of Public Instruction (California Department of Education - CDE) between October 1 and 15 each year. If anyone establishes a new private school at anytime after October 15th, and enrolls five or fewer students, they can file an affidavit at that time. However, while private schools enrolling six or more students may be started at any time during the year, the CDE does not keep the affidavit form on line for filing by these larger schools after December 1st (this is because of the CDE's need to comply with federal reporting requirements).

### Who Should File

If you have a child who is six years old (by Dec. 2nd) or older and not yet 18 years old, and you are establishing your own private school in your home, you will need to file a private school affidavit every year. This must be done in order to be legally recognized as a private school in California and for your children to be exempt from having to attend a public school.

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

If you are joining a California-based private school satellite program (PSP) or "umbrella" program, you should not file your own affidavit because the administrator of the PSP is responsible for filing their affidavit on behalf of that private school.

### Method of Filing Options

There are two methods of filing an affidavit: (1) online electronic filing or (2) letter in lieu of an affidavit. The State Department of Education no longer provides hardcopy affidavit forms.

The only information required to be reported on the computerized online affidavit, or in a letter in lieu, are the items specifically mentioned in E.C. §33190. However, the online affidavit form has been programmed by the CDE to ask for some additional information. When filing online, we recommend that you provide only the

asterisked information, which is necessary to file your affidavit online.

### (1) Online Electronic Filing

The **online** affidavit filing process on the CDE website is the easiest and preferable way for all private schools, including homeschoolers, to comply with the annual requirement for filing a private school affidavit. This is the method that both HSLDA and we recommend.

The Private School Affidavit form for the 2009-2010 school year is expected to be available online again this year at the CDE's website ([www.cde.ca.gov/sp/ps/rq](http://www.cde.ca.gov/sp/ps/rq)) in time for filing during the regular October 1-15 filing period.

If you do not have a connection to the Internet, you should find a public library or a friend with access to the Internet and a printer to help you.

### Categories for Filing Online

When filing a Private School Affidavit (PSA) online, between October 1st and 15th, your private home-based school will fit into one of the three following categories:

(a) an existing private school with six or more students, for which an affidavit was filed for the previous 2008-2009 school year, in which case you should select "*Existing schools with six or more students*"; or

(b) a new private school with six or more students and you did not file in the previous 2008-2009 school year, in which case you should select "*New schools and schools with six or more students*"; or

(c) a private school with five or fewer students, regardless of whether you have filed in any previous school year, in which case you should select "*Schools with five or fewer students*".

### Steps for Filing Online:

A. Fill out the form following the directions provided on the CDE web site and as clarified at the end of this article. See the latest step-by-step instructions on CHEA's website for additional details at [www.cheafca.org](http://www.cheafca.org).

B. Provide the information requested for the "Electronic Signature." You are certifying that all the information on the affidavit is true and accurate. [See our discussion toward the end of this article regarding "Acknowledgements" for clarification of some of the items listed under the "Acknowledgements" section of the Affidavit just prior to the "Electronic Signature".]

C. Click on the "Submit Form" button at the bottom of the online affidavit to submit your completed affidavit to the CDE. Your completed form, with a confirmation number at the bottom, will be displayed.

D. **Print at least two copies** of the completed affidavit form for your files and retain them for at least

three years. **Affidavits** that are completed and submitted to the CDE **online** do not need to be physically signed and a **copy should not be mailed** to the CDE when your affidavit has been submitted electronically.

## (2) Letter In Lieu of Affidavit Filing

If you file your affidavit electronically online, ignore this subsection and go to the next subsection, "Submitting the Affidavit Form".

The CDE does not provide any paper (hardcopy) affidavit forms.

The CDE has indicated that any letters in lieu of an affidavit, which are post-marked before October 1, or manually-completed forms printed from the CDE web site will not be recognized as a filing for the 2009-2010 school year.

Address to mail a letter in lieu to the CDE:

*Elementary Education Office  
California Department of Education  
1430 N St, Ste 4401  
Sacramento, CA 95814*

While some private schools have used a letter in lieu of the State's affidavit form, we are not recommending this method of filing.

