



# PACIFIC JUSTICE INSTITUTE

## Four Types of Church-Parent Homeschool Co-ops

### INTRODUCTION

This resource for churches explains **four ways a church can conduct a church/homeschool co-op program**. These four options are referred to in a brochure from Public School Exit<sup>1</sup> (“PSE”):

- 1. Homeschool Church-Parent Co-Op**
- 2. One-Room School Method**
- 3. Umbrella School: Church Membership Association**
- 4. University Model**

Specifically, this resource answers four questions regarding co-op choices:

- **Is there a limit on how many students can meet for a co-op?**
- **Can a student be taught there even though their parents may not be involved?**
- **Can a student be enrolled in an online private school program and still attend with adult supervision?**
- **Are there any insurance issues?**

This resource further includes guidance on local zoning ordinances for church/homeschool co-op programs.

The California Education Code (“Cal. Ed. Code”) is the primary source of clarification for conducting church/homeschool co-op programs. In addition, one primary case deals with the State’s interest in making sure the education of all children calls for some regulatory oversight.<sup>2</sup> The Cal. Ed. Code does not use the word “homeschool.” Therefore, we will refer to church/homeschool co-op programs as homeschool.

The State of California requires all children between 6 and 18 years of age to attend a public, full-time day school based on the governing board of the school district where the student resides. Cal. Ed. Code § 48200. Two exceptions to this regulation are found in Cal. Ed. Code § 48220: the private school exemption and the private tutor exemption. Both exemptions are the basis for the discussion below on the four types of church/homeschool co-op programs.

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<sup>1</sup> <https://daffodil-lobster-m5nr.squarespace.com/>.

<sup>2</sup> *In re Jonathan L. v. Superior Ct.*, 165 Cal. App. 4th 1074 (2008).

## LEGAL DISCUSSION

### 1. Homeschool Church-Parent Co-Op

The Homeschool Church-Parent Co-Op provides families the opportunity to homeschool their children, gathering one or more times per week based on the level of interest. Based on the Cal. Ed. Code, this co-op program would fall into the category of a private school exemption because the students would not be enrolled in a public, full-time day school. The private school exemption allows students to be taught in a “private full-time day school by persons capable of teaching.” Cal. Ed. Code § 48222.

The Education Code is ambiguous when it comes to the oversight of homeschools and whether they should be classified as a private school.<sup>3</sup> However, due to the legislative history and regulatory practices through the years, the court in *Jonathan L.* ruled that “home schools may constitute private schools.”<sup>4</sup>

The decision in *Jonathan L.* provides the steps and parameters based on the Cal. Ed. Code that parents/guardians must take in order to homeschool their student(s). The following parameters have been set by the Cal. Ed. Code for homeschools as private schools:

- Each parent/guardian must submit an affidavit to the Superintendent of Public Instruction (or statement under penalty of perjury) between October 1 and 15 each year. Cal. Ed. Code § 33190.
- This affidavit or statement must include the current year’s information, such as the address of “every place of doing business of the person, firm, association, partnership, or corporation within the State of California.” Cal. Ed. Code § 33190 (b). This would include the church providing facilities for the Homeschool Church-Parent Co-Op.
- The affidavit or statement must provide the “enrollment, by grades, number of teachers, coeducational or enrollment limited to boys or girls and boarding facilities.” Cal. Ed. Code § 33190 (d). For this co-op program, the affidavit would list anyone brought in to teach at the co-op and whether it is co-educational.
- The affidavit or statement must include a statement that “the following records are maintained at the address stated, and are true and accurate: (1) the records required to be kept by Section 48222, (2) the courses of study offered by the institution, (3) the names and addresses, including city and street, of its faculty,” including the qualifications of each faculty member. Cal. Ed. Code § 33190 (f). Each parent/guardian would need to keep these records based on their student(s).
- The affidavit or statement must “affirm that ‘criminal record summary information has been obtained pursuant to Section 44327.’” Cal. Ed. Code § 33190 (g). This includes

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<sup>3</sup> *Jonathan L.*, 165 Cal. App 4th at 1093 (2008).

<sup>4</sup> *Id.* at 1099.

finger prints, criminal record information, and/or a list of teachers who have had suspended credentials. Cal. Ed. Code § 44237. A parent/guardian is exempt from the fingerprinting requirement when working exclusively with their own children. Cal. Ed. Code § 44237 (b)(4). Due to the co-op nature of this option, each parent/guardian may be required to obtain fingerprints and criminal history.

- Attendance must be kept of each student in a homeschool on a register, showing every absence for a half day or more. Cal. Ed. Code § 48222. The attendance record must be maintained during the entire school year by the parent/guardian.

According to *Jonathan L.*, the court said that a teacher in a private, full-time day school need only be a person “capable of teaching.”<sup>5</sup> Each parent/guardian who homeschools their student(s) would be permitted to teach based on this interpretation.

