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U.S. DEPARTMENT OF EDUCATION

State Regulation of Private Schools

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**U.S. Department of Education
Office of Innovation and Improvement
Office of Non-Public Education**

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CALIFORNIA

Accreditation/Registration/Licensing/Approval

- *Accreditation is optional.*
 - The Western Association of Schools and Colleges, one of six regional accrediting agencies in the United States, conducts a comprehensive accreditation of public and private schools and maintains a directory of accredited California schools.
- *Registration is mandatory.*
 - Private schools are required to file an affidavit with the Superintendent of Public Instruction between the first and fifteenth day of October of each year. *Calif. Educ. Code §33190. See Recordkeeping/Reports.*
- No requirements for *Licensing*.
- *Approval is optional.*
 - California does not approve private schools. However, nonpublic, nonsectarian special education schools enroll both privately enrolled and public school-placed students and therefore are considered a type of private school. These schools are certified by the California Department of Education to provide special education services. *See Special Education. Calif. Educ. Code §56836.2.*
 - Under California law, private schools may not be converted to charter schools. *Calif. Educ. Code §47602(b).*

Teacher Certification

- Teacher certification is optional. Children instructed in private full-time day schools by "persons capable of teaching" are exempt from public school attendance under the compulsory education law. *Calif. Educ. Code §48222.*
- The California Commission on Teacher Credentialing must forward to private schools on a monthly basis a list of all teachers who have had their state teaching credential revoked or suspended. The Commission must also send on a quarterly basis a complete and updated list of all teachers who have had their teaching credentials revoked or suspended, excluding teachers who have had their credentials reinstated, or who are deceased. *Calif. Educ. Code §44237(g).*
- Private schools may request information regarding the fitness of any applicant for a teaching position from the commission. *Calif. Educ. Code §44341(d).*
- English is the basic language of instruction in all schools. The governing board of any private school may determine when and under what circumstances instruction may be given bilingually. Pupils proficient in English and fluent in a foreign language may be instructed in classes conducted in that foreign language. *Calif. Educ. Code §§48222, 30.*

Length of School Year/Days

- Children exempt from compulsory public school attendance under the Private School Affidavit must attend “full-time school.” The length of the private school year and school day is set by the private school officials who oversee the operation of the private school.

Curriculum

- Students attending private schools are exempt from California’s compulsory attendance law if the schools offer instruction in the several branches of study required in the public schools of the state. Private schools are not required to follow the state’s adopted *Content Standards*. The exemption from California’s compulsory attendance law under which students attend private schools includes the requirement that the private school offers instruction in the several branches of study required in the public schools of the state. *Calif. Educ. Code* §48222.
- County superintendents of schools may enter into agreements with nonpublic private schools to provide programs and classes in outdoor science education and conservation education for private school students. The private school must pay for the actual cost of providing the programs or classes. *Calif. Educ. Code* §§8763, 8766–67.
- District superintendents may designate private school officials at private schools located within the district’s boundaries to issue work permits to students in accordance with state provisions governing the employment of minors. *Calif. Educ. Code* §49110.1.

Recordkeeping/Reports

- Private schools are required to file an affidavit with the Superintendent of Public Instruction between the first and fifteenth day of October of each year. The affidavit must contain the following information: 1) all names under which it has done and is doing business; 2) address of every place of business in California; 3) location of records and custodian of records; 4) names and addresses of directors and principal officers; 5) school enrollment by grades, number of teachers, coeducational or enrollment limited to boys or girls and boarding facilities; 6) that school attendance records, courses of study, and faculty information records maintained by the school are true and accurate; and 7) that criminal record summary information for employees has been obtained pursuant to Section 44237. *Calif. Educ. Code* §33190. Where the instructor also serves as the school administrator, the affidavit must be made available upon request to the parents or guardians of students or prospective students. *Calif. Educ. Code* §33191.
- Private schools are required to maintain a record of attendance for students. Every absence for a half-day or more must be documented. *Calif. Educ. Code* §48222.
- Private school parents have an absolute right to access any and all pupil records related to their children that are maintained by the school. *Calif. Educ. Code* §49069.
- Whenever a pupil transfers from a public school district to private school, or transfers from a private school to a school district, the pupil’s permanent record or a copy thereof must be transferred by the former district or private school upon request of the

school or district. Parents have a right to receive a copy of the record and to challenge the content of the record at a hearing. *Calif. Educ. Code* §49068.