If you file a letter in lieu of an affidavit, you should mail it to the CDE via *certified mail (return receipt service is not recommended)* at the address shown above. (Also as mentioned above, affidavits filed online should not be mailed.)

The only information required to be reported in a letter in lieu are the items specifically mentioned in E.C. §33190.

Before mailing a letter in lieu, you should make at least two copies for your files. It is also essential that you keep the *certified mail* receipt as proof of mailing. The CDE does not acknowledge receipt. Therefore, your certified mailing receipt will be your proof of mailing. Keep this mailing receipt with the copies you made of your letter in lieu.

## Submitting the Affidavit Form

According to HSLDA, your responsibility to file an affidavit ends when you either complete the CDE's process for filing online or mail your signed letter in lieu.

## Acknowledgements

HSLDA advises that you will need to check all of the boxes under the section "Acknowledgements" (numbers 41-51), indicating that you have read and understand these statements, in order to be able to submit the online Affidavit.

Regarding item #46, HSLDA further advises that you

need not and **should not contact any of these local authorities** because your private home-based school is a private residence, and the ordinances referred to in this item were intended to cover only public-use buildings.

Regarding item #50, you are asked to acknowledge that your school "*is in compliance with California Education Code 44237 to the extent it applies.*" Education Code 44237 requires **criminal background checks**, which do not apply to typical home-based private schools (i.e. homeschools). This requirement "*does not apply to a ... parent or legal guardian working exclusively with his or her children.*" [E.C. §44237]. This requirement only applies to schools that employ someone, i.e., pay wages for services rendered. However, this requirement also does not apply to those whom you may hire to teach music lessons, or the like, as they are not employees of your school.

Criminal background checks for paid school employees, including fingerprints, must be completed, and the report of the background check received back from the Department of Justice, before the employment of paid employees, who will interact with pupils, may begin.

## Legal Contacts

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

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

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

## Preschoolers and Kindergartners

On your Private School Affidavit, where you are asked to enter the "Range of students' ages", do **not** indicate enrollment of any children who are under 5 years of age. The reason for this is that the California Department of Social Services, Community Care Licensing Division, rather than the Department of Education, has jurisdiction over the licensing of all private preschools and daycare centers for children

younger than four years and nine months of age. The *California Code of Regulations*, Title 22, Division 12, Chapter 21 contains the regulations for the licensing, evaluation, and employee qualifications for such private preschools and daycare centers.

Also, while you will notice that there is a space for the number of students enrolled in kindergarten, it is important to recognize that kindergarten is not mandatory in California. Therefore, if you have a child who is younger than compulsory school age (is not age 6 by Dec. 2nd) and whom you may consider being at a kindergarten level, you do not need to enroll him in your school or to count him on your school's affidavit.

Schools in which kindergartners are enrolled are routinely contacted by the Health Department to verify immunizations and school entry health exams. Private schools may teach kindergarten but it is not mandatory. Therefore, we recommend that homeschoolers avoid the extra paperwork by not enrolling their children formally into their schools until they reach the age of compulsory attendance and may begin in the first grade.

As previously noted, California's compulsory attendance laws only require that children be enrolled by their sixth birthday in the school year in which they turn six on or before December 2nd (i.e. a child who turns six on or after December 3, 2009, does not need to be formally enrolled in school until September of 2010). You may, of course, teach your children who are under

compulsory attendance age at home. They simply are not formally a part of your private school and are not to be included in the number of enrolled students indicated on the affidavit.

### **Deciding Whether to File an Affidavit**

Whether or not to file a Private School Affidavit can be a subject of disagreement. Some argue that the state has the authority to demand they register their school with the state. Christians, who file an affidavit, typically believe that a failure to register is a wrongful disobedience to the governing authorities or that filing the affidavit does not interfere with their right to home school privately. Some are concerned that if they do register, the state will have all the information it needs to find and possibly harass them. Others think that if they do not register, things will be harder for them if, for some reason, they are ever investigated.

It is important to remember that the affidavit is **not an application** requiring approval, but is only a "notice of operation."

This article was written in consultation with attorneys at HSLDA. For legal questions we encourage you to contact HSLDA as a member.

Please keep this article on file for guidance in completing the State's Private School Affidavit form for the 2009-2010 school year.

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