

SOUTH DAKOTA

Compulsory Attendance Ages: Beginning the school year the child is 5 years old by September 1 until the time the child is 18, or until graduation. South Dakota Codified Laws § 13-27-1.

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. Section references below (§) are to South Dakota Codified Laws.

“A child shall be excused from school attendance, pursuant to § 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 annually submit an application for an excuse to a local school official. It must be notarized or signed by two witnesses, and 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. Effective July 1, 2011, the child is excused automatically upon the filing of the application, without the necessity of any school board action, as a result of the enactment of HB 1133. The application should be filed no later than the first day of school in the local school district.
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 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.” The affidavit must be notarized or witnessed by two witnesses. Violation of this requirement is a misdemeanor. § 13-27-3.1
3. If the parents submit a birth certificate under paragraph 2, above, it must be “maintained by the ... alternative instruction program” and it “shall be part of the child’s permanent cumulative school record.” § 13-27-3.2
4. The birth certificate requirement was amended after some school districts misinterpreted the former law and tried to obtain homeschoolers’ 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." §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 revocation of their certificate of excuse to the state board of education, which will conduct a hearing. § 13-27-8. On appeal, "the burden of proving noncompliance with § 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." South Dakota Codified Laws Chapter 1-26 explains the procedure on appeal, including the 30-day deadline in § 1-26-31. If the school board fails to make any decision within 30 days after the application for excuse is filed, a family may proceed under § 1-26-30.1.
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 §§ 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. §13-27-3. Parents must file with the local school. § 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. § 13-27-7.