

## ISP to PSP Background on Changing our Phraseology

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For many years, private homeschoolers in California have complied with the compulsory education laws in one of two ways: (1) They enrolled their children in their own private school, composed only of their family members, and filed the Private School Affidavit for their own home-based private school; or (2) They enrolled their children in what we called a private school Independent Study Program (ISP), which filed one affidavit and enrolled students from multiple families. Some ISPs were associated with campus-based schools, and some were composed entirely of homeschoolers. The recommendations we are discussing in this article **do not apply** to homeschoolers in category number 1 above (i.e. a private school consisting of only one family). This is not meant to imply that we are recommending either one of these two categories over the other.

The choice of the term “ISP” for private homeschooling was chosen years ago for ease of understanding. The term “ISP” was not chosen with the thought that we could legally defend private homeschoolers being in compliance with the public school ISP statutes in the California Education Code. The term ISP was a concept that made it relatively easy to explain to truant officers, and others concerned about the legality of private homeschooling, what we were doing by comparison or analogy to a public school independent study program. The use of private school ISPs as an alternative means of homeschooling was seldom an issue.

However, on August 8, 2008, the Second District Court of Appeal in Los Angeles issued its final decision in the *In re Rachel L* “homeschooling” case. In that decision, the court considered the fact that the children involved in this case were enrolled in a private school independent study program (ISP). This decision referred to California’s independent study laws in Education Code §51745, et. seq. and stated: “It is apparent ... that independent study is permissible only when offered *by the public school system and supervised by a certificated teacher.*” [emphasis in original]

In response to a request on May 19th, by the Court of Appeal in the *In re Rachel L* case, the California Department of Education (CDE) submitted an amicus brief to the court. In their brief, the CDE stated: “[A] private school may *not* offer instruction through ‘independent study’ and a child enrolled in a private school [ISP] ... would not qualify for the exemption from public school attendance.” [emphasis in original] The view of the CDE apparently is that an Independent Study Program is a legally defined program in which education is required to be: (1) provided by a public school, and (2) supervised by a certified teacher employed by the public school. We and HSLDA disagree with this interpretation by the CDE. However, their amicus brief is currently the only written statement by the CDE on this subject of which we are aware.

It is important to realize that local public school officials, who are charged with enforcing the state’s compulsory education and truancy laws, rely on the CDE regarding how to interpret and enforce California’s education laws.

In light of this court decision and the CDE’s written position regarding “independent study programs”, we have worked with HSLDA and the leaders of every statewide homeschool membership organization (CHEA, CHN, HSC) to recommend **not** using the term ISP. We all have recommended adopting the term “PSP” (Private School Satellite Program) in place of the legally-defined term “Independent Study Program” (ISP). Using the recommended term “Private School Satellite Program” (PSP) should help homeschoolers, who are enrolled in this type of private school program, to avoid future unnecessary legal challenges by public school authorities (due to the “ISP” issue having been addressed in the *In re Rachel L* case). Private schools are generally free to establish any program of instruction that

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they want, and using the term “Private School Satellite Program” (PSP) should create less confusion with public school officials because this is not a term that is already used in the Education Code to describe an institution or program of K-12 education.

Using the new term, PSP, will make it clear that these private homeschool programs, in which the student’s education is being provided by their parents as their teachers, are different from public school ISPs, in which there is a requirement that a public school credentialed teacher be assigned to direct the student’s education. Parents who enroll their children in public school ISPs (including charter schools) are not considered their child’s teacher even if they have a teaching credential, unless they are among the very few who are employed by the public school ISP or charter school as a teacher of their child and other -children.

The legal requirements for private schools, including all private homeschools, has not been changed in California - neither by the court ruling nor by the Legislature. The Education Code (§§33190 & 48222) continues to require every private school in California to file a Private School Affidavit (PSA) once each October. These laws also require every private school to maintain certain records. In a Private School Satellite Program (PSP), when the PSP principal or administrator files the Private School Affidavit, he or she must count at least one parent in each family as a teacher in their private school. We have defined a PSP to be **one** private school with multiple sites (i.e. each home), and a teacher(s) (i.e. a parent) at each site.

Also, among the records required to be maintained, the principal or administrator of the PSP must maintain for each of the teachers enumerated on the Private School Affidavit, a record of “[t]he names, and addresses ... of its faculty, together with the educational qualifications of each.” (Education Code §33190(f)(3)) This requirement to maintain information about the teacher(s) in private schools, including teachers in private home-based schools, is not a recent requirement. It has been in the law for many years, and compliance with this law should not be a problem for any homeschooling parent. See page 90 in the 11th edition [2007] of CHEA’s *An Introduction to Home Education* for a discussion of what might be placed in the “teacher’s education qualification” file to meet this requirement.

Parents want to know that when they enroll their children in a private school program, their children are exempt from attendance in a public school. Principals and administrators of private schools have an obligation to their students and to their students’ families to ensure that they are operating in compliance with the requirements of the California Education Code. Every private school must comply with specific laws (i.e. EC §§33190 & 48222) in order that its students can be exempted from attendance in the public schools. If children are enrolled in a private school that is deemed to not be in compliance with these laws, it is the parents and students who will be held accountable in any legal contact for not complying with California’s compulsory education laws.

Please note that our recommendation to change from using the term “ISP” to using the term “PSP” does not affect parents who file their own Private School Affidavit and enroll only their own children in their private school. The Appellate Court, in their August 8th decision, clearly affirmed the right of parents to establish their own private home-based school and to enroll and teach their own children in that private school. The CDE is in full agreement with the court that parents can homeschool under the private school exemption (Section 48222 of the Education Code).

Regardless of which option your family has chosen to teach your children at home, we urge each family to join HSLDA and to keep your membership current.

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