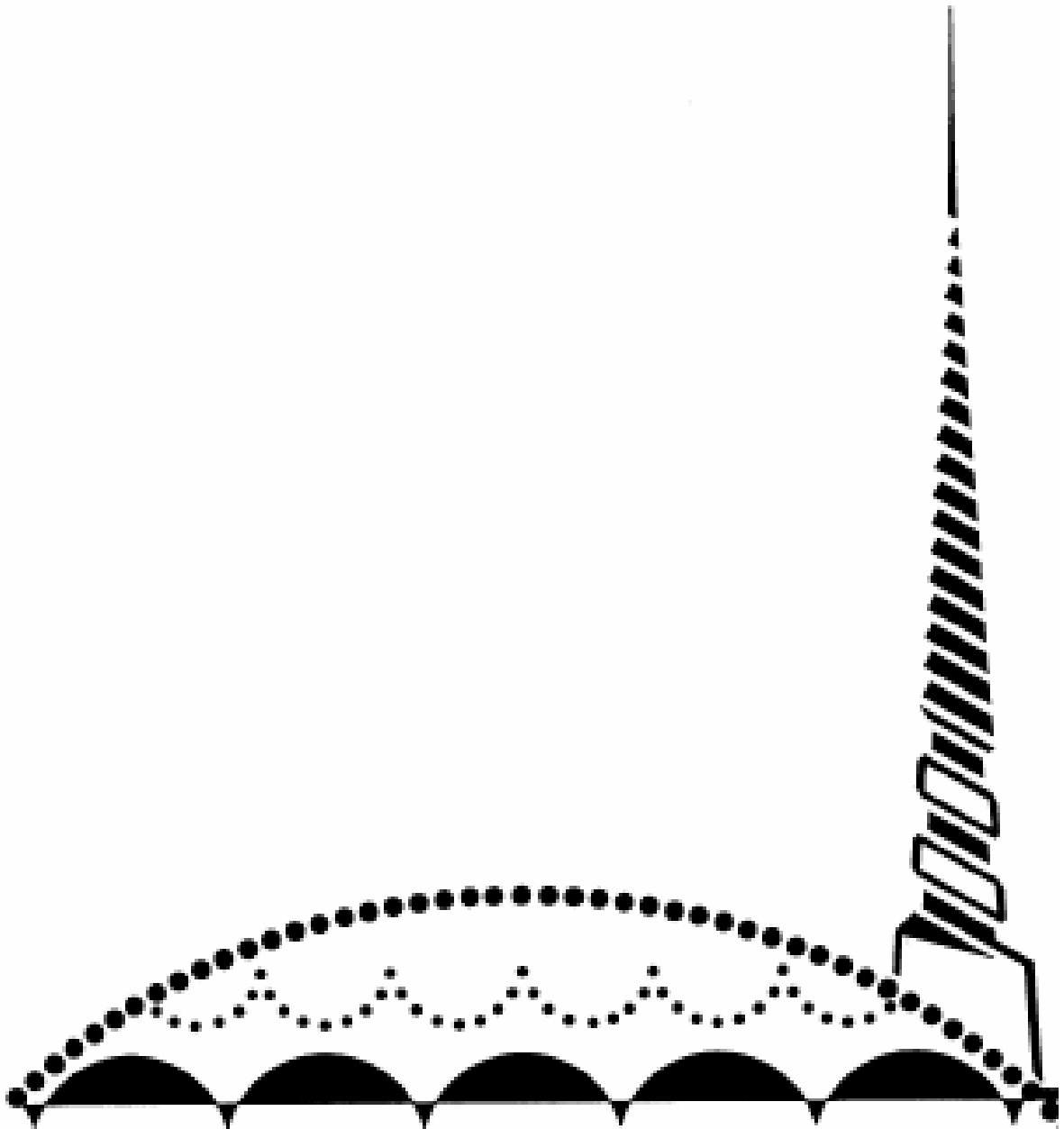
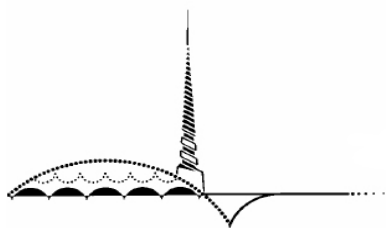


