

7,000 CHILDREN AND COUNTING

AN ANALYSIS OF RELIGIOUS EXEMPTIONS FROM COMPULSORY SCHOOL ATTENDANCE IN VIRGINIA

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At that point, the authors analyzed and interpreted the assembled data. But what we now know about the implementation of Virginia's religious exemption statute would have not been possible without Youth-Nex's collaboration.

The Child Advocacy Clinic will, from time to time, release reports such as this, analyzing overlooked but important areas of Virginia law that impact significant numbers of the commonwealth's children. These reports are not intended to propose specific legislative changes, but to highlight potential areas of concern for Virginia policymakers.

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EXECUTIVE SUMMARY

Virginia's General Assembly, along with every other state legislature, has passed compulsory attendance laws requiring all school-age children to attend school, either in a public, private, parochial or approved homeschool setting.¹ Like all 50 states, and as required by the United States Constitution and the Supreme Court, Virginia allows parents whose religious beliefs conflict with the idea of sending their children to public school to excuse their children from compulsory school attendance. Unique among the 50 states, however, is the fact that Virginia grants parents the ability to exempt their children from education altogether if they assert that their religious beliefs conflict with public school attendance. Indeed, once parents in Virginia are granted a religious exemption, they are no longer legally obligated to educate their children at all.

Virginia's unique approach to this issue might be of no more than academic interest were it not for the fact that, according to the most recent statistics provided to the Virginia Department of Education, in the 2010-2011 school year more than 7,000 children were exempted from compulsory attendance using this provision.²

"A school board 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. For purposes of this subdivision, "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code..."

– Virginia Code, §22.1-254

While this does not necessarily mean that religiously exempted children are not receiving an education, it does mean that Virginia law contemplates and allows for this possibility.

This report examines this system. It first describes rulings by the U.S. Supreme Court and lower courts regarding the required state-level accommodations for families whose religious beliefs may lead them to oppose compulsory school. The report then discusses how the 50 states have addressed the mandates of the Supreme Court. Narrowing in on the commonwealth, the report analyzes Virginia's religious exemption statute and how it has been applied and interpreted by courts and the office of Virginia's attorney general.

Prior to writing the report, the authors worked with Youth-Nex, the University of Virginia Center to Promote Effective Youth Development, to produce and distribute an online survey to all of Virginia's school superintendents regarding the implementation of Virginia's religious exemption statute, and to utilize a follow-up telephonic survey with willing superintendents. Thus, in addition to analyzing the law, this report also examines the data and findings from these surveys.

Given both this legal and factual research, the report discusses whether school divisions are correctly applying the statute and whether, in fact, the statute violates the state constitutional mandate that education is a fundamental right for all of Virginia's children.

The report reaches the following conclusions:

- Virginia is the only state in the nation that does not require any education for children receiving religious exemptions from compulsory school attendance, and more than 7,000 children a year may be currently subject to these exemptions.
- Local school divisions are frequently violating their legal obligations under Virginia's religious exemption statute.
- The religious exemption statute, both as written and applied, may violate Virginia's Constitution.
- Neither the U.S. Constitution nor the United States Supreme Court requires that states grant religiously motivated parents the authority to remove their children from school without any further educational obligations.
- Regardless of its positive intentions, a policy that currently permits more than 7,000 children to have unknown and unknowable educational opportunities should demand more careful examination by educators, families and policy makers.

In response to these potential concerns, the report proposes a range of questions for Virginia's educators, policy makers and families to consider as they analyze the commonwealth's current system of granting exemptions.

It is important to note that this report, while critical of many features of Virginia's religious exemption system, is not intended to be critical of parents or families who are seeking these exemptions and merely doing what the law allows. It is well within their rights under both the current statute and the Virginia and U.S. Constitutions to seek educational alternatives to compulsory public school attendance based on their firmly held religious beliefs, and this report takes no issue with those rights or that choice.

It is the view of this report, however, that based on what is discussed in the following pages, Virginia needs to examine whether its current system of granting religious exemptions is constitutional, applied in a lawful manner by local school divisions, and serving as the most effective method for balancing the rights and choices of parents with other important, and even constitutional, interests of the state and the children themselves.

Should Virginia's educators and policy makers not engage in this examination, school divisions will continue to violate a law that may well be unconstitutional, and thousands of Virginia's children will potentially, and unnecessarily, face uncertain and unverifiable educational futures.

In order to understand the extent to which Virginia's statute is extraordinarily deferential to the views of a child's parent when it comes to matters of school attendance and religion, it is first necessary to explain the constitutional floor that has been set by the U.S. Supreme Court and other courts when considering whether and to what extent the state must defer to the religious views of parents when it comes to the education of their children.

To begin, it is also worth remembering that the right to practice one's religion freely and openly is firmly embedded in the First Amendment of the U.S. Constitution, and that various Supreme Court cases provide strong support for the notion that parents also have a constitutional right to raise their children as they see fit, most notably in the area of education.³ However, even in the areas of both education and religion this right is not without limits.

WISCONSIN V. YODER

The discussion of when parents may, for religious reasons, keep their school-age children from attending public school begins – and in many ways ends – with the case of *Wisconsin v. Yoder*, 406 U.S. 205 (1972). In *Yoder*, three Amish families were charged with violating the Wisconsin compulsory attendance law when the parents declined to send their children to public school after they had reached the age of 14.⁴ The Amish children in question attended public school through the eighth grade and began vocational training within their community after leaving school.⁵ Their parents objected to sending their children to public schools beyond this time, as they argued that the education provided to their children after the eighth grade conflicted with their religious beliefs.

Specifically, a central tenet of the Amish religion is the belief that living in a church community separate and apart from other worldly influences is essential for salvation, and the parents in this case contended that sending their children to public high schools would expose them to myriad social influences that dangerously conflicted with their beliefs.⁶ Furthermore, it would take their children away from the Amish community during a formative period when they received training in the specific skills needed to succeed as an adult member of the Amish community.⁷ Despite these undisputed beliefs, the parents were convicted of violating Wisconsin's compulsory attendance statute and their convictions were upheld in the Wisconsin Court of Appeals. The Wisconsin Supreme Court reversed the ruling, however, finding in favor of the families, and the state then appealed to the U.S. Supreme Court.⁸

The Supreme Court considered both the parents' right to freely practice their religion and their right to direct the upbringing of their children. While important and significant, the court had

previously found that the right to direct the religious upbringing of one's children was not absolute.⁹ Balanced against the rights of the parents, the court also looked to the state's responsibility for the education of its children and found that the state had strong interests in preparing its citizens to participate effectively and intelligently in the political system, and in preparing children to be self-reliant and self-sufficient participants in society.¹⁰

Applied to the facts of the case in *Yoder*, the court found that beyond the eighth grade, the rights and interests of the parents were more substantial than the state's interest in forcing children to continue to attend school, particularly in situations – as in Wisconsin at the time – wherein compulsory school attendance ended only two years later, at the age of 16. The court's decision rested heavily on the unique qualities of the Amish community, which provided a vocational education for children after they had completed the eighth grade, allowing the children to develop the skills necessary to live in the very self-sufficient and isolated Amish community. Thus, many of the justifications for supporting compulsory education – namely, creating self-reliant citizens who would not later become burdens to the state – were satisfied with the continued education received by the Amish students.¹¹

In other words, although the Supreme Court sided with the parents in *Yoder*, it did so in a case in which the children had already received education through the eighth grade, would be entering a well-established and longstanding period of vocational and skills development, and would have had only two more years of compulsory attendance.¹² The decision, in other

Although the Supreme Court sided with the parents in *Yoder*, it did so in a case in which the children had already received education through the eighth grade, would be entering a well-established and longstanding period of vocational and skills development, and would have had only two more years of compulsory attendance. The decision, in other words, was fairly narrow.

words, was fairly narrow. Indeed, in its written opinion, the majority stated: "Our disposition of this case, however, in no way alters our recognition of the obvious fact that courts are not school boards or legislatures, and are ill-equipped to determine the 'necessity' of discrete aspects of a State's program of compulsory education. This should suggest that courts must move with great circumspection in performing the sensitive and delicate task of weighing a State's legitimate social concern when faced with religious claims for exemption from generally applicable education requirements."¹³

In a separate nod to the idea that the state could continue to impose some obligations on those families who removed their children from school for religious reasons, the court went on to state, "Nothing we hold is intended to undermine the general applicability of the State's

compulsory school-attendance statutes or to limit the power of the State to promulgate reasonable standards that, while not impairing the free exercise of religion, provide for continuing agricultural vocational education under parental and church guidance by the Old Order Amish or others similarly situated.”¹⁴

Put another way, the situation of the Amish children was clearly unique, so it should not be surprising that although courts have continued to hear challenges to compulsory attendance laws as unconstitutional infringements on parents’ free exercise rights, they have also, both before and after *Yoder*, upheld the constitutionality of such statutory schemes as a valid exercise of states’ police power.¹⁵ A long line of cases supports the power of the state to regulate in this way.

Yet significantly, *Yoder* did establish that compulsory attendance laws may not be inviolable, and that in some circumstances states’ interests in ensuring that children receive an education must give way to parents’ religious liberties. Accordingly, it appears that states must provide alternatives for parents with religious objections to compulsory school attendance, such as the option to homeschool or send their children to a private or parochial school. However, courts have consistently upheld reasonable regulations and guidelines for those parents who take advantage of these alternatives, demonstrating that the courts take seriously the responsibility to carefully balance the competing interests at stake.¹⁶

Thus, although *Yoder* is a landmark case that places a strong thumb on the scale for parental religious liberties, it need not be read to preclude states from enforcing compulsory attendance statutes, nor from placing reasonable regulations on parents who have obtained exemptions from those requirements.