The impetus would be on the parents/guardians to ensure their homeschool situation abides by Cal. Ed. Code §§ 48200 and 48222. Each church may offer their facilities as a ministry to the homeschool co-op allowing the parents/guardians to structure the co-op in a way that works best for their student(s).

**Is there a limit on how many students can meet for a co-op?** It is recommended that the student-teacher ratio while classes are in session at the church facility does not exceed twenty-five to one. California Code of Regulations, Title 5, § 11704.

**Can a student be taught even though their parents may not be involved?** The level of the parent involvement in this option would be based on the agreement of the parents/guardians involved in the co-op. There needs to be at least one teacher per class. It is recommended that parents/guardians stay involved as they are the overseer of their child’s education.

**Can a student be enrolled in an online private school program and still attend with adult supervision?** If the student is enrolled in another online private school program, this would not automatically preclude the student from participating in the co-op as long as it does not interfere with their enrolled studies.

**Are there any insurance issues?** Each church offering this option as a ministry would need to follow up with their liability and facility insurance company to determine and ensure their policy will cover this particular ministry option.

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<sup>5</sup> *Jonathan L.*, 165 Cal. App. 4th at 1096 (2008).

## 2. One-Room School Method

Essentially, the One-Room School Method is formalized education operated and administered by a church. As described by PSE, the teacher would be responsible for all grade levels, and the parents/guardians would pay the teacher directly. This method closely resembles the private tutor method outlined by the Cal. Ed. Code § 48224.

If the parents/guardians pay the teacher directly, with the church providing the facility, the private tutor exemption has the following requirements:

- Each student must be instructed by a private tutor for at least three hours a day for 175 days each calendar year. Cal. Ed. Code. § 48224.
- Students must study “several branches of study required to be taught in the public schools” of California and in the English language. Cal. Ed. Code § 48224.
- Instruction must be between the hours of 8 a.m. and 4 p.m. Cal. Ed. Code § 48224.
- A private tutor is required to have the same professional requirements met as a classroom teacher. Cal. Ed. Code § 48224.
- Each class must stay within the state-required, student-teacher ratio of twenty-five students to one teacher. Cal. Code Regs. Tit. 5, § 11704.

The One-Room School Method is ideal for parents/guardians who desire more specialized, credentialed tutoring for their student. The church may opt to provide the facility as a ministry to the parents/guardians deciding to move this direction.

**Is there a limit on how many students can meet for a co-op?** Each class must stay within the student-teacher ratio of twenty-five students to one teacher. Cal. Code Regs. Tit. 5, § 11704.

**Can a student be taught even though their parents may not be involved?** The level of parent involvement in this option is based on the agreement between the parents/guardians and the private school tutor. Since the tutor must possess the same professional requirements as a classroom teacher (Cal. Ed. Code § 48224), parents do not need to be involved during class.

**Can a student be enrolled in an online private school program and still attend with adult**

**supervision?** The teacher in this option would be teaching all of the students for the required amount of time per day for the 175 required days per year (see above requirements). Parents/guardians may wish to choose between this option and the online private school program.

**Are there any insurance issues?** Each church offering this option as a ministry would need to follow up with their liability and facility insurance company to determine and ensure their policy will cover this particular ministry option.

### **3. Umbrella School: Church Membership Association Co-Op**

The Umbrella School program is very similar to the Homeschool Church-Parent Co-Op, except the students learn at home. The church does not open its facilities for classroom studies, and the parents would not need to come and participate. Each student and their parent/guardian would follow Cal. Ed. Code §§ 48200 and 48222.

The one major difference with this program is that the church is involved in administration for each student. The church would perform any testing, maintain student records, and potentially provide the facility for graduation ceremonies or other gatherings. The church would follow the guidelines set forth in Cal. Ed. Code § 33190 for the affidavit or statement and Cal. Ed. Code § 44222 for attendance reporting/record keeping.

Since the parents/guardians are the teachers in this homeschool co-op, the ruling set in *Jonathan L.* would allow them to teach as they are “capable of teaching.”<sup>6</sup>

The church would provide this service as a ministry to the parents/guardians, allowing them to focus on teaching their student(s) and creating amazing learning opportunities without the burden of administration.

**Is there a limit on how many students can meet for a co-op?** In the Umbrella School program, the number for each homeschool would be limited to how many children live in the home.

**Can a student be taught even though their parents may not be involved?** The level of parent/guardian involvement in the Umbrella School program would be high, as each parent/guardian is responsible for the education of their student(s).

**Can a student be enrolled in an online private school program and still attend with adult supervision?** The parent/guardian may opt to hire a private tutor in the home. In this situation, the parent/guardian must abide by the private tutor exception found in Cal. Ed. Code § 48224.

**Are there any insurance issues?** It is recommended the church reach out to their insurance company to ensure their policy covers the storing of student records and any gatherings offered on their campus.