- When a private school pupil transfers from a private school to a public school, pupil records shall not be withheld from the requesting district because of any charges or fees owed by the pupil or his parent. *Calif. Code of Regulations*, Title 5, S. 438 (c).
- Private schools may withhold grades, diplomas, or transcripts based on a minor's willful misconduct that results in personal injury or property damage until reparations are made. The school must afford the student his due process rights and notify the parents in writing before taking any action. *Calif. Educ. Code* §48904(b).
- Private schools must maintain for one year a record of the school bus safety instruction provided by the school. The record must indicate the name and location of school, date of instruction, supervising adults, number of participating students, grade levels, subjects covered, time taken for instruction, bus driver's name, and bus number. The record is subject to inspection by the Department of the California Highway Patrol. *Calif. Educ. Code* §39831.5. See *Transportation*.
- County boards of education may require private schools to report the withdrawal of any student, whether by severance, expulsion, exclusion, exemption, transfer, or suspension beyond 10 school days. The report must include names, ages, last known address and the reason for withdrawal. *Calif. Educ. Code* §48202(a). Private schools are required to report the withdrawal (as defined above) or denial of admission of physically handicapped, mentally retarded, or multiple handicapped students to the county superintendent. *Calif. Educ. Code* §48203.

Health and Safety Requirements

- California provides financial assistance to private and parochial schools under the Child Nutrition Program. The funding reimburses the school cafeteria accounts based upon the number of qualifying meals served to students. *Calif. Educ. Code* §§41311, 49530.5, 49531.
- Private elementary and secondary schools cannot unconditionally admit a student unless he has been fully immunized for: diphtheria, haemophilus influenzae type b, measles, mumps and pertussis (except for students who have reached 7 years), poliomyelitis, rubella, tetanus and any other disease deemed appropriate by the State Department of Health Services. *Calif. Health and Safety Code* §120325.
- Prior to employment at a private or parochial elementary or secondary school, individuals must present a certificate showing that they have been examined within the last 60 days found to be free of communicable tuberculosis. Additional testing is required at least once each four years or more if directed by the school. The private school is responsible for maintaining up-to-date certificates for each person covered. Private schools have the discretion to waive this requirement for employees who are employed less than a school year and who do not have frequent or prolonged contact with pupils. Employees transporting students must provide a certificate unless they transport students on an infrequent basis not to exceed once a month. *Calif. Health & Safety Code* §121525.
- Volunteers must also present a certificate that they have been found free of communicable tuberculosis within the last four years. At the discretion of the governing authority of a private school, this section shall not apply to volunteers

whose functions do not necessitate frequent or prolonged contact with pupils. *Calif. Health & Safety Code* §121545.

- Private school buildings are subject to an annual inspection through the State Fire Marshall's office. *Calif. Health & Safety Code* §13146.3.
- Private schools entirely enclosed (except for building walls) by fences or walls must maintain gates of sufficient size to permit the entrance of ambulances, police equipment, and fire fighting apparatus. Locking devices must be designed to permit ready entrance by chain or bolt cutting devices *Calif. Educ. Code* §32020.
- The local sheriff or chief of police will immediately notify a private school if any of the school employees are arrested for controlled substance offenses. *Calif. Health & Safety Code* §11591(c).
- California requires new noncertified employees at private elementary and high schools having contact with minor pupils to obtain criminal record summaries from the Department of Justice (DOJ) and the Federal Bureau of Investigation. DOJ will provide the records to the designated private school employers to be maintained in a secured file separate from personnel files. The criminal record summary will include only arrests resulting in conviction or pending final adjudication for any sex offense, controlled substance offense, or crime of violence. *Calif. Educ. Code* §44237(a), (b), (c).
- Private schools have a duty to equip schools with eye protective devices for students, teachers and visitors and to require eye protective devices to be worn when observing or participating in an activity where the use of hazardous substances are likely to cause injury to the eyes. *Calif. Educ. Code* §§32030-32032.
- Private schools are required to equip the school with a first aid kit to accompany pupils whenever they are taken on school-sponsored field trips. *Calif. Educ. Code* §32040. When field trips are taken into areas commonly known to be infested by poisonous snakes, the first aid kit must contain medically accepted snakebite remedies. The field trip must be accompanied by an agent of the school who has completed a course in first aid certified by the American Red Cross that emphasizes the treatment of snakebites. *Calif. Educ. Code* §32043.
- Art and craft materials deemed to contain a toxic substance by the Office of Environmental Health Hazard Assessment or a toxic substance causing chronic illness are prohibited for use by students in K–6 grade private schools. Materials containing toxic substances causing chronic illness may not be used by students in 7–12 grade private schools unless it meets labeling standards *Calif. Educ. Code* §§32064-66.
- Private schools are subject to the provisions of the *Private Schools Building Safety Act of 1986* to ensure that children attending private schools are afforded equivalent earthquake safety as afforded public school students. The act regulates the design and structure of private schools and provides for inspections by an enforcement agency. The act defines "private school structure" as "any building used for educational purposes through the 12th grade by 50 or more persons for more than 12 hours per week or 4 hours in any one day." Certain structures 2,000 square feet or less in floor area are exempt. *Calif. Educ. Code* §17320 *et seq.*
- Persons 18 years of age or over who unlawfully sell heroin, cocaine, cocaine base or any analog of these substances, within 1,000 feet of private school grounds when

minors are using the facility, will receive additional imprisonment in the state prison for two years. *Calif. Health & Safety Code* §11353, 11353.1(a)(2).

