



COMMONWEALTH of VIRGINIA

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The Honorable Stephen E. Gordy
Member, House of Delegates
3708 Prado Place
Fairfax, Virginia 22031

My dear Delegate Gordy:

You have requested my opinion on the applicability of Ch. 436, Acts of Assembly of 1984, (House Bill 535) to parents whose children are exempted or excused from compulsory school attendance.

Section 22.1-254 of the Code of Virginia sets forth the basic requirement of compulsory school attendance for all children in Virginia between the ages of five and seventeen. See Grigg v. Commonwealth, 224 Va. 356, 297 S.E.2d 799 (1982). Compulsory school attendance may be satisfied by a child's attendance at public school, private school or instruction by an approved, qualified tutor. See § 22.1-254. Prior to the passage of Ch. 436, home instruction by an unapproved tutor or teacher would not meet the requirements of the compulsory education statutes. See Grigg v. Commonwealth, supra.

Chapter 436 amends § 22.1-254 to provide an additional means of meeting compulsory school attendance. In general, it permits home instruction of a child by the child's parent, even though the parent is not a certified tutor teacher under prescribed criteria. Children who are taught at home by their parents in accordance with the legislatively mandated conditions will not be in violation of the compulsory school attendance law. See Report of the Joint Subcommittee Studying Home Education, S.Doc. No. 14 (1984).

You specifically ask whether parents having an exemption from school attendance for their children due to religious belief are bound by Ch. 436. Chapter 436 does not prohibit parents from seeking school board excuse of their children from the compulsory school attendance requirements by reason of bona fide religious training or belief, as provided in § 22.1-257(A)(2). Specifically, § 22.1-254.1, a new section added by Ch. 436, provides in part:

"Nothing in this section shall prohibit a pupil and his parents from obtaining an excuse from school attendance by reason of bona fide religious training or belief pursuant to § 22.1-257 of this Code."¹

The General Assembly, through the enactment of Ch. 436, has determined that approved home instruction is an acceptable equivalent to school attendance for purposes of meeting the compulsory school attendance law in Virginia. Therefore, parents seeking excuse for religious reasons from school attendance must be prepared to show to the school board that school attendance and its statutory equivalents, such as home instruction, do not accommodate their bona fide religious beliefs. The decision on such requests has been vested in the school board. Thus, in reply to your first question, Ch. 436 does not affect parents whose children may be exempted from school attendance due to religious beliefs.

Your second question is whether parents who have exemption from school attendance for their children due to reasons other than religious are bound by Ch. 436.

Section 22.1-256 lists six acceptable reasons for seeking excusal from compulsory school attendance. Parents whose children properly fall under any of the exemptions set forth in § 22.1-256 are not obligated to provide home instruction in accordance with the provisions of Ch. 436. The legislature has explicitly provided that the provisions of Art. 1, of Ch. 14, Title 22.1 (compulsory attendance) are inapplicable to such exempted or excused children. See § 22.1-256(A). Accordingly, your second question is answered in the negative.

The foregoing, of course, assumes that the child and his or her parents have, in fact, met the criteria for the exemption.

¹Section 22.1-257 provides in pertinent part: "A. A school board:

* * *

2. Shall excuse from attendance at school any pupil who, together with his parents, by reason of bona fide religious training or belief, is conscientiously opposed to attendance at school;

* * *

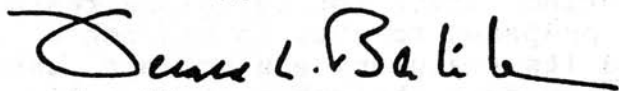
C. As used in paragraph A 2 of this section, the term 'bona fide religious training or belief' does not include essentially political, sociological or philosophical views or a merely personal moral code." (Emphasis added.)

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Also, I note that the exemptions provided in §§ 22.1-256 and 22.1-257 are not permanent exemptions, but are subject at least to annual scrutiny by the local superintendent of schools. See § 22.1-261. Moreover, some of the exemptions listed in § 22.1-256 are limited in duration by their very nature. (See, for example, § 22.1-256(1) which exempts children while they have a contagious disease.)

With kindest regards, I am

Sincerely,



Gerald L. Baliles
Attorney General