RELIGIOUS EXEMPTIONS FROM COMPULSORY ATTENDANCE: STATE-LEVEL LEGISLATIVE APPROACHES

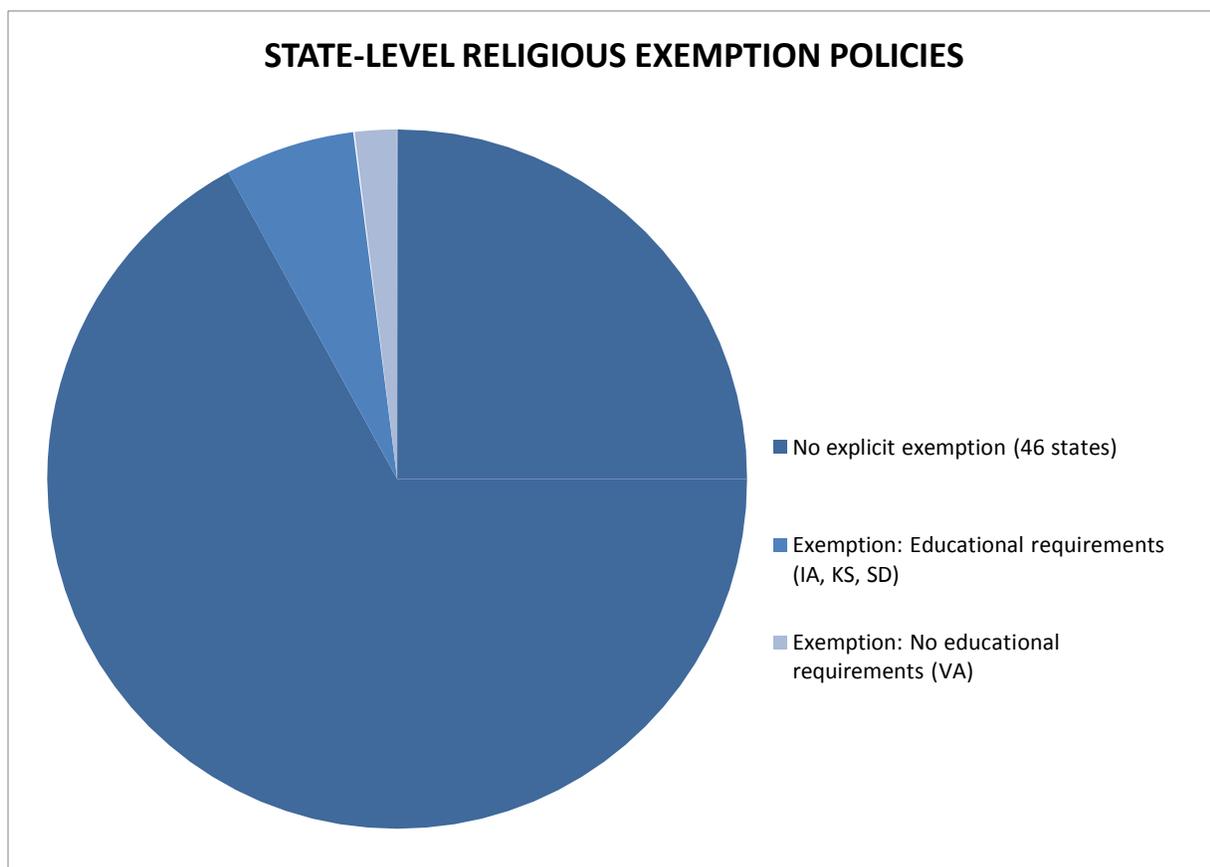
A comprehensive analysis of the 50 states reveals that legislatures across the country have approached the religious exemption issue from a variety of perspectives. Numerous states, for instance, provide a partial statutory exemption from compulsory school attendance by allowing children to miss a limited amount of school, such as two hours per week or an entire day, for religious instruction or observance.¹⁷ Beyond such narrow exceptions, the vast majority of states – 46 in all – do not provide explicit religious exemptions from compulsory attendance, but do, through homeschool or private school systems, provide educational alternatives for parents who are religiously opposed to public school attendance.

Only four states – Iowa, Kansas, South Dakota, and Virginia – provide an explicit statutory exemption to compulsory attendance for religious reasons, permitting children to be entirely exempt from all compulsory attendance requirements.¹⁸ Out of those, three states – Iowa, Kansas, and South Dakota – still require that children receive educational instruction after being granted an exemption.¹⁹ Two of the four states – South Dakota and Kansas – only allow a religious exemption after the child has completed the eighth grade.²⁰

Virginia is the only state in the nation that provides a complete statutory exemption to school attendance on religious grounds without any requirement of continued educational instruction.

This means that Virginia is the only state in the nation that provides a complete statutory exemption to school attendance on religious grounds without any requirement of continued educational instruction. Additionally, it is one of only two states – Iowa being the other – that provide such an exemption for children that have yet to reach the eighth grade. In short, when it comes to religious exemptions from public school attendance, Virginia is unusually permissive and deferential to the views of parents seeking exemptions, and, at least by the terms of the statute, uniquely unconcerned about the educational futures of those children receiving religious exemptions.

STATE-LEVEL RELIGIOUS EXEMPTION POLICIES



NO RELIGIOUS EXEMPTION

Forty-six states do not have an explicit religious exemption, but do provide parents the ability to exempt their children from public school attendance through other avenues, such as homeschooling, private schooling or private tutoring. States in this category can be divided into two broad subcategories.

NO RELIGIOUS EXEMPTION: TESTING AND/OR EVALUATION REQUIREMENTS

Of the 46 states that do not have an explicit religious exemption, 23 – along with the District of Columbia – monitor the educational achievements and progress of children kept at home or at private school through standardized testing procedures or professional evaluations, or both.²¹ Many of these states, such as Arkansas, require that students be tested using “a nationally recognized norm-referenced achievement test selected by the State Board of Education.”²² Some of these states also require that children score within a certain percentile to continue home education.²³ States in this category are mostly concerned with the results of the education that exempted children are receiving.

NO RELIGIOUS EXEMPTION: HOMESCHOOL/PRIVATE SCHOOL REQUIREMENTS

The other 23 states without a religious exemption have less demanding educational requirements for children not attending public school. These states do not require that parents submit progress reports or evaluations of progress, but do require that children receive educational instruction in core areas.²⁴ In Alabama, for instance, private tutors are required to provide “instruction in the several branches of study required to be taught in the public schools,”²⁵ but neither they nor parents are required to submit progress reports.

Likewise, parents in California can keep their children at home under the private school or private tutor exemptions as long as they are instructed, “in the several branches of study required to be taught in the public schools of the state.”²⁶ Thus, although these states exempt parents from submitting regular reports on their children’s educational progress, they do place some requirements on how that education is to be administered.

RELIGIOUS EXEMPTION: EDUCATIONAL REQUIREMENTS

Three states – Iowa, Kansas and South Dakota – provide an explicit religious exemption but require that children under the exemption meet certain educational requirements. Significantly, the statutes in each of these states also closely mirror the Supreme Court's opinion in *Yoder*. In South Dakota and Kansas, a child may only be exempt from compulsory school attendance if he or she is a member of a recognized church or religious denomination, has successfully completed the eighth grade and will be given further educational instruction after the exemption has been granted.²⁷ In Iowa, like Virginia, a child can be given an exemption at any age.²⁸ However, unlike Virginia, Iowa only permits a religious exemption for members of a recognized church or religious denomination that has been established for 10 years or more within the state and whose principles or tenets differ substantially from the goals and objectives of public education.²⁹ Furthermore, Iowa requires the parents or guardians of a child with a religious exemption to submit proof of educational progress annually.³⁰

RELIGIOUS EXEMPTION: NO EDUCATIONAL REQUIREMENTS

Virginia is the only state that provides a religious exemption without placing any educational requirements on the parents or child. As previously outlined, if a family is granted a religious exemption in the commonwealth, no further educational requirement is imposed.³¹ Virginia’s statute is unique in two additional ways: it requires that the child’s religious beliefs – not just the parents – lead to opposition to compulsory school attendance, and it recognizes a very broad set of different religious beliefs and trainings.

VIRGINIA'S RELIGIOUS EXEMPTION

This section of the report examines in greater depth the language of Virginia's religious exemption statute, its interpretation by the courts and the office of the attorney general and implementation by local school divisions. Among other issues, this examination reveals how apparently difficult, if not impossible, it is for local school divisions to follow the religious exemption statute, a problem that raises serious questions about the efficacy of the statute.

VIRGINIA'S COMPULSORY ATTENDANCE CODE AND EXEMPTIONS

The section of the Virginia Code requiring school attendance but providing for religious exemption from school attendance reads, in part, as follows:

- A. Except as otherwise provided in this article, every parent, guardian, or other person in the Commonwealth having control or charge of any child who will have reached the fifth birthday on or before September 30 of any school year and who has not passed the eighteenth birthday shall, during the period of each year the public schools are in session and for the same number of days and hours per day as the public schools, send such child to a public school or to a private, denominational, or parochial school or have such child taught by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the division superintendent, or provide for home instruction of such child as described in § 22.1-254.1 . . .
- B. A school board shall excuse from attendance at school:
 - 1. Any pupil who, together with his parents, by reason of bona fide religious training or belief is conscientiously opposed to attendance at school. For purposes of this subdivision, "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code . . .