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<sup>6</sup> *Jonathan L.*, 165 Cal. App. 4th at 1096 (2008).

#### 4. University Model

The University Model involves the Independent Learning Academy<sup>7</sup> (“ILA”), a school with classes and curriculum that utilizes a church campus to house the students who enroll. ILA enters into a business relationship with the church, leases the church venue, and operates as an independent school on the church property. The University Model resembles a combination of private school instruction and private tutoring with a strong homeschool portion. ILA provides a schedule of classes that parents/guardians use to supplement the education they provide at home, especially on subjects that parents/guardians are unable to teach their student(s).

Parents/guardians have the opportunity to tailor the program and studies for their student(s). The classes chosen by the parents/guardians meet for one or two days a week at the church property. Parents/guardians would homeschool along with ILA supplemented classes. The teachers of ILA would need to have the same credentials as described in Cal. Ed. Code § 48224.

Parents/guardians and ILA would need to abide by Cal. Ed. Code §§ 48200, 48222, and 48224. Reporting, as explained in Cal. Ed. Code § 33190, must be strictly adhered to. The student-teacher ratio while classes are in session at the leased church facility would need to be applied. Cal. Code Regs. Tit. 5, § 11704.

The implications for the church could potentially be the following:

- ILA would need to operate in compliance with a school campus, restricting use of the facility while classes were in session.
- As ILA would be leasing space in the church, the church could have potential property tax exemption issues for the portion of the facility the ILA uses. ILA would need to be a nonprofit with an organizational clearance certificate from the Board of Equalization to protect the church from potential property tax liability.
- The church would need to require ILA to have the proper insurance to operate as a school removing liability from the church.

**Is there a limit on how many students can meet for a co-op?** ILA must stay within the state-required, student-teacher ratio of twenty-five students to one teacher per class. Cal. Code Regs. Tit. 5, § 11704.

**Can a student be taught even though their parents may not be involved?** Since ILA postures as a University Model, ILA would need to advise parents/guardians on their involvement in the classes offered. The level of parent/guardian involvement in the homeschool portion would be high, as each is responsible for the education of their student(s).

**Can a student be enrolled in an online private school program and still attend with adult supervision?** Parents/guardians may choose the University Model as well as an online private

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<sup>7</sup> <https://www.independentlearningacademy.org/>.

school program. This decision is best for the parents/guardians, whether ILA ultimately enhances the student(s) education. Participation in an online private school program may not be precluded alongside ILA. Parents/guardians should connect with ILA on their guidelines.

**Are there any insurance issues?** It is recommended the church reach out to their insurance company to ensure their policy covers the lease of their campus to a different entity as well as housing students on campus. As stated above, this option may limit the use of the space by the church while ILA is in session each week.

## **ZONING**

A church will need to check local county or municipal zoning ordinances in their area to determine if there are any ordinances or zoning codes that would impact the homeschool co-op. In addition, a church should examine the use permit which it is currently operating under to see if a homeschool co-op is permissible at the church's location. Frequently, a use permit may allow for Christian education; however, a church may have to apply for a new use permit.

Unfortunately, a church may encounter opposition from local planning officials when seeking a permit. However, a federal law, the Religious Land Use and Institutionalized Persons Act (RLUIPA), provides protections against discriminatory treatment of religious institutions in local land use decisions. RLUIPA has four provisions as follows:

- A local zoning ordinance may not “impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution – (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. 2000cc.
- “No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.” 42 U.S.C. 2000cc.
- “No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.” 42 U.S.C. 2000cc.
- “No government shall impose or implement a land use regulation that (a) totally excludes religious assemblies from a jurisdiction; or (b) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.” 42 U.S.C. 2000cc.

If the church experiences difficulties in obtaining a use permit, consult with a skilled attorney in this area of law. **Please feel free to contact the Pacific Justice Institute for a consultation.**

## CONCLUSION

The four co-op program options, found in PSE's brochure to assist parents/guardians and churches in removing their children from the public school system, present an interesting decision for churches. The church should look at several factors when making this decision:

1. How much liability does the church wish to take on?
2. What are the property tax implications if the church leases its facility?
3. What does the church wish to accomplish by offering any of these co-op programs?
4. Does the church have necessary staffing for any of these co-op programs?
5. What ministries would be impacted by the addition of these co-op programs?
6. What zoning issues may arise if any of these co-op programs are provided at the church's location?

This legal resource for churches is based on the Cal. Ed. Code, but each church must follow up with their local jurisdiction on any zoning ordinances to review them individually. Whatever choice the parent/guardian and church make, applying and adhering to the regulations set in the Cal. Ed. Code and to the decision from *Jonathan L.* as outlined above, is strongly recommended for a successful co-op program.

**For any questions or concerns please contact  
PACIFIC JUSTICE INSTITUTE  
at [PJI.org](http://PJI.org) or (916) 857-6900**

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