2005-2006 MARIN COUNTY CIVIL GRAND JURY

# Caught in the Middle: Home schooling Neglected in Marin County

May 8, 2006





**CAUGHT IN THE MIDDLE:  
HOME SCHOOLING NEGLECTED IN MARIN COUNTY**

**SUMMARY**

Marin County school districts earn a failing grade for neglecting their oversight responsibilities for home schooled children. School officials are uninformed about these responsibilities under the California Education Code (Code) regarding home schools in their districts. Furthermore, the California Department of Education (CDE) does not take an active role in monitoring home schools. The unfortunate result is that neither the local school districts nor the CDE monitor whether home schoolers are getting the education to which they are entitled under the law. The Grand Jury felt that this apparent gap in responsibility warranted closer scrutiny.

Under California's compulsory education laws, children between six and eighteen years of age are required to attend public school unless they comply with one of several specific exemptions provided by the Code. Home schools in California generally claim the exemption that they are providing instruction in a "private full-time day school by persons capable of teaching."<sup>1</sup>

In order for the exemption to be valid, the following must be done: the home school must file an annual Private School Affidavit (Affidavit) with the CDE, and the local school district personnel must verify that the annual Affidavit complies with the Code requirements. The Code also requires private school authorities to keep an attendance register.<sup>2</sup> The CDE considers private schools with less than six students to be home schools and maintains a list of them which is accessible to public school districts from a password-protected Web site. There were 58 home schools in Marin County that had filed Affidavits as of September 2005.

Marin educators we spoke with were not aware that information about home school Affidavits is accessible to public school districts through the CDE-maintained Web site.

The Code requires that private schools teach in English and "offer instruction in the several branches of study required to be taught in the public schools of the state."<sup>3</sup> There is, however, a lack of guidance from the Code and the CDE regarding oversight and enforcement.

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<sup>1</sup> California Education Code § 48222

<sup>2</sup> California Education Code §§ 33190, 48222

<sup>3</sup> California Education Code §48222

While the attendance policies and administrative regulations of several Marin school districts specifically authorize them to verify that Affidavits have been filed, those policies and regulations are not being implemented. Other school districts, however, have no policies that address this issue.

The Grand Jury recommends:

- That Marin County Office of Education (MCOE) and local school districts contact the CDE's Elementary Education Office to obtain the password needed to access the annual lists of home schools in their districts and verify that Affidavits have been properly completed and filed
- That MCOE and local school districts implement the requirements of Code Section 48222 with regard to home schools

## BACKGROUND

This Grand Jury investigated a citizen's complaint alleging that a child who was being home schooled was in fact, not being schooled at all. When this concern was brought to the attention of the local school district, the complainant was told that home schooling was monitored by the CDE, but when she contacted the CDE, she was told that home schooling was the responsibility of the local school district. While the local school district and the CDE were disavowing oversight responsibility, this child was caught in the middle and denied the education to which all children are entitled.

This apparent gap in responsibility is troubling and warrants closer scrutiny.

### California's Compulsory Education Laws

Under California's compulsory education laws, children between six and eighteen years of age are required to attend public school unless they comply with one of the following exemptions:<sup>4</sup>

- They are instructed in a "private full-time day school by persons capable of teaching."
- They are instructed by a private tutor or other person holding a valid California teaching credential for the grades and subjects being taught.
- They are enrolled in an independent study program offered by a public or private school.
- They are enrolled in a public charter school.

Children who do not attend public schools or who are not exempt are truant.