- The governing board of each private school must establish an earthquake emergency procedure system in every private school building having an occupant capacity of 50 or more pupils or more than one classroom. The earthquake emergency procedure system must include: 1) a school building disaster plan; b) a drop procedure; 3) protective measures to be taken before, during, and following an earthquake; and 4) a program to ensure students and staff are trained in the earthquake emergency procedure system. *Calif. Educ. Code* §§35295-35297.
- Persons in charge of private schools may not allow any cup or glass to be used in common for drinking purposes. *Calif. Health & Safety Code* §118375.

Transportation

- County superintendents may provide transportation to pupils attending private schools upon the same terms, in the same manner and over the same routes as provided for pupils attending public schools. The authorization is limited to actual transportation and not transportation payments of money. *Calif. Educ. Code* §39808.
- State subsidized transportation for children attending parochial schools is proper under the California Constitution in view of the broad police powers of the state to promote educational welfare and safety of the children. *Bowker v. Baker*, 167 P.2d 256 (1946).
- California distinguishes between school buses, school pupil activity buses, and youth buses in the applicable provisions of the vehicle code. *Calif. Vehicle Code* §§492, 545, 546, 680, 2808, and 12517; *Calif. Educ. Code* §39830, 39831.
- Private schools are subject to the same statutes, rules, and regulations relating to construction, design, operation, equipment, and color of school buses that apply to public schools unless exempt by the commissioner of the California Highway Patrol by rule or regulation. *Calif. Veh. Code* §§2808.
- Private schools are required to provide instruction in school bus emergency procedures and passenger safety for students transported in a school bus or school pupil activity bus. The instruction must be given at least once a year to all transported pupils prekindergarten through grade 8. In addition, safety instruction must be given prior to departures on a school activity trip including instruction on the location of emergency exits and location and use of emergency equipment. The school must maintain a record for one year documenting the details of the instruction. *Calif. Educ. Code* §39831.5.

Textbooks

- The lending of textbooks, without charge, to students attending nonprofit, nonpublic schools violates the California Constitution prohibiting appropriations for the support of sectarian schools. *Calif. Teachers Assoc. v. Riles*, 632 P.2d 953 (1981).
- Nonpublic schools, i.e. schools satisfying attendance recordkeeping requirements and exempt from taxation, may order instructional materials from the state board. *Calif. Educ. Code* §60310.

Testing

- Private schools students do not participate nor may they have access to STAR system.

Special Education

- California places students with exceptional needs in a range of settings appropriate to the individual's needs. One option is placement in nonpublic, nonsectarian schools. Individual education program team members and or parents may request a private school placement based on the educational needs of the child. *Calif. Educ. Code* §§ 6342, 56365, 56365.5, 56730.6.
- Nonpublic, nonsectarian schools are certified by the California Department of Education. Certification requirements and procedures and statutory guidelines are administered by the Special Education Division of the California Department of Education. (See Information Resources for California Web resources, below.) *Calif. Educ. Code* §§56365, 56366.
- Individuals with disabilities are entitled to full and equal access as other members of the general public to private schools. *Calif. Civ. Code* §54.1.
- California's Community Mental Health Services publicly place students with serious emotional disturbances in private schools. *Calif. Welf. & Inst. Code* §§5852.5, 5864, 5865, 5877.
- Private schools serving exceptional need students under a state contract must comply with state provisions governing the suspension of pupils with previously identified exceptional needs and the use of behavioral interventions with exceptional need students. *Calif. Educ. Code* §48911, 48911.5.

Nursing and Health

- Child Abuse Prevention Coordinating Councils funded by the state shall encourage inclusion of private school representatives. *Calif. Welf. & Inst. Code* §18982.1.

Technology

- County superintendents of schools may enter into agreements with nonpublic private schools to provide for the use of audiovisual curriculum materials, including equipment and apparatus. The agreement must provide for an amount of payment equal to the cost incurred in connection with the handling, loss, destruction, or damage to the audiovisual curriculum materials. Such agreements may only be entered into when such materials are not needed by the public schools or the county superintendent. *Calif. Educ. Code* §1251.