Therefore, the law provides parents with three ways to satisfy the compulsory attendance requirements:

1. Send their child to public school.
2. Send their child to a private, denominational, or parochial school.
3. Provide instruction for their child by a tutor or teacher who is certified by the Board of Education and approved by the superintendent of the school division.³²

In addition to these options, there are two statutory exemptions from the compulsory attendance requirement: the homeschool exemption and the religious exemption.

The homeschool exemption places specific educational requirements on the parent and the child, as well as annual reviews of academic progress.³³ In contrast, the religious exemption

provision requires no education once the exemption is granted.³⁴ As mentioned previously, this absence of educational requirements makes Virginia unique among the 50 states, but it also makes this alternative to public school attendance unique among other statutory exemptions in Virginia.

Another significant feature of the religious exemption law is that the statute's requirement that the local school board consider the religious beliefs of both the parent and the child contemplates a scenario in which a child's beliefs and desire to attend school could potentially trump a parent's desire to remove the child. While this is perhaps admirable and raises interesting and provocative questions about parental authority and the autonomy and independence of children, the lack of clarity regarding its implementation is problematic. Specifically, the statute provides no guidance for how, or how regularly, school boards ought to assess the beliefs of a specific child, and no clarity as to when, if, and at what age the child's views can supersede the views of his or her parents.

INTERPRETATION OF THE STATUTE

Both the Virginia courts and the office of the attorney general of Virginia have had some occasion to consider the meaning of the religious exemption statute and have addressed and attempted to clarify both the statutory requirement that parents must base their opposition to school attendance on bona fide religious training or beliefs, as well as the requirement that school boards must consider both the views of the parent and the child prior to granting an exemption. While the opinions are helpful, they frequently lack specificity, leaving school divisions in the dark on important aspects of the statute.

In contrast [to the homeschool exemption], the religious exemption provision requires no education once the exemption is granted. This absence of educational requirements makes Virginia unique among the 50 states.

PARENTAL BELIEF REQUIREMENT

When assessing the religious beliefs of the parents, the Virginia Supreme Court held in the case of *Johnson v. Prince William County School Bd.* that school boards may only analyze whether the parents' beliefs are religious in nature, as opposed to political, sociological, philosophical or personal,³⁵ and that the sole test for determining whether an exemption is warranted is the sincerity of the religious beliefs.³⁶

Indeed, the court in that case clarified that the only question a school may ask in deciding whether to grant a religious exemption is whether the parents and child are "conscientiously opposed to attendance at school by reason of bona fide religious training or belief."³⁷

While this opinion should help guide the focus of a local school board’s response to a requested religious exemption, it is also notably silent as to the process for pursuing this response or inquiring into the strength or legitimacy of a parent’s asserted beliefs.

CHILD’S BELIEF REQUIREMENT

Although the statute requires that a local school board consider both the beliefs of the parent and the child, it is silent as to how much weight the school board must give the child’s opinion, and how frequently a school board must evaluate those beliefs. The Virginia Supreme Court has partially clarified at least the first of these ambiguities by stating that the school board must place equal emphasis on the beliefs of the student and the beliefs of the parents.³⁸ Interpreting the guidance of the Virginia Supreme Court and the language of the statute, a circuit court in Fairfax explicitly required that the views of the student be considered, as a failure to do so would “disregard the express intent of the state legislature.”³⁹

However, while not providing a bright line, the Virginia Supreme Court has indicated that there are some ages below which children presumably lack the capacity to form religious beliefs of their own. For example, in the *Johnson* case referenced above – a case involving a requested exemption for five- and six-year-old children – the court noted:

We do not overlook the fact that under Code § 22.1-257(A)(2), the emphasis is as much on the religious beliefs of the “pupil” as it is on the beliefs of the parents. The record discloses nothing, however, about the beliefs of the Johnson children, although the question was raised at the school board hearing on the Johnsons' application. This omission, we assume, results from the fact the children are of such tender years that they have not developed any religious beliefs one way or the other on the question whether they should attend school or be educated at home by their parents.⁴⁰

In other words, these decisions have clarified that prior to granting a religious exemption, school boards are indeed required to consider the beliefs of the children, but that below a certain age such an inquiry may not be necessary. Beyond these two points, however, the courts have not offered additional guidance to school boards or families.

Opinions from the office of the attorney general have attempted to further clarify the statute by advising that compliance requires that the pupil’s religious beliefs be considered along with the beliefs of the parents, and the child’s age and intellectual ability may be considered in determining the weight that should be given to his or her beliefs.⁴¹ Critically, and in an effort to specify how frequently schools must evaluate the exemption, the attorney general opinions also advise that, once granted, the religious exemption is not permanent, and instead is subject to annual scrutiny by the local superintendent.⁴²

However, these attorney general opinions, and particularly the direction that the statute requires annual reviews, go well beyond the language of the statute and, as a result, may be falling on deaf ears. No reported case in Virginia has raised the issue of whether local school boards must review the exemption and the child's beliefs, and the collected survey responses by school administrators suggest that very few divisions in Virginia follow this guidance.

In summary, although the Virginia Supreme Court has confirmed the requirement that a school board consider the beliefs of the child, and the opinions of the attorney general advise regular reviews, local school boards are still left in the very difficult position of having to choose between following the law (or at least the guidance of the office of the attorney general) but potentially outraging families by rigorously tracking the evolving religious beliefs of their exempted children, or arguably failing to follow the law by granting the initial request for an exemption when a child is too young to meaningfully hold or express a belief, and never subsequently reassessing those beliefs.

Since the commonwealth is obligated to ensure that all children are receiving an education, a statutory scheme that excuses a large number of children from any form of education might well run afoul of this constitutional responsibility.

CONSTITUTIONAL CONCERNS

In addition to being uncomfortably vague in critical areas, the religious exemption statute also may conflict with the educational guarantee under the Virginia Constitution. In *Scott v. Commonwealth*, the Virginia Supreme Court, interpreting the Virginia Constitution, declared that education is a fundamental right in the commonwealth.⁴³ By declaring education to be a fundamental right for the commonwealth's children, the court set the right to receive an education on equal footing with other constitutional rights such as free speech, and protected such rights from government infringement unless such infringement is done in the most narrowly tailored way to further a compelling government interest.⁴⁴

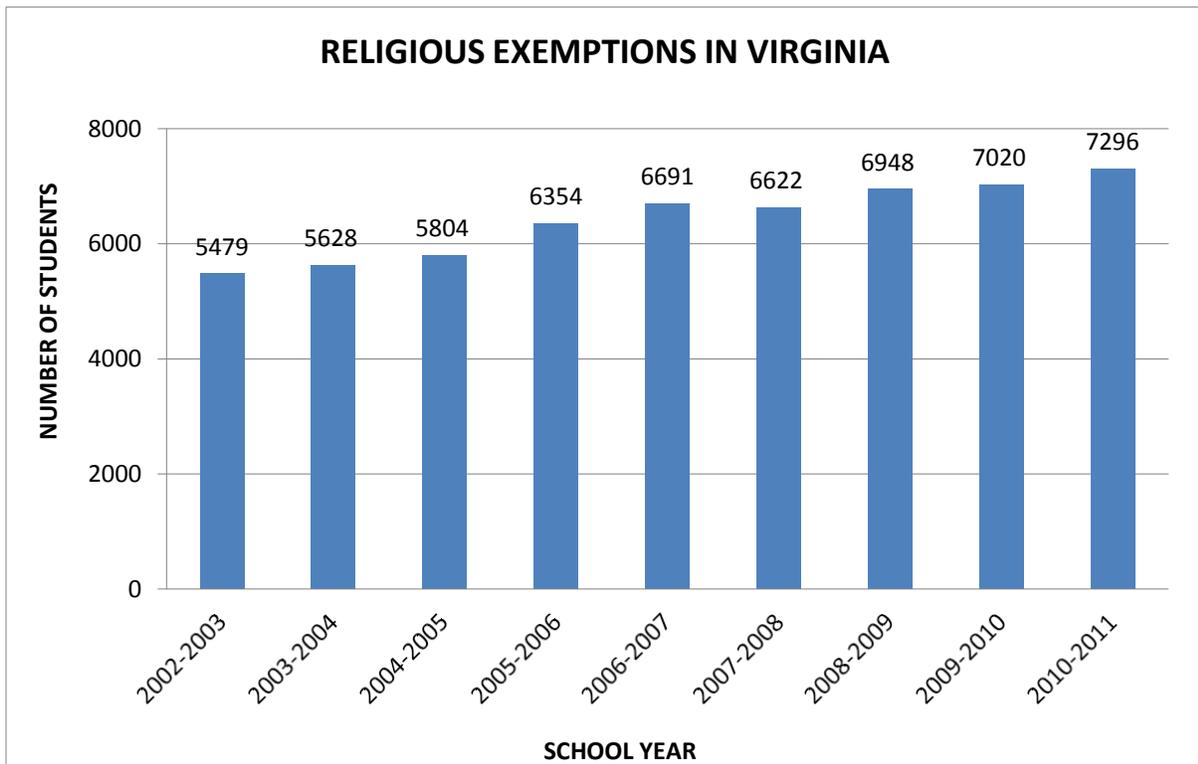
Since the commonwealth is obligated, therefore, to ensure that all children are receiving an education, a statutory scheme that excuses a large number of children from any form of education might well run afoul of this constitutional responsibility unless it could be shown that this scheme was the most narrowly tailored means of accomplishing a compelling government interest. As applied to this statute, while the commonwealth certainly has a compelling interest in protecting the religious freedom of parents,⁴⁵ its failure to require the provision of any educational alternatives for religiously exempted children could hardly be called the most narrowly tailored means of furthering this interest. As will be discussed in greater detail below,

this lack of narrow tailoring should prompt serious concerns among Virginia’s policy makers about the constitutionality of this statute.