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<sup>4</sup> California Education Code §§48220-48232

**Home Schooling Options**

Home schooling families in California generally claim the exemption for private schools. All private schools are required to file an annual Affidavit with the CDE and are subject to other recordkeeping requirements. Exemptions from compulsory education are considered valid only after the attendance supervisor of the district, or another person designated by the district board of education, verifies that the private school has complied with Code requirements.<sup>55</sup>

The CDE considers private schools with less than six students to be home schools. There were 58 such schools in Marin County that had Affidavits on file with the CDE as of September 2005 when this investigation began. These private schools were distributed throughout the county as follows:

**Table 1 Home Schools in Marin County**

School District (Note: These are the names as they appear on the Affidavits)	Number of Home Schools
Bolinas-Stinson	1
Dixie	3
Kentfield Elementary	1
MCOE	2
Mill Valley	2
Mill Valley Elementary	3
Novato	4
Novato Unified	14
Reed	1
Ross Valley	4
Ross Valley Elementary	3
San Rafael	1
San Rafael City Elementary	6
San Rafael City High	4
San Rafael City School District	2
Sausalito/Marin City School District	1
Shoreline Unified	2
Tamalpais Union High	4
<b>Total</b>	<b>58</b>

**APPROACH**

The Grand Jury investigation had three points of focus:

- Clarify the responsibilities of the County and school districts for implementation of California's compulsory education laws and policies with respect to home schooling

<sup>55</sup> California Education Code §§33190, 48222

- Provide an assessment of their efforts in that regard
- Make recommendations to remedy any deficiencies we discover

We interviewed officials and employees from the following departments and agencies: the CDE, MCOE, selected Marin County school districts, and the San Rafael Police Department. Several Grand Jury members attended a countywide annual School Attendance Review Board training session. We also reviewed district attendance policies and administrative regulations, job descriptions, relevant Code provisions, and several California home school association Web sites.

We also spoke with legal counsel to state school and college districts, a member of the legal rights committee of a California home schooling organization, and district attendance officers from inside and outside Marin County.

## DISCUSSION

### Home Schooling under the California Education Code

According to various CDE officials, the popularity of home schooling had not been anticipated when the Code was written and, therefore, was not explicitly addressed. They explained that when the home schooling movement “exploded” about 10-12 years ago, home schoolers based their legitimacy on the existing private school exemption. An “accommodation was worked out” by having home schools file Private School Affidavits required under Code Section 33190. Until about 5 years ago, Affidavits were filed with the local school districts, but now they are filed with the CDE which maintains two lists: Affidavits of private schools with 6 or more students and Affidavits of private schools with less than 6 students. These lists are accessible to public school districts from a password-protected Web site.<sup>6</sup>

The CDE explains on its Web site that “a child's exemption from public school is not valid until the district's attendance supervisor has verified the filing of the Affidavit.”<sup>7</sup> The Code requires that the board of education of any school district and county supervise the attendance of pupils. The Code does not provide any guidance as to how attendance should be supervised or whether that supervision includes or excludes private school pupils.

The Code also states that a private school shall “be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public

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<sup>6</sup> The California Department of Education’s Office of Elementary Education (916-319-0229) provides each county with the password they need to access the Web site, “Private School Affidavit Search” ([www.cde.ca.gov/sp/ps/rq/ap/coe\\_logon.asp](http://www.cde.ca.gov/sp/ps/rq/ap/coe_logon.asp)).

<sup>7</sup> California Department of Education, “Private Schools Frequently Asked Questions,” (<http://www.cde.ca.gov/sp/ps/cd/psfaq.asp>)

schools of the state.”<sup>8</sup> However, the Code does not stipulate who should monitor or how to monitor compliance with these requirements.

This lack of guidance has resulted in divergent positions on home schooling throughout the state. At one end of the spectrum, El Dorado County has taken the position that home schooling is not authorized under California law.<sup>9</sup> While Marin County school districts have no policy either for or against home schools, a legal advisor to MCOE told the Grand Jury that the local school districts have no authority to review any private school’s attendance records. In complete opposition to this advisor’s opinion, the Gilroy Unified School District actively enforces its attendance policy that authorizes its attendance supervisor to analyze a private school’s attendance register if a complaint is submitted regarding the attendance of a home school student. The conclusion to be drawn is: other county and local districts have assumed the authority under the Code to enact stricter standards.

When we asked CDE officials about the inconsistency among the different counties and school districts, we were told by one official that the CDE's position is to "clarify by indirection." This disavowal of CDE responsibility indicates that it is up to counties and local districts to regulate the “private school exemption” within their jurisdictions.