Professional Development

- State agencies have the authority to enter into vocational education contracts with approved private schools to provide training and retraining programs for students. *Calif. Educ. Code* §§8090-92.

Reimbursement for Performing State/Local Functions

- There is no state policy at this time.

Tax Exemption

- The state legislature has provided that property used exclusively for school purposes of less than collegiate grade is exempt from taxation if the school meets certain requirements. *Calif. Rev. & T. Code* §214.
- Tax exempt status for parochial K–12 schools under §214 is constitutional since a nonprofit school has a charitable purpose. *Lundberg v. County of Alameda*, 298 P.2d 1 (1956).
- The California legislature may exempt property used exclusively for religious purposes and held by a nonprofit corporation from property tax under the California Constitution. *California Constitution*, Art. XIII. Section 4. Church-related schools may be required to file factual statements to qualify for the exemption. 62 Ops. Att. Gen. 690, 11-9-79.
- Private schools and nonprofit parent-teacher associations are "consumers" rather than "retailers" for sales tax purposes with respect to 1) yearbooks and catalogs prepared for distribution to students by the school and 2) tangible personal property sold by the parent-teacher organization if the profits are used exclusively for the organization. *Calif. Rev. & T. Code* §6361.5, 6370.
- School meals provided to students by private schools are exempt from sales tax. The exemption does not apply if the food is sold for consumption within a place subject to an admission charge, except for national and state parks and monuments. *Calif. Rev. & T. Code* §6363.
- Private schools are exempt from state park fees for school field trips arranged through the Department of Parks and Monuments. The exemption extends to pupils K–12, their escorts, teachers, supervisory personnel, and bus drivers. (Hearst San Simeon State Historic Monument excluded.) *Calif. Pub. Res. Code* §5010.2.

Public Aid for Private Education

- **Constitutional provisions:** The California Constitution prohibits the appropriation of public money for the support of sectarian or denominational schools or any other school not under the exclusive control of the officers of the public schools. *California Constitution*, Art. IX. Section 8.
In addition, Art. XVI. Section 5. prohibits any public support for a school controlled by any religious creed, church, or sectarian denomination, including any grant of personal property or real estate.
- **Programs for financial assistance for attendance at private schools:** There are no such programs at this time.

Homeschooling

- California parents have access to three approaches to schooling their children at home: public school independent or home-based study programs; public charter independent study schools; and homeschooling under the Private School Affidavit.
- The first option: Public school home-based or independent study programs require enrollment in public school and use the public school curriculum. If this option is selected, then the child is considered a public school student and subject to the rules and policies of the public school, including participation in State testing. *Calif. Educ. Code* §51745.

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- The second option: Parents may also enroll a child in a public charter school that offers independent study. These California charter schools allow enrollment to students living either in the county in which the charter school is located or in any contiguous county. Computer access to curriculum is common; State testing is required. *Calif. Educ. Code* §47600 et seq.
- The third option: Parents may submit annually the Private School Affidavit. Under this provision, a child being taught by "persons capable of teaching" is exempt from compulsory public school attendance, is not enrolled in a public school, and does not have access to State curriculum, materials or testing. *Calif. Educ. Code* §§33190,48222.
- A related exemption allows schooling at home without filing the affidavit. Under this exemption, a child must receive at least three hours of instruction, between the hours of 8 a.m. and 4 p.m. a day for 175 days each calendar year by a tutor with a clear California teaching credential, "in the several branches of study required to be taught in the public schools of this state and in the English language." *Calif. Educ. Code* §48224.
- A parent or guardian may legally homeschool their child without a teacher certification in the state of California. On Aug. 8, 2008, the Court of Appeals for the Second Appellate District in California unanimously reversed their previous decision made on Feb. 28, 2008, to require parents to possess a teaching certification in order to provide home instruction.
- No California statute requires testing for homeschooled students.

Information resources

- [California Department of Education: Selected California Education Codes](http://www.cde.ca.gov/sp/ps/rq/psaffedcode.asp)
<<http://www.cde.ca.gov/sp/ps/rq/psaffedcode.asp>>
- [California Department of Education: Private School Frequently Asked Questions](http://www.cde.ca.gov/sp/ps/rq/psfaq.asp)
<<http://www.cde.ca.gov/sp/ps/rq/psfaq.asp>>
- [California Department of Education: Private School Affidavit](http://www.cde.ca.gov/sp/ps/rq/)
<<http://www.cde.ca.gov/sp/ps/rq/>>
- [California Law](http://www.leginfo.ca.gov/calaw.html) <<http://www.leginfo.ca.gov/calaw.html>>
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