FACTS ON THE GROUND

Virginia’s religious exemption statute impacts a substantial and increasing number of children each year. During the 2010-2011 school year, the Virginia Department of Education reported that 7,296 children in Virginia were exempted from public school attendance pursuant to the religious exemption provision.⁴⁶ (See Appendix A for a detailed list of religious exemption figures from all school districts within the commonwealth.)

To put this figure into perspective, the number of children taken out of school by the religious exemption is greater than the number of children enrolled in more than 70% of Virginia’s individual school divisions.⁴⁷ Moreover, the figure of 7,296 is 1,817 more children than in the 2002-2003 school year, representing an increase of over 33% in that eight-year period.



IMPLEMENTATION IN VIRGINIA: A SURVEY OF VIRGINIA'S SUPERINTENDENTS

In order to more fully understand how the religious exemption works in practice, the research for this report included a survey of school administrators across the state. With the help of Youth-Nex, the Center to Promote Effective Youth Development at the University of Virginia, an online survey was developed and distributed to the superintendents of every public school division in Virginia in March 2012. The survey asked a number of questions about how requests for religious exemptions are handled, including what information parents and students must provide to receive an exemption, how often requests are denied and what type of contact, if any, administrators have with families and children both before and after they have received an exemption. (See Appendix B for a full script of the questions in the survey.)

Superintendents were asked to complete the survey themselves or forward it to the person most knowledgeable about the process in their school division. Participation in the survey was completely voluntary and participants were ensured that their responses would remain anonymous. Of the 132 superintendents who received the survey, 64 completed it, resulting in a 48.48% response rate. Furthermore, 31 survey respondents provided their contact information and indicated that they would be willing to answer a few short follow-up questions. In April 2012, the respondents were contacted by telephone; follow-up questions were conducted with 17 administrators. (See Appendix C for full script of the telephonic survey). The resulting data is instructive and sheds further light on how the religious exemption statute is understood and applied by those responsible for its implementation.

It is important to note that the surveys were sent solely to school officials and not to exempted children and families.

MOST EXEMPTIONS ARE GRANTED WHEN CHILDREN ARE VERY YOUNG

Of the survey respondents, 72.73% reported that they received the most requests for exemptions for children in elementary school (grades one through five). The comments provided by some respondents suggest that

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the spike in requests at the elementary-school level likely results from the fact that compulsory attendance begins at age five, which is typically when children begin school.

According to respondents, the second-highest number of requests for religious exemptions – 12.73% – came from students in high school (grades nine through 12). While this is somewhat surprising, the comments within the survey indicate that older students may request

exemptions because they have an academic or attendance issue and no longer wish to be associated with the school division, or because some families will request an exemption for all of their children at the same time, when their children are of varying ages. In a follow-up telephone conversation, one administrator who has worked with exemption requests for many years said that he has increasingly seen parents request exemptions for their children when they are not succeeding in school and the family no longer wishes to have their child enrolled.

SCHOOLS EMPLOY DIFFERENT METHODS TO RESPOND TO EXEMPTION REQUESTS

Given the lack of statutory guidance, it is not surprising that school divisions employ a range of methods for accepting applications for religious exemptions. Some schools employ informal processes, while others require families to provide detailed explanations about their religious objections to compulsory attendance. Indeed, schools require parents to comply with a variety of different procedures. Various methods, some required solely or in combination with others, included:

- Filling out a standard form: 25.56%
- Providing a statement from their church or clergy: 15.62%
- Providing a statement describing their religious beliefs: 35.94%
- Meeting in person with school officials: 4.93%

Some respondents wrote that they also required additional letters of support from family or friends who can attest to the parents' and/or child's religious beliefs, particularly if the family does not attend a formal church.

Significantly, more than one school division reported that it has received resistance from some parents who do not believe that they can be required to supply *any* supporting documentation. One individual said her school board has been advised by its attorney that it may request these forms, but it may not require them. She mentioned that one possible area of statutory improvement would be explicit statutory support for the notion that school divisions may request documentation in support of a request for an exemption.

SCHOOL DIVISIONS RARELY MEET WITH THE CHILDREN

Another interesting finding from the survey data is that, contrary to the law's provisions, very few schools reported including the students themselves in the process. Specifically, when evaluating requests for exemptions, more than 90% of the responding divisions failed to have any contact with students, with only less than 1% reporting direct contact with children. Those

few divisions that do have contact with students do so only when the request is made on behalf of an older student. One survey respondent commented that the school division only requires a statement from the student if the request is made when he or she is of high-school age, while another respondent reported that they only require a statement from the student “if age appropriate.”

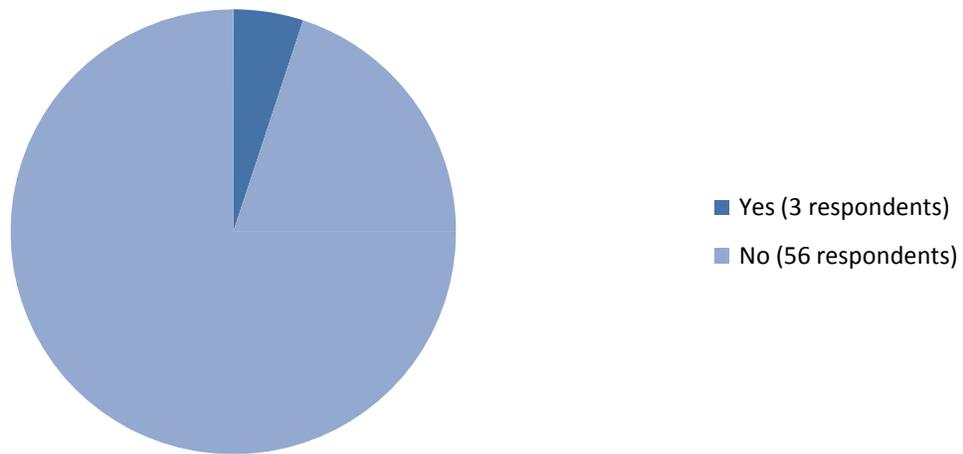
Follow-up telephone conversations echoed these results: student involvement is indeed rare. In fact, one respondent indicated that they had always interpreted the statute to require an evaluation of the family’s religious beliefs, but not the student’s beliefs. Moreover, the administrators who indicated that they do involve the students in their evaluations mentioned that their school division only does so when the students are older. Respondents generally could not cite a specific age cut-off, preferring to consider whether student involvement is appropriate on a case-by-case basis. Yet when schools do include the student, the student is frequently asked to provide the same documentation that they require from parents – most often, a letter describing said beliefs – but the school does not request a personal meeting.

One administrator described a unique process for student involvement. He said that his division only considers input from the student when the student is of secondary-school age (generally, age 14 or older), and even in those circumstances, the student’s involvement is permitted, but not required. He indicated that when students do choose to be involved, administrators will engage them in an informal discussion about their long-term plans and offer resources to assist the student in meeting his or her goals; this discussion is not designed to elicit information regarding the student’s religious beliefs. Thus far, he could recall only one student who had availed himself of this option.

SCHOOL DIVISIONS RARELY DENY EXEMPTION REQUESTS

Of the respondents, 94.92% reported that they had never denied a request for a religious exemption. Only three respondents reported that they had ever denied a request. When asked why requests for religious exemptions had been denied, survey respondents reported that the main problems were procedural (a failure to comply with administrative procedures or requirements), rather than substantive (insufficient evidence of bona fide religious beliefs or student opposition to the exemption).

DENIED RELIGIOUS EXEMPTION REQUESTS

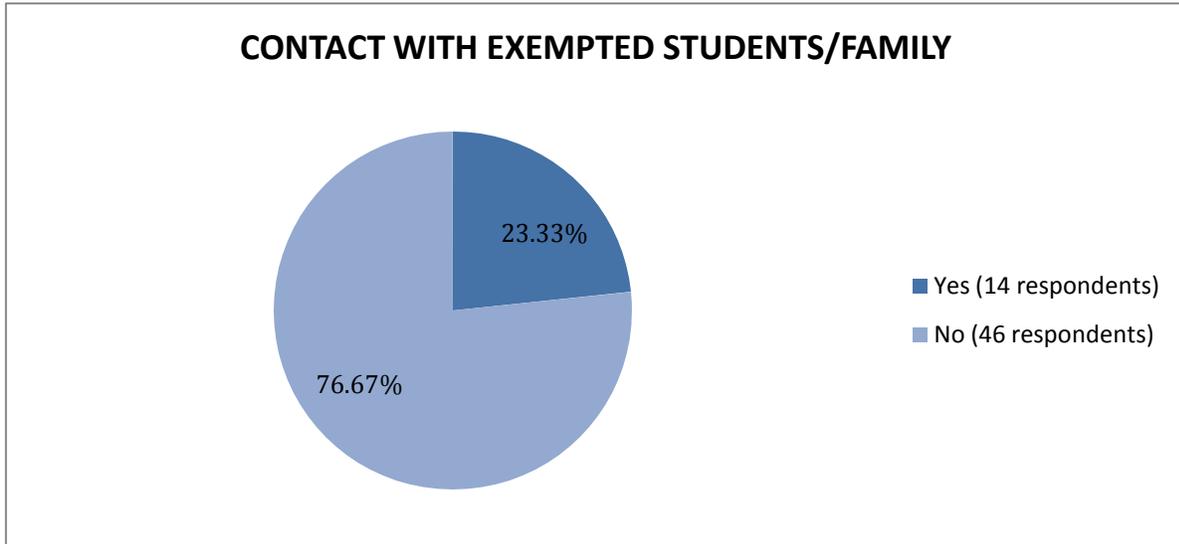


Follow-up phone conversations yielded similar responses, as administrators cited instances in which they had requested additional information from families or asked them to provide more complete documentation as required by their school division's procedures. These were often described as "postponements" rather than denials, and the administrators with whom we spoke said that in those circumstances they had always approved the exemption after the family provided the necessary information. It is possible that the online survey respondents who indicated that they had denied requests for an exemption were describing similar situations, and they had not actually denied those requests for substantive reasons. Because we could not speak with everyone who filled out the survey, it is impossible to verify whether this is actually the case. Yet it is fair to conclude that a denial of a request for an exemption is rare, and a denial because the school questions the sincerity of the family's religious beliefs is even more uncommon, if it occurs at all.