### Home Schooling in Marin County

The lack of clear directives and instruction from the Code and the CDE as described above is reflected in how home schooling is treated by public school officials in Marin County.

Although we were impressed by the dedication of the Marin educators, we were surprised that none of those we interviewed knew that the Affidavits for home schools in their respective districts were accessible online. Without this knowledge, they have no way of gauging how many home schoolers they may have in their districts. In addition, several educators were unclear about what information is provided in the Affidavits. (See Appendix A for a sample Private School Affidavit Form.) Some of this confusion can be attributed to the fact that until about five years ago, parents had to pick up the Affidavit forms from their district or school and file them locally. District officials felt they had more control over the process and had a better sense of who the home schoolers were and why they chose to home school. Although the Affidavits are no longer handled at the local level, the information is now literally at their fingertips.

Our review of the policies and administrative regulations of the local school districts regarding “exemption from attendance” indicates that several<sup>10</sup> have approved the following policy regarding Affidavits:

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<sup>8</sup> California Education Code § 48222

<sup>9</sup> See El Dorado County Office of Education, “CDE Position on Home Schooling,” (<http://www.edcoe.k12.ca.us/sarb/cdeposition.html>)

<sup>10</sup> Larkspur School District, Sausalito Marin City School District, Reed Union School District, Lagunitas School District, Tamalpais Union High School District, Shoreline Unified School District, Ross Elementary School District, and Ross Valley School District "is in the process of adopting"

**“Students who are being instructed in a private full-time school.**

The attendance supervisor or designee shall verify that the private school complies with Education Code 33190 before such exemptions are valid. (Education Code 48222, 48223)”

This language explicitly instructs those Marin school districts to verify that home schools have filed Affidavits with the CDE. Our investigation revealed that they have not done so.

The Grand Jury concludes that all school districts can and should implement the requirements of the Code and that they have the discretionary power under the Code to accomplish this.

**Clarification and Direction**

The commitment to verify the filing of Affidavits poses no undue burden since that information can be easily obtained online. The Code stipulates that this verification is not to be construed as an evaluation, endorsement, recognition, or approval of any private school.<sup>11</sup>

The Code establishes the minimum responsibilities for providing education to the children of California. This allows Marin County an opportunity to be proactive in assuring its citizens that all children are in school and receiving the education to which they are entitled by law.

**FINDINGS**

- F1. Home schools may rely upon the private school exemption provided by Section 48222 of the Code.
- F2. Marin educators we spoke with were not aware that information about home schools in Marin school districts is accessible to public school districts through a CDE-maintained Web site.
- F3. Marin school districts do not verify Private School Affidavits of home schools.
- F4. Marin school districts do not check home schools regarding: (a) the attendance registers, (b) that teaching is in English, and (c) that instruction is offered in the several branches of study required to be taught in the public schools.
- F5. Although the Code requires that private schools must teach in English and cover certain subjects, there is a lack of guidance from the Code and the CDE regarding responsibility and methods of enforcement.
- F6. The attendance policies and administrative regulations of the following Marin school districts authorize them to verify that Affidavits have been filed: Larkspur School District, Sausalito Marin City School District, Reed Union School District, Lagunitas School District, Tamalpais Union High School District, Shoreline

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<sup>11</sup> California Education Code §§ 33190(g), 48222

Unified School District, Ross Elementary School District, and Ross Valley School District "is in the process of adopting."

## RECOMMENDATIONS

The Grand Jury recommends:

- R1. That MCOE and local school districts contact the CDE's Elementary Education Office to obtain the password needed to access the annual lists of home schools in their districts and verify that Affidavits have been properly completed and filed.
- R2. That MCOE and local school districts implement the requirements of California Education Code Section 48222 with regard to home schools.

## REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the Grand Jury requests responses as follows:

From the following individual:

- Mary Jane Burke, Marin County Superintendent of Schools: F1, F2, F3, F4, F5, F6, R1, R2

From the following governing bodies:

- The Marin County Board of Education : F1, F2, F3, F4, F5, F6, R1, R2
- The Boards of Trustees of each of Marin County's school districts: F1, F2, F3, F4, F5, F6, R1, R2

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code section 933(c) and subject to the notice, agenda and open meeting requirements of the Brown Act.

