

## SOUTH DAKOTA

**Compulsory Attendance Ages:** “six years old by the first day of September and who has not exceeded the age of sixteen years.” Under age 7, a parent will be granted a waiver of compulsory attendance if requested. South Dakota Codified Laws § 13-27-1. As of July 1, 2010, compulsory age is lowered to 5 as of Sept. 1, with no waiver available.

As of July 1, 2009, the compulsory attendance age will extend to age 18.

**Required Days of Instruction:** “[E]quivalent period of time” as public schools § 13-27-3 (“[A]t least a nine-month regular term.” S.D. Codified Laws § 13-26-2).

**Required Subjects:** Language arts and math. South Dakota Codified Laws § 13-27-3.

**Home School Statute:** None. Homeschools and non-accredited private schools are referred to in statutes as “alternative instruction” or “alternative education.”

**Alternative Statutes Allowing for Home Schools:** South Dakota Codified Laws § 13-27-3.

“A child shall be excused from school attendance, pursuant to South Dakota 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.”

1. Parents homeschooling their children must submit a notarized application for an excuse to the local superintendent. It must include the names of the teachers, place of instruction, and description of the basic skills taught. Parents must use the form written by the Secretary of the Department of Education and Cultural Affairs.
2. The first time (only) an application for excuse is filed for a specific child, the parents must include either 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.” South Dakota Codified Laws § 13-27-3.1
3. At all times a child is being homeschooled, the parents must keep on file at home a certified copy of the child’s birth certificate. South Dakota Codified Laws § 13-27-3.1
4. The birth certificate requirement was amended after some school districts misinterpreted the former law and tried to obtain home schoolers’ birth certificates. *See State v. Brush & Schnoor*, Nos. T97-1105, 1085, 1137, 1136 (Mag. Ct. 7th Cir., June 17, 1998) (Two HSLDA homeschool

families were found not guilty of violating the former requirement when they maintained their children's birth certificates in their homes rather than giving them to the public school.)

5. No individual may teach more than twenty-two children.
6. The Secretary of the Department of Education "may inspect the records of an alternative education program with 14 days' written notice if the secretary has probable cause to believe the program is not in compliance." South Dakota Codified Laws § 13-27-3. The records to be inspected are limited to attendance and evidence showing academic progress. This statute does not give officials authority to enter a home. Before any homeschooler's records can be inspected, the state has the burden of proving it has reliable evidence that the family is not in compliance. Suspicion or an anonymous tip is not sufficient. Rarely do school officials have evidence of sufficient quality and quantity to satisfy the probable cause standard so as to authorize them to review any homeschoolers' records.
7. Parents may appeal a denial to homeschool to the state board of education, which will conduct a hearing. South Dakota Codified Laws § 13-27-8. On appeal, "the burden of proving noncompliance with South Dakota Codified Laws § 13-27-3 shall be upon the secretary of the Department of Education and Cultural Affairs. The state board's decision shall be final as to the secretary's right to appeal."
8. HSLDA filed *Davis v. Newell School District*, Civ. 93-5012 on January 20, 1993, in the U.S. District Court of South Dakota, Western Division, challenging the constitutionality of the state's former statute which gave school districts authority to conduct home visits of homeschool families. This suit helped spur the passage of House Bill 1260 in 1993 which repealed the home visit authority. The *Davis* suit was subsequently dismissed.
9. Homeschoolers' privacy is expressly protected by South Dakota Codified Laws §§ 13-27-2 and 13-27-9, which makes the certificate of excuse a confidential document.

**Teacher Qualifications:** None.

**Standardized Tests:** Children who are in grade levels 2, 4, 8, and 11 must take either the standardized test used in the local public school district or, at their option, any other nationally standardized test. South Dakota Codified Laws § 13-27-3. Parents must file with the local school. South Dakota Codified Laws § 13-27-7. Although a school district has authority to monitor the test, this is done so rarely (essentially never) that any demand to monitor should be carefully examined for discrimination. The school district has no authority to enter a home to monitor a test.

If a subsequent test shows "less than satisfactory" academic progress, the school board may refuse to renew the child's certificate of excuse. South Dakota Codified Laws § 13-27-7