Furthermore, it appears that school administrators may so rarely deny requests for exemptions because they do not feel that they have clear enough guidance as to how to conduct a thorough evaluation of the family's religious beliefs. When asked whether they had any recommendations or thoughts as to how the religious exemption statute could be improved, several administrators expressed frustration with the lack of guidelines as to how to assess bona fide religious beliefs. They thought that the religious exemption statute needed "to be toughened up" and that there should be "much more rigor in the process," expressing the belief that it should be harder for parents to obtain an exemption. Yet, in the absence of clear guidance or standards administrators appear to feel

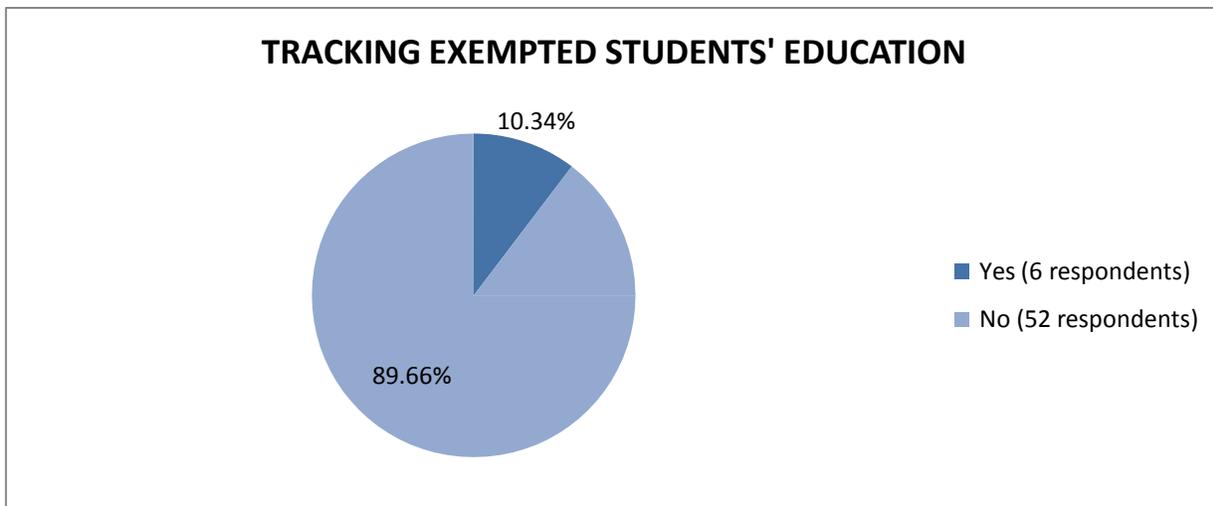
[The administrators] thought that the religious exemption statute needed "to be toughened up" and that there should be "much more rigor in the process," expressing the belief that it should be harder for parents to obtain an exemption.

as though they have no choice but to defer to families. As one administrator described his school’s stance on evaluating requests for exemptions, “it’s not a battle [that we’re] going to fight – whether it’s legitimate or not.”



MOST SCHOOL DIVISIONS FAIL TO HAVE FURTHER CONTACT WITH A FAMILY AFTER GRANTING THE EXEMPTION

The vast majority of survey respondents – 76.67% – reported that they have no further contact with families after granting an exemption. Only 27.59% of school administrators reported that they verify whether exempted students remain in their school districts and only 10.34% of respondents reported that they track whether students are receiving education services through home instruction or a private or parochial school.⁴⁸



Therefore, it appears that the educational fates of a vast majority of exempted students are unknown to anyone but the families themselves. As one administrator stated, these students are “out of sight, out of mind.” Moreover, administrators seem to believe that they have no choice in the matter, and that they are not legally permitted to contact these students after they have received an exemption. When asked whether his school division requires testing or any proof of educational progress from students with religious exemptions, one administrator said, “I don’t think we can do that, can we?” While the statute does not explicitly preclude further monitoring of educational progress, it is equally true that the statute does not require follow up either.

Of the small percentage of school divisions that *do* maintain contact with these families, 33.33% reported that they regularly review the continued bona fide religious beliefs of the children or parents opposing school attendance, 38.46% reported that they evaluate the students’ academic progress and 46.15% reported that they had received requests by parents for additional exemptions for additional children. No division reported that children with religious exemptions participated in sports or other extracurricular activities. Finally, it appears that most follow-up contact takes place between the school and parent(s), rather than the school and the child. While 30.00% of this group of respondents reported that they had further contact with parents, only 15.38% reported that they had contact with the students.

Several of the administrators expressed frustration with the leniency of the statute. This frustration, coupled with the inconsistency of school division responses, suggests that a simpler and different process would be well received by divisions across the commonwealth.

Of the small number of divisions that follow up with students and families, it appears that some are confusing the religious exemption with the homeschool exemption. For example, one respondent wrote that their division tracked students’ academic progress, “[o]ne time per year in accordance with state regulations.” However, there are no such regulations. Similar concerns were raised by follow-up telephone conversations, during which one administrator indicated a belief that students with religious exemptions, like students who have obtained a homeschool exemption, must provide some evidence of academic growth on an annual basis.

However, other divisions may simply be choosing to impose stricter requirements, such as one survey respondent who reported that their division required exempted families to notify the school district as to which curriculum they will follow when they make their request for a religious exemption. Another administrator described a policy of reaching out to exempted

families on an annual basis to determine whether they remain interested in the religious exemption and to check in regarding their children’s educational progress. Under that division’s policy, exempted families receive a letter in the mail in which they are asked to describe what they are doing to educate their children. The administrator said that most families provide a brief narrative description of their child’s educational activities and progress, while others provide test scores and describe field trips and other activities.

When asked whether the administrator thought this was required by the statute, he was uncertain but described the practice as a longstanding one in the division. He did say that in his experience, if the parents do not respond to this letter, the school does not follow up. But in his opinion, an exemption is granted with the understanding that the parents will ensure that their children receive an education, and that through this follow-up contact, “it’s comforting to know that parents are doing what they said they would.”

Not surprisingly, several of the administrators expressed frustration with the leniency of the statute and the fact that, as they (accurately) read it, the statute does not impose any obligation to provide educational alternatives to exempted children. This frustration, coupled with the inconsistency of school division responses, suggests that a simpler and different process would be well received by divisions across the commonwealth.

QUESTIONS RAISED BY THE STATUTE AND ITS IMPLEMENTATION

After analyzing the responses provided by school administrators and comparing these to both the language and interpretation of the religious exemption statute, it has become clear that following the mandates of the law has proven to be a difficult, if not impossible, task for many school administrators. Moreover, both the language of the statute and the manner in which it has been applied raise legitimate constitutional concerns. The main questions raised by the religious exemption statute are outlined below.

CAN SCHOOL DIVISIONS FOLLOW THE MANDATES OF THE STATUTE?

The survey responses from the school divisions suggest that the religious exemption statute has confounded school administrators across the commonwealth. School divisions appear to routinely violate the statute, despite their apparent best intentions and good-faith efforts to comply. The violations are due in large part to the fact that the statute provides little specificity or guidance regarding implementation.

School Divisions Rarely, If Ever, Question Parents' Religious Beliefs

By and large, the data indicates that schools are hesitant to conduct more than a cursory review of the parents' and child's religious beliefs when evaluating a request for an exemption. In fact, very few administrators who responded to the survey could cite an instance in which a request for an exemption had been denied, and those that could cited procedural, rather than substantive, deficiencies with the request. Thus, despite the fact that the statute directs school boards to consider whether the child and his parents are "conscientiously opposed" to public school attendance "by reason of bona fide religious training or belief"⁴⁹ and the Virginia Supreme Court has endorsed a comprehensive review of the family's beliefs in order to apply this statute,⁵⁰ schools are understandably wary of engaging in such a thorough evaluation.

Although the statute makes clear that "bona fide religious training or belief[s]" are distinct from "merely political, sociological or philosophical views or a 'personal moral code',"⁵¹ Virginia courts have provided scant guidance as to how schools should make such difficult and delicate judgments.

Because the consequences of granting a religious exemption in Virginia are so significant, it is troubling to think that such an exemption is, in reality, rather easy to obtain.

And while more than one survey respondent described a more searching inquiry than that required by the Virginia Supreme Court's pronouncement that the sole test is the sincerity of the religious beliefs, most school boards have generally chosen to give families the benefit of the doubt and rarely, if ever, challenge a request on substantive grounds. This result should not be surprising, for without specific guidance or training, it is hard to imagine how school personnel are equipped to assess the legitimacy or depth of a family's religious beliefs.

