

## TEXAS

- Compulsory Attendance Ages:** “a child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade, and who has not yet reached the child's 18th birthday shall attend school.” A child 17 years of age who has been issued an equivalency certificate is exempt. Texas Educ. Code Ann. § 25.085(b).
- Required Days of Instruction:** 180 days. Only required for public schools. § 25.081.
- Required Subjects:** Good citizenship, math, reading, spelling and grammar.

**Home School Statute:** None.

**Alternative Statutes Allowing for Home Schools:** Tex. Educ. Code Ann. § 25.086(a)(1).

1. “Any child in attendance upon a private or parochial school which shall include in its course a study of good citizenship” is exempt from the requirements of compulsory attendance.

Since this law does not specifically mention home schooling, the Texas Education Agency announced that homeschooling was illegal in 1985. After over 80 innocent home school families were criminally prosecuted for truancy, HSLDA joined with other homeschool plaintiffs to file a class action suit against every school district in Texas (over 1,000). The class action suit, *Leeper v. Arlington Indep. School Dist.*, No. 17-88761-85 Tarrant County 17th Judicial Ct. Apr. 13, 1987), resulted in a trial level decision in favor of home schooling. The court ruled that:

- a. Home schools can legally operate as private schools in Texas;
- b. Article 7, section 2 of the Texas Constitution only authorizes the legislature to establish and maintain public education, not private or parochial education (*Leeper*, Slip Op. At 10);
- c. Homeschools must be conducted in a bona fide manner, using a written curriculum consisting of reading, spelling, grammar, math and a course in good citizenship; **no other requirements apply**.
- d. The court ruled that the interpretation of the law cannot be left to each criminal prosecution. “If arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.” Slip Op. at 9. Therefore, the court interpreted the law based on the historical treatment of homeschooling. “The evidence establishes that from the inception of the first compulsory attendance law in Texas in 1915, it was understood that a school-age child who was being educated in or through the child’s home, and in a bona fide manner by the parents ... was considered a private school...”
- e. “This judgment does not preclude the Texas Education Agency, the Commissioner of Education, or the State Board of Education from suggesting to the public school attendance officers lawful methods, including but not limited to inquiry concerning curricula and standardized test scores, in order to ascertain if there is compliance with the declaration contained in this judgment.” *Leeper*, Final Judgment at 13.
- f. On November 27, 1991, the Court of Appeals of Texas completely affirmed the *Leeper* case. (See *Texas Education Agency, et al. v. Leeper, et al.*, 843 S.W.2d 41 [Tex. App. – Ft. Worth 1991]). The

Court stated that the Texas Education Agency “deprived the home school parents of equal protection under the law” since their private schools in the home were unfairly discriminated against “on the sole basis of location in the home,” rather than outside the home.

The court emphasized “that initiation of prosecution of plaintiff parents violates the parents’ equal protection rights by establishing an unreasonable and arbitrary classification of parents which is not rationally related to any state interest.”

- g. On June 15, 1994, the Texas Supreme Court unanimously affirmed the Court of Appeals decision in *Texas Educational Agency, et al. v. Leeper, et al.* (893 S.W. 2d 432, 1994) clearly settling the issue: “homeschools” can operate as private schools under the law.
2. On October 4, 1995, Mike Moses, Commissioner of Education, issued a memo on homeschools stating, “It is the current opinion of the Commissioner of Education and the Texas Education Agency Legal Counsel that a written statement of assurance, provided by the parents to the school district, meets the requirements of *Leeper* and verifies compliance with compulsory attendance laws.”
3. As a result of the *Leeper* decision, home schools do *not* have to initiate contact with a school district, submit to home visits, have curriculum approved or have any specific teacher certification. Home schools need only have a written curriculum, conduct it in a bona fide manner and teach math, reading, spelling, grammar, and good citizenship.
4. Two important developments were successfully lobbied by HSLDA which curtail the powers of the Child Protective Service against homeschooling: a) social worker training mandate: “It is the intent of the Legislature that the training curriculum for CPS Caseworkers funded out of Strategy A.1.2, Child and Family Services, include instruction in the Fourth Amendment to the U.S. Constitution and parents’ rights,” (Texas House Bill 1, 2003), and b) Parental Rights Act: “A state agency may not adopt rules or policies or take any other action that violates the fundamental right and duty of a parent to direct the upbringing of the parent’s child.” Tex. Fam. Code § 151.005.
5. Homeschool graduates are specifically protected by law from discrimination by Texas colleges: “Because the State of Texas considers successful completion of a nontraditional secondary education to be equivalent to graduation from a public high school, an institution of higher education must treat an applicant for admission to the institution as an undergraduate student who presents evidence that the person has successfully completed a nontraditional secondary education according to the same general standards as other applicants for undergraduate admission who have graduated from a public high school.” Texas Education Code, Chapter 51, Subchapter Z, Section 51.9241.

**Standardized Tests:** None. The court in *Leeper* specifically stated that the school district could not mandate standardized testing.

**Religious Freedom Act:** Tex. Civ. Prac. & Rem. Code § 110.001 et seq.

The Religious Freedom Restoration Act (RFRA), passed with the help of HSLDA members, gives religious home schoolers another legal means to protect their right to home school. If the parents’ free exercise of religion is substantially burdened by having to comply with the homeschool law, the parents may use the RFRA as a defense or file suit against the state. Under this statute, the burden is on the state to prove that its requirement “furthers a compelling state interest” and is the “least restrictive means” of fulfilling its interest that children be educated. This Act restores the highest protection of the individual’s right to freely exercise his religious beliefs taken away by the U.S. Supreme Court in its 1997 *City of Boerne* decision. 520 U.S. 507.

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