The California Penal Code section 933(c) states that "...the governing body of the public agency shall comment to the presiding judge on the findings and recommendations pertaining to matters under the control of the governing body." Further, the Ralph M. Brown Act requires that any action of a public entity governing board occur only at a noticed and agendized public meeting.

The Grand Jury invites the following individuals to respond:

- The superintendents of each of the Marin County school districts: F1, F2, F3, F4, F5, F6, R1, R2



## BIBLIOGRAPHY

- *A Review of California's Compulsory Education Laws*, Legislative Analyst's Office, (February 2004), ([http://www.lao.ca.gov/2004/compulsory\\_ed/020304\\_Compulsory\\_Education\\_Laws.htm](http://www.lao.ca.gov/2004/compulsory_ed/020304_Compulsory_Education_Laws.htm))
- California Education Code (<http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=edc&codebody=&hits=20>)
- California Department of Education Web site (<http://www.cde.ca.gov/>)
- *CDE Position on Home Schooling*. (October 12, 2004.) Retrieved from <http://www.edcoe.k12.ca.us/sarb/cdeposition.htm> (El Dorado County Office of Education Web site)
- HomeSchool Association of California Web site (<http://www.hsc.org/>)
- Home School Legal Defense Association State Laws Web site (<http://www.hslda.org/laws/default.asp>)
- *The Legality of Homeschooling: Complying with California Law*, HomeSchool Association of California, (<http://www.hsc.org/chaos/legal/>)

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

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APPENDIX A

CALIFORNIA DEPARTMENT OF EDUCATION PRIVATE SCHOOL AFFIDAVIT

(from California Department of Education Web sites  
<http://www.cde.ca.gov/sp/ps/rq/affidavit.asp> and  
<http://www.cde.ca.gov/sp/ps/rq/ap/form.asp?formtype=blank>)

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## Private School Affidavit

On December 30, 2005, the filing period for the Private School Affidavit (PSA) for existing schools will close. After January 1, 2006, the California Department of Education will accept submission of PSAs, statements, and letters-in-lieu from new schools only.

### Why file the Private School Affidavit?

The information provided in the Private School Affidavit (PSA) is used annually to create the California Department of Education (CDE) online *Private School Directory*. This information is reported to the federal Department of Education as one basis for the annual No Child Left Behind Act of 2001 (NCLB) grant to California schools. Private non-profit schools listed in the *Directory* will be reported to public school districts as private schools eligible for NCLB services and resources. Private schools that do not file a PSA during the 2005-06 filing period (see above), may not be included in the 2005-06 *Directory* and therefore may not be listed for participation in NCLB.

### Who should file a Private School Affidavit?

Persons, firms, associations, partnerships, or corporations offering or conducting full-time day school at the elementary or high school level for **students between the ages of six and eighteen years**.

Filing does not grant state approval, recognition, or endorsement.

Filing of this affidavit shall not be interpreted to mean, and it shall be unlawful for any school to expressly or impliedly represent by any means whatsoever, that the State of California, the State Superintendent of Public Instruction, the State Board of Education, the California Department of Education, or any division or bureau of the Department, or any accrediting agency has made any evaluation, recognition, approval, or endorsement of the school or course unless this is an actual fact (*Education Code* Section 33190). See [Selected California Education Codes](#) pertaining to private elementary or high schools.

Filing an affidavit does not mean that the State of California or any accrediting agency has made any evaluation, recognition, approval, or endorsement of the school or course. It is not a license or authorization to operate a school.

### Filing the Online Affidavit Form

**As of January 1, 2006, new schools only** may file the 2005 PSA. The 2005 PSA can be completed and filed online. An electronic signature has replaced the final mail-in step.