This is not to say that a more rigorous examination of the basis for exemption requests would not lead to the same outcomes and the granting of exemption requests. It is to say, though, that if schools are not thoroughly investigating families' reasons for requesting this exemption, the justification for treating them so deferentially in regards to their children's education loses much of its force. Because the consequences of granting a religious exemption in Virginia are so significant, it is troubling to think that such an exemption is, in reality, rather easy to obtain.

School Divisions Fail to Consider the Child's Beliefs

Furthermore, and contrary to both the language of the statute and the guidance from the office of the attorney general, very few school districts involve the child in the application process.

Indeed, given the lack of guidance and the practical difficulties involved, it should not be surprising that school divisions rarely evaluate the beliefs of the child.

First, to do otherwise would require school divisions to interview young children whose religious have not been fully, or independently, formed and to continually re-evaluate the beliefs of the child. Second, for purposes of re-evaluation and to determine if the child held evolving divergent views from his or her parents, schools would be forced on an annual basis to intrude into the parent-child relationship on this most personal of matters. School divisions are understandably reluctant to engage in these practices even when the law may implicitly call for them to do so.

As a result, school boards are left in an uncomfortable, and potentially legally untenable, position. They can either abstain from meeting with children and following up with them as they get older, and in this abstention violate the statute, or instead face the potential consternation of families by continually reexamining the evolving belief system of the exempted child. Not surprisingly, and as the collected data suggests, most school boards – over 76% – opt for the former route. Of those that maintain some contact with the families, few have direct, in-person contact with children. While this approach to granting exemptions is certainly easier and less adversarial, it may not be legally defensible.

In summary, when it comes to considering the beliefs of the child, most schools are applying the statute in a way that is plainly inconsistent with its terms and, to put it bluntly, unlawful. While this response, as discussed above, should not be surprising, it raises real questions about the efficacy and legitimacy of Virginia’s religious exemption system.

CAN SCHOOLS KNOW THE EDUCATIONAL FATE OF CHILDREN EXEMPTED UNDER THE STATUTE?

The evidence reveals that after school divisions grant a religious exemption, most have no further contact with the family. The survey response data specifically shows that nearly 90% of school divisions fail to monitor the educational progress of exempted children. While the same could be said of children in private or parochial schools, given the requirements that children must enroll in these schools or in a homeschooling program, such tracking and accountability remains possible. With religiously exempted children, on the other hand, even if schools wanted to track the educational progress of exempted students it would be difficult, as no further education is required and the statute does not appear to authorize it.

Specifically, while the office of the attorney general has advised that schools are to reach out to families annually to see if the grounds for the exemption still exist, and such advice is consistent with the statutory mandate to consider the religious beliefs of the child as well as the parents,

the statute provides no authority whatsoever for tracking of educational progress. Tracking, if it is permitted at all, is limited to evaluation of the child and family's evolving religious beliefs.

Put another way, parents whose children have received a religious exemption have virtual freedom from any state oversight regarding the education of their children. Accordingly, if parents fail to provide education to their exempted children, the statute provides no recourse for the state or local school division. To the extent that some school divisions report engaging in efforts to determine whether exempted children are being educated, those efforts should be understood as taking place beyond the mandates of the law and contingent on parental cooperation.

Undoubtedly, most children who have been granted religious exemptions are receiving some form of education through home instruction or a private or parochial school. But the prospect that even a portion of the more than 7,000 exemptions currently granted each year result in no educational opportunities for some Virginia children should be a troubling one for families, educators and policy makers alike.

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IS THIS STATUTE CONSTITUTIONAL?

If children with religious exemptions are not receiving *any* education, it could well mean that the statute, as applied, impermissibly violates their fundamental right to an education under the Virginia Constitution and is therefore unconstitutional. Likewise, because Virginia's religious exemption statute allows for the possibility that children receive no education, it may also be unconstitutional as written.

As previously discussed, infringing on a fundamental right is legally permissible only if the infringement is narrowly tailored to further a compelling government interest. Protecting the rights of Virginians to freely practice their religion and hold their own beliefs is certainly a compelling government interest. However, the statute, as applied, overwhelmingly prioritizes the parent's beliefs and decisions over any independent interest a child might have in his or her public school education, and, as written, contemplates the possibility that exempted children receive no education at all. Accordingly, it is very difficult to argue that Virginia's religious exemption statute is the most narrowly tailored means of protecting the religious liberties of Virginia's families.

While the statute theoretically guards against children being unwillingly taken out of school by requiring school boards to consider their independent beliefs, it is difficult to imagine many scenarios where this divergence would be expressed, even if it were felt. Further, as the survey responses indicate, in the overwhelming majority of cases local schools are either unwilling or unable to independently determine the beliefs of the child, and young children are likely not developmentally capable of establishing independent religious beliefs. Moreover, as described above, this lack of verification of a child's beliefs is hardly surprising given the unrealistic and impractical burdens that independent verification of evolving beliefs would place on school divisions, families, and children.

In addition to not balancing the potentially divergent interests of parents and their children, by allowing for the possibility that some children receive absolutely no education, the statute completely ignores Virginia's substantial interest in ensuring the education of all of its children. In other words, the statute, by so heavily loading the parents' side of the scale, fails to give any weight to the interests of the children in their own education, or to the state in guaranteeing an educated citizenry.

It would likely be possible to protect the belief systems of parents seeking exemptions through the use of Virginia's homeschool exemption. Under this system, the right of parents to keep children out of public school would be protected, but they would also have to comply with a host of reporting requirements and allow schools to assess their children's educational progress.

As a result, it is again difficult to claim that the statute is the narrowest means of protecting the religious interests of those parents seeking religious exemptions. It would likely be possible, for example, to protect the belief systems of parents seeking exemptions through the use of Virginia's homeschool exemption. Under this system, the right of parents to keep children out of public school would be protected, but they would also have to comply with a host of reporting requirements and allow schools to assess their children's educational progress. If applied to children with religious exemptions, such a regime would meet the standards set in *Yoder* and subsequent cases.

Other, more balanced approaches to respecting religious beliefs while meeting educational priorities exist in every other state in the country. Indeed, the vast majority of states have chosen *not* to treat a religiously based objection to compulsory education as a separate ground for an exemption, choosing instead to provide homeschooling and private schooling as alternatives for parents who object to public school for any reason, including their religious beliefs. Courts have also consistently upheld the constitutionality of basic education standards,

certifications and reporting requirements, even when imposed on parents who have obtained exemptions for religious reasons.

Moreover, the statutes in each of the three other states that have adopted explicit statutory religious exemptions – South Dakota, Kansas and Iowa – are much more narrowly tailored to the Supreme Court’s holding in *Yoder*. These states’ statutes provide narrow exemptions for students whose religious faiths uniquely conflict with the tenets of public education, such as the Amish, and provide mechanisms to ensure that those students are receiving an education. In fact, Iowa’s statute, known as the “Amish exemption,” has withstood constitutional challenge, as the Iowa Supreme Court has held that the legislature did not intend for such an exemption to be available to any and all church groups that sought to provide a religiously oriented education.⁵²

Though the commonwealth’s objective of protecting religious liberties is certainly legitimate and even compelling, the current system is so out of balance that, if challenged, it would be unlikely to withstand constitutional scrutiny.

These examples from other states demonstrate the unusual nature of Virginia’s religious exemption regime and that, as a constitutional matter, Virginia need not abandon an educational requirement for exempted children. On the contrary, compliance with the Virginia Constitution may well require educational services for exempted children. Though the commonwealth’s objective of protecting religious liberties is certainly legitimate and even compelling, the current system is so out of balance that, if challenged, it would be unlikely to withstand constitutional scrutiny.

The commonwealth’s elected officials have a duty to protect the constitutional rights of all Virginians. When those rights belong to a uniquely vulnerable group such as children, who are unable to assert them on their own behalf, that duty is even more paramount. For that reason, and because the statute allows for the possibility that some Virginia children may receive no education at all – in contravention of the state’s substantial interest in an educated citizenry – educators and policy makers should re-examine this statute.

CONCLUSION AND RECOMMENDATIONS

Virginia's religious exemption provision is unique, and potentially problematic, for several reasons.

First, it is the only legislation among the 50 states that allows for the possibility that exempted children receive no education at all.

Second, the statute's vague wording, arduous demands of local school boards and lack of official guidance as to its proper application cause local school officials to routinely violate both the letter and intent of the law.

Third, from a policy perspective, the statute is problematic insofar as it releases over 7,000 children a year in Virginia from any educational requirements. Though many, perhaps even a substantial majority, of these students may be receiving an education, the fact that the statute allows for their lives to be devoid of any education should be of grave concern.

Fourth, the statute, as written and certainly as applied, may well violate a child's fundamental right to an education under the Virginia Constitution.

While it is clearly the view of this report that the religious exemption statute has a number of deficiencies, it is ultimately the responsibility of our elected officials to reexamine the statute and, if they deem it necessary, amend it. Should legislators and others desire statutory change, one potential path would be to use an existing legislative commission such as the General Assembly's Commission on Youth – which focuses on exploring and resolving issues related to youth and their families – to establish a stakeholder group comprised of educators, families who have received the exemption, leaders in the faith community and policy makers to propose changes after considering questions such as the following:

- Is it possible for school divisions to consistently and legally apply the religious exemption statute as currently written?
- Does the religious exemption statute, as written or applied, violate an exempted child's fundamental right to an education?
- Does the current system, which requires that school officials evaluate the religious beliefs of both parents and their children, make good policy sense?
- Are there alternatives, such as handling religious exemption requests under the homeschool statute, which would be simpler to administer while not violating the

religious liberties of parents or providing for the possibility that some children receive no education at all?

These questions might guide interested parties toward an analysis of the statute and a potential redrafting that is clearer, more workable and unambiguously constitutional. Though a solution may take many forms, given the significant number of children receiving exemptions each year, lawmakers, families and educators should prioritize this issue in the legislative sessions ahead.

ENDNOTES

¹ See VA. CODE ANN. §22.1-254.

² Virginia Department of Education, Home Schooled Students and Religious Exemptions Reports, *available at* http://www.doe.virginia.gov/statistics_reports/enrollment/home_school_religious_exempt/index.shtml.

³ See, e.g., *Meyer v. Nebraska*, 262 U.S. 390 (1923) (finding that restricting foreign-language education violated Due Process, as the liberty protected by the Due Process Clause includes the right of parents to bring up children); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (finding that forbidding private school attendance was unconstitutional under the Due Process Clause. Writing for the court, Justice McReynolds stated that making the decision between private and public education was a liberty protected by the Due Process Clause).

⁴ The Wisconsin statute mandated education, in private or public school, until the age of 16. *Wisconsin v. Yoder*, 406 U.S. 205 at 207 (1972).

⁵ *Id.* at 211.

⁶ *Id.* at 209-10.

⁷ *Id.* at 211-12.

⁸ *Id.* at 208.

⁹ *Prince v. Massachusetts*, 321 U.S. 158, 167 (1944).

¹⁰ *Yoder*, 406 U.S. at 222.

¹¹ *Id.* at 224.

¹² Although no such conflict appeared in the facts presented in *Yoder*, Justice Douglas, in dissent, raised the possible complication of a child who expressed a desire to attend public school, in conflict with the wishes of his parents. *Id.* at 241. The majority chose not to take this issue into account and stated that the opinion in “no way determines the proper resolution of possible competing interests of parents, children, and the state in an appropriate state court proceeding in which the power of the state is asserted on the theory that Amish parents are preventing their minor children from attending high school.” *Id.* at 231.

¹³ *Id.* at 235.

¹⁴ *Id.* at 236.

¹⁵ See, e.g., *Pierce v. Society of Sisters* 268 U.S. 510, 534 (1925) (“No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school...”); *Blackwelder v. Safnauer*, 866 F.2d 548 (2d Cir. 1989)

(rejecting plaintiffs' challenge to New York's compulsory attendance law). The Court's opinion in *Meyer v. Nebraska*, 262 U.S. 390 (1923), had previously suggested that the police power of the states to "protect its citizens, to provide for their welfare and progress and to insure the good of society" might expand to compulsory education of some sort. And indeed it did.

¹⁶ See, e.g., *Blount v. Department of Educational & Cultural Services*, 551 A.2d 1377 (Me. 1988) (upholding requirement that homeschooling programs receive prior approval before parents can be given a homeschool exemption as applied to parents who claimed that the requirement interfered with the free exercise of their religion, reasoning that the burden was justified by the state's compelling interest in public education); *New Life Baptist Church Academy v. East Longmeadow*, 885 F.2d 940 (1st Cir. 1989) (upholding Massachusetts state laws requiring inspection and other measures of approval for nonpublic schools against a challenge by a parochial school); *State v. Patzer*, 382 N.W.2d 631 (N.D. 1986) (upholding requirement that teachers of homeschooled children be certified by the state against a challenge that it violated parents' free exercise rights); *State v. DeLaBruere*, 154 Vt. 237 (Vt. 1990) (upholding conviction of parents for violating compulsory education law where parents sent their son to a church school instead of a public or reporting private school. The court upheld the validity of the reporting school alternative, holding that the state has a compelling interest in regulating attendance and minimum course of study for students in private as well as public schools in order for all students to obtain basic skills necessary to function as adults and citizens).

¹⁷ A review of the compulsory education codes showed that 13 states – Arizona, Florida, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, New Mexico, New York, Oklahoma, Texas, Vermont and West Virginia – have partial exemptions for different religious reasons, such as religious instruction and observance. See, e.g., ARIZ. REV. STAT. ANN. § 15-806; FLA. STAT. § 1003.21(2)(b). For a particularly narrow exemption, see MASS. GEN. LAWS ANN. CH. 76, § 1: "Absences may also be permitted for religious education at such times as the school committee may establish; provided, that no public funds shall be appropriated or expended for such education or for transportation incidental thereto; and provided, further, that such time shall be no more than one hour each week."

¹⁸ S.D. CODIFIED LAWS § 13-27-1.1; KAN. STAT. ANN. § 72-1111(g); IOWA CODE § 299.24; VA. CODE ANN. § 22.1-254(B)(1).

¹⁹ S.D. CODIFIED LAWS § 13-27-1.1; KAN. STAT. ANN. § 72-1111(g); IOWA CODE § 299.24.

²⁰ S.D. CODIFIED LAWS § 13-27-1.1; KAN. STAT. ANN. § 72-1111(g).

²¹ These states include Arkansas, Colorado, Florida, Georgia, Hawaii, Louisiana, Maryland, Maine, Massachusetts, Minnesota, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Washington and West Virginia.

²² ARK. CODE ANN. § 6-15-504(a). See also <http://www.hslda.org/laws/analysis/Arkansas.pdf>.

²³ For example, Oregon requires that if a homeschooled child continues to score below a certain percentile then the superintendent has the option, but is not required, to send the child to school. OR. REV. STAT. § 339.035(4)(b)(B)(iii).

²⁴ These states include Alabama, Alaska, Arizona, California, Connecticut, Delaware, Idaho, Illinois, Indiana, Kentucky, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, Oklahoma, Texas, Utah, Wisconsin and Wyoming.

²⁵ ALA. CODE § 16-28-5.

²⁶ CAL. EDUC. CODE § 48222, 48224. *See also* <http://www.hslda.org/laws/analysis/California.pdf>.

²⁷ S.D. CODIFIED LAWS § 13-27-1.1; KAN. STAT. ANN. § 72-1111(g)

²⁸ IOWA CODE § 299.24.

²⁹ *Id.*

³⁰ *Id.*

³¹ VA. CODE ANN. § 22.1-254(B)(1).

³² VA. CODE ANN. § 22.1-254.

³³ VA. CODE ANN. § 22.1-254.1 provides, in part, that:

“A. When the requirements of this section have been satisfied, instruction of children by their parents is an acceptable alternative form of education under the policy of the Commonwealth of Virginia. Any parent of any child ... may elect to provide home instruction in lieu of school attendance if he (i) holds a high school diploma; or (ii) is a teacher of qualifications prescribed by the Board of Education; or (iii) provides a program of study or curriculum which may be delivered through a correspondence course or distance learning program or in any other manner; or (iv) provides evidence that he is able to provide an adequate education for the child.

B. Any parent who elects to provide home instruction in lieu of school attendance shall annually notify the division superintendent in August of his intention to so instruct the child and provide a description of the curriculum to be followed for the coming year and evidence of having met one of the criteria for providing home instruction as required by subsection A. Effective July 1, 2000, parents electing to provide home instruction shall provide such annual notice no later than August 15. Any parent who moves into a school division or begins home instruction after the school year has begun shall notify the division superintendent of his intention to provide home instruction as soon as practicable and shall thereafter comply with the requirements of this section within 30 days of such notice....

C. The parent who elects to provide home instruction shall provide the division superintendent by August 1 following the school year in which the child has received home instruction with either (i) evidence that the child has attained a composite score in or above the fourth stanine on any nationally normed standardized achievement test or (ii) an evaluation or assessment which the division superintendent determines to indicate that the child is achieving an adequate level of educational growth and progress, including but not limited to: (a) an evaluation letter from a person licensed to teach in any state, or a person with a master's degree or higher in an academic discipline, having knowledge of the child's academic progress, stating that the child is achieving an adequate level

of educational growth and progress; or (b) a report card or transcript from a community college or college, college distance learning program, or home-education correspondence school.

³⁴ VA. CODE ANN. §22.1-254(B)(1).

³⁵ *Johnson v. Prince William Cty. Sch. Bd.*, 404 S.E.2d 209, 214 (Va. 1991).

³⁶ *Id.* at 211.

³⁷ *Id.*

³⁸ *Id.* at 211, n.5.

³⁹ *Downing v. Fairfax County School Board*, 28 Va. Cir. 310, 313 (Va. Cir. Ct. 1992) (stating that “[a]lthough [the student] receives religious training from her parents, it does not necessarily follow that she conscientiously opposes attendance at school as they do”).

⁴⁰ *Johnson*, 404 S.E.2d at 211, n.5.

⁴¹ 1987-88 Va. Op. Atty. Gen. 330, Nov. 18, 1988 opinion to Senator Schewel, *available at* www.vahomeschoolers.org/PDF/AG_Terry_11_88.pdf.

⁴² *Id.* See also 1983-84 Va. Op. Atty. Gen. 305, May 29, 1984 opinion to Delegate Gordy, *available at* www.vahomeschoolers.org/PDF/AG_Baliles_05_84.pdf.

⁴³ *Scott v. Commonwealth*, 443 S.E.2d 138, 142 (Va. 1994).

⁴⁴ See *Mahan v. National Conservative Political Action Committee*, 227 Va. 330, 335-336 (1984) (“[W]here the statute creates a ‘suspect classification’ (e.g. race, sex, or religion) or where it affects a fundamental constitutional right, the presumption of constitutionality fades, and the ‘strict scrutiny’ test, rather than the more relaxed ‘rational relationship’ test, applies. Laws that affect fundamental constitutional rights, as we have seen, are subjected to strict judicial scrutiny. In order to satisfy such an examination, the law must be a necessary element for achieving a compelling governmental interest. To be viewed as necessary, the classification or infringement must be the least burdensome means available for attaining the governmental objective in question.”) (internal citations omitted).