New schools  
(Did not file in 2004-05)

and/or

Schools with five or fewer students

Does not meet filing criteria. Return to Private Schools home

Paper copies of the Affidavit may be requested via e-mail to [privateschools@cde.ca.gov](mailto:privateschools@cde.ca.gov), or by written request to:

Private School Affidavit Request  
Elementary Education Office  
California Department of Education  
1430 N Street, Suite 4401  
Sacramento, CA 95814

Questions: Elementary Education Office | [privateschools@cde.ca.gov](mailto:privateschools@cde.ca.gov) | 916-319-0878

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## Private School Affidavit Form Fall 2005

The Private School Affidavit is for persons, firms, associations, partnerships, or corporations offering or conducting **full-time day** school at the elementary or high school level for students between the **ages of six and eighteen years**. Please note that this is a public document.

Click on the "Submit Form" button at the bottom of the form to submit the form to the California Department of Education (CDE). An asterisk (\*) denotes fields required to submit the form. You must complete the entire form during this browser session.

Please [e-mail CDE](#) if you have questions about this form.

### School Information

Is this a new school? (If you have been operating only as a preschool, consider yourself a new school.)	Yes No
If your school has six or more students, have you filed an affidavit in the past?	Yes No
County *	<input type="text"/>
Public school district in which school is located *	<a href="#">Click here to locate and insert the district name</a>
Name of School *	<input type="text"/>
Street Address * (P.O. Box is not acceptable)	<input type="text"/> (no abbreviations)
City *	State * CA Zip *
Designated School E-mail Address	<input type="text"/>
Telephone Number *	( <input type="text"/> ) <input type="text"/> - <input type="text"/>
Mailing Address (if different)	<input type="text"/> (no abbreviations)
Mailing City	State CA Zip
Site Administrator *	First: * <input type="text"/> Last: * <input type="text"/>
Title of Administrator *	<input type="text"/>
Type of School *	<input type="checkbox"/> Coeducational <input type="checkbox"/> Boys Only <input type="checkbox"/> Girls Only <input type="checkbox"/> Special Education
School Accommodations *	<input type="checkbox"/> Residential Boarding Only <input type="checkbox"/> Day Only <input type="checkbox"/> Both
Grades Offered *	Lowest: <input type="text"/> Highest: <input type="text"/>
High School Diploma Offered *	Yes No
Our District Has Changed *	Yes No
Enter old school name if name has changed since last affidavit	<input type="text"/>

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Statistical Information

Range of students' ages * (Do not include preschool.)	Youngest:      Oldest:																																		
Enrollment on a single date <b>October 1-15, 2005</b> * (Do not include preschool enrollment. Fill in "0" for none.)	<table border="1"> <thead> <tr> <th>Grade</th> <th>Number of Pupils</th> </tr> </thead> <tbody> <tr><td>Kindergarten</td><td>0</td></tr> <tr><td>First Grade</td><td>0</td></tr> <tr><td>Second Grade</td><td>0</td></tr> <tr><td>Third Grade</td><td>0</td></tr> <tr><td>Fourth Grade</td><td>0</td></tr> <tr><td>Fifth Grade</td><td>0</td></tr> <tr><td>Sixth Grade</td><td>0</td></tr> <tr><td>Seventh Grade</td><td>0</td></tr> <tr><td>Eight Grade</td><td>0</td></tr> <tr><td>Ninth Grade</td><td>0</td></tr> <tr><td>Tenth Grade</td><td>0</td></tr> <tr><td>Eleventh Grade</td><td>0</td></tr> <tr><td>Twelfth Grade</td><td>0</td></tr> <tr><td>Ungraded Elementary</td><td>0</td></tr> <tr><td>Ungraded Secondary</td><td>0</td></tr> <tr><td><b>Total Enrollment</b></td><td></td></tr> </tbody> </table>	Grade	Number of Pupils	Kindergarten	0	First Grade	0	Second Grade	0	Third Grade	0	Fourth Grade	0	Fifth Grade	0	Sixth Grade	0	Seventh Grade	0	Eight Grade	0	Ninth Grade	0	Tenth Grade	0	Eleventh Grade	0	Twelfth Grade	0	Ungraded Elementary	0	Ungraded Secondary	0	<b>Total Enrollment</b>	
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Number of Twelfth Grade Graduates in 2004-2005 School Year *	0																																		
Number of School Staff * (Count each staff only once. Do Not include preschool staff. Fill in "0" for none.)	<table border="1"> <thead> <tr> <th>Staff</th> <th>Number</th> </tr> </thead> <tbody> <tr><td>Full-time Teachers</td><td>0</td></tr> <tr><td>Part-time Teachers</td><td>0</td></tr> <tr><td>Administrators</td><td>0</td></tr> <tr><td>Other Staff</td><td>0</td></tr> </tbody> </table> <p>*Other Staff* includes instructional aides, therapists, secretaries, etc.</p>	Staff	Number	Full-time Teachers	0	Part-time Teachers	0	Administrators	0	Other Staff	0																								
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NDSL Cancellation * - Full-time teachers in private nonprofit schools having concentrations of students from low-income families may have National Direct Student Loans (NDSL) canceled. (Title 20, <i>United States Code</i> , section 1087ee; Title 34, <i>Code of Federal Regulations</i> , section 674.53.) If you believe your school can qualify in either or both categories, select "Yes;" otherwise, select "No."	Yes      No																																		

Tax Status \*

<p>Tax-exempt, nonprofit status under Section 501(c)(3) of the 1954 U.S. <i>Internal Revenue Code</i></p> <p>Tax-exempt, nonprofit status under Section 23701d of the <i>California Revenue and Taxation Code</i></p> <p>Property tax exemption under Section 214 of the <i>California Revenue and Taxation Code</i></p> <p>No tax exemption</p> <p>Not applicable</p>
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Religious Affiliation - Denomination (Enter _____)
Religious Affiliation - Independent
Non-Religious Affiliation - Independent

**Director, if any, and Principal Officer**

Name *	First *	Last *
Position		
Street Address	(no abbreviations)	
City *	State * CA	Zip *
E-mail Address		
Name *	First *	Last *
Position		
Street Address	(no abbreviations)	
City *	CA	
	State * CA	Zip *
E-mail Address		

**School Records**

The attendance records required by *Education Code* Section 48222 and the records of courses of study, names, addresses, and educational qualifications of the faculty, as required by subdivisions (f)(2) and (3) of *Education Code* Section 33190, are maintained by the person and at the place listed here and are true and accurate.

Name of Individual who is Custodian of Records *	First: *	Last: *
Address * (Location of Records)	(no abbreviations)	
City *	State * CA	Zip *
E-mail Address		

When a school ceases operation, every effort should be made to give a copy of the pupil's permanent records to his or her parents or guardians. If records cannot be given to the parents or guardians, it is recommended that the school's custodian of records retain the records permanently so that former pupils may obtain copies when needed for future education, employment, or other purposes.

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## Electronic Signature

Private school authorities are responsible for initiating contact with the appropriate local authorities (city and/or county) regarding compliance with ordinances governing health, safety, and fire standards; business licensing; and zoning requirements applicable to private schools.

**Filing does not grant state approval, recognition, or endorsement**

Filing of this affidavit shall not be interpreted to mean, and it shall be unlawful for any school to expressly or impliedly represent by any means whatsoever, that the State of California, the Superintendent of Public Instruction, the State Board of Education, the State Department of Education, or any division or bureau of the Department, or any accrediting agency has made any evaluation, recognition, approval, or endorsement of the school or course unless this is an actual fact (see *Education Code* Section 33190). **Filing an affidavit does not mean that any accrediting agency has made any evaluation, recognition, approval, or endorsement of the school or course.**

This school is in compliance with California *Education Code 44237* to the extent it applies.

**By submitting this form and the electronic signature attached hereto, I declare under penalty of perjury and the laws of the State of California that I am the owner or other head of the school, and the information contained herein is true, accurate, and complete.**

**I will maintain a hard copy of this complete document, to be produced on demand, for a period of three years.**

Name of Person Preparing Form *	
Title *	
Telephone Number *	(       )
Electronic Signature - Birth Month *	
Electronic Signature - Birthday *	
Electronic Signature - Question *	
Electronic Signature - Answer *	

Submit Form

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