⁴⁵ It is worthwhile to note, however, that the religious freedom protections enshrined in Virginia’s state constitution are coextensive with, and no greater than, the protections of the First Amendment in the U.S. Constitution. See, e.g., *In re Multi-Circuit Episcopal Church Prop. Litig.*, 76 Va. Cir. 894, 896 n.4 (2008) (“If a statute satisfies the Establishment and Free Exercise Clauses of the U.S. Constitution, it is also consistent with the Virginia Constitution’s corresponding religious freedom provisions.”); *Cha v. Korean Presbyterian Church of Washington*, 262 Va. 604, 612 (2001) (holding that “[t]he Free Exercise Clause of the First Amendment to the Constitution of the United States and Article I, § 16 of the Constitution of Virginia do not permit a circuit court to substitute its secular judgment for a church’s judgment when the church makes decisions regarding the selection or retention of its pastor”); *Habel v. Indus. Dev. Auth.*, 241 Va. 96, 100 (1991) (describing language in Article I, § 16 of the Constitution of Virginia as “analogous” to the Establishment Clause); *Reid v. Gholson*, 229 Va. 179, 190-91 (1985)

(describing Article I § 16 of the Virginia Constitution and the First Amendment to the U.S. Constitution as containing equivalent “guarantees of religious freedom”); *Mandell v. Haddon*, 202 Va. 979, 989 (1961) (holding that the law in question did not violate either Article I, § 16, of the Constitution of Virginia or the First Amendment to the Constitution of the United States).

⁴⁶ Virginia Department of Education, Home Schooled Students and Religious Exemptions Reports, *available at* http://www.doe.virginia.gov/statistics_reports/enrollment/home_school_religious_exempt/index.shtml.

⁴⁷ Virginia Department of Education, http://bi.vita.virginia.gov/doe_bi/rdPage.aspx?rdReport=Main&subRptName=Fallmembership (Data found after selecting “Division” under “Select Report Level,” selecting “All Divisions” under “Select Division(s),” changing the view from “Map” to “Chart,” and then pressing “Submit.”).

⁴⁸ This lack of tracking also helps clarify the high numbers of older, exempted students listed in Appendix A and how these numbers can be reconciled with the survey responses indicating most exemption requests are made when children are younger. Most divisions, it appears, note the exemption when it is originally granted and continue to count those students in succeeding years as they advance chronologically.

⁴⁹ VA. CODE ANN. § 22.1-254(B)(1).

⁵⁰ *Johnson v. Prince William County School Bd.*, 241 Va. 383 (1991).

⁵¹ VA. CODE ANN. § 22.1-254(B)(1).

⁵² *Johnson v. Charles City Community School Bd. of Educ.*, 368 N.W.2d 74, 82 (Iowa 1985). *See also Fellowship Baptist Church v. Benton*, 815 F.2d 485 (8th Cir. 1987) (upholding constitutionality of Iowa religious exemption statute).

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APPENDIX A

VIRGINIA DEPARTMENT OF EDUCATION

HOMESCHOOLED STUDENTS AND RELIGIOUS EXEMPTIONS

SCHOOL YEAR: 2010 - 2011

| Div. No. | Division Name | Home Instruction K-5 | Home Instruction 6-8 | Home Instruction 9-12 | Home Instruction Other | Total Home Instruction | Religious Exemptions K-5 | Religious Exemptions 6-8 | Religious Exemptions 9-12 | Religious Exemptions Other | Total Religious Exemptions |
|----------|------------------------------------|----------------------|----------------------|-----------------------|------------------------|------------------------|--------------------------|--------------------------|---------------------------|----------------------------|----------------------------|
| 1 | Accomack County Public Schools | 15 | 14 | 16 | 0 | 45 | 4 | 4 | 4 | 5 | 17 |
| 2 | Albemarle County Public Schools | 206 | 114 | 82 | 0 | 402 | 22 | 25 | 30 | 0 | 77 |
| 3 | Alleghany County Public Schools | 24 | 19 | 22 | 0 | 65 | 3 | 2 | 4 | 0 | 9 |
| 4 | Amelia County Public Schools | 24 | 16 | 16 | 0 | 56 | 15 | 9 | 10 | 0 | 34 |
| 5 | Amherst County Public Schools | 54 | 25 | 25 | 0 | 104 | 22 | 7 | 14 | 12 | 55 |
| 6 | Appomattox County Public Schools | 39 | 15 | 13 | 0 | 67 | 11 | 5 | 2 | 7 | 25 |
| 7 | Arlington County Public Schools | 89 | 44 | 20 | 0 | 153 | 3 | 2 | 6 | 0 | 11 |
| 8 | Augusta County Public Schools | 169 | 75 | 76 | 0 | 320 | 67 | 81 | 122 | 12 | 282 |
| 9 | Bath County Public Schools | 2 | 5 | 9 | 0 | 16 | 3 | 1 | 2 | 0 | 6 |
| 10 | Bedford County Public Schools | 248 | 131 | 141 | 4 | 524 | 16 | 5 | 18 | 103 | 142 |
| 11 | Bland County Public Schools | 6 | 4 | 0 | 0 | 10 | 5 | 2 | 6 | 0 | 13 |
| 12 | Botetourt County Public Schools | 99 | 49 | 55 | 3 | 206 | 28 | 25 | 25 | 5 | 83 |
| 13 | Brunswick County Public Schools | 10 | 5 | 10 | 0 | 25 | 1 | 0 | 7 | 0 | 8 |
| 14 | Buchanan County Public Schools | 8 | 4 | 5 | 0 | 17 | 2 | 0 | 1 | 0 | 3 |
| 15 | Buckingham County Public Schools | 40 | 19 | 12 | 0 | 71 | 1 | 0 | 0 | 0 | 1 |
| 16 | Campbell County Public Schools | 125 | 63 | 83 | 0 | 271 | 57 | 28 | 38 | 0 | 123 |
| 17 | Caroline County Public Schools | 76 | 28 | 30 | 0 | 134 | 1 | 0 | 0 | 0 | 1 |
| 18 | Carroll County Public Schools | 34 | 17 | 23 | 0 | 74 | 33 | 26 | 44 | 0 | 103 |
| 19 | Charles City County Public Schools | 11 | 7 | 4 | 0 | 22 | 9 | 3 | 8 | 0 | 20 |
| 20 | Charlotte County Public Schools | 18 | 15 | 16 | 0 | 49 | 37 | 23 | 33 | 0 | 93 |
| 21 | Chesterfield County Public Schools | 637 | 323 | 390 | 8 | 1,358 | 379 | 231 | 149 | 75 | 834 |

| Div. No. | Division Name | Home Instruction K-5 | Home Instruction 6-8 | Home Instruction 9-12 | Home Instruction Other | Total Home Instruction | Religious Exemptions K-5 | Religious Exemptions 6-8 | Religious Exemptions 9-12 | Religious Exemptions Other | Total Religious Exemptions |
|----------|--------------------------------------|----------------------|----------------------|-----------------------|------------------------|------------------------|--------------------------|--------------------------|---------------------------|----------------------------|----------------------------|
| 22 | Clarke County Public Schools | 75 | 38 | 26 | 0 | 139 | 8 | 11 | 14 | 10 | 43 |
| 23 | Craig County Public Schools | 4 | 5 | 6 | 0 | 15 | 5 | 3 | 8 | 0 | 16 |
| 24 | Culpeper County Public Schools | 118 | 70 | 75 | 0 | 263 | 61 | 44 | 59 | 2 | 166 |
| 25 | Cumberland County Public Schools | 16 | 7 | 11 | 0 | 34 | 0 | 0 | 0 | 0 | 0 |
| 26 | Dickenson County Public Schools | 16 | 8 | 7 | 0 | 31 | 1 | 0 | 0 | 0 | 1 |
| 27 | Dinwiddie County Public Schools | 36 | 26 | 42 | 0 | 104 | 24 | 30 | 25 | 5 | 84 |
| 28 | Essex County Public Schools | 16 | 9 | 14 | 0 | 39 | 2 | 1 | 0 | 0 | 3 |
| 29 | Fairfax County Public Schools | 1,240 | 529 | 456 | 0 | 2,225 | 0 | 0 | 0 | 481 | 481 |
| 30 | Fauquier County Public Schools | 210 | 120 | 111 | 0 | 441 | 70 | 46 | 37 | 0 | 153 |
| 31 | Floyd County Public Schools | 47 | 20 | 42 | 0 | 109 | 36 | 29 | 36 | 49 | 150 |
| 32 | Fluvanna County Public Schools | 58 | 32 | 26 | 0 | 116 | 3 | 2 | 0 | 0 | 5 |
| 33 | Franklin County Public Schools | 170 | 62 | 108 | 5 | 345 | 37 | 24 | 31 | 0 | 92 |
| 34 | Frederick County Public Schools | 188 | 88 | 102 | 0 | 378 | 65 | 52 | 82 | 0 | 199 |
| 35 | Giles County Public Schools | 30 | 16 | 9 | 0 | 55 | 94 | 13 | 3 | 0 | 110 |
| 36 | Gloucester County Public Schools | 45 | 24 | 61 | 0 | 130 | 32 | 30 | 65 | 0 | 127 |
| 37 | Goochland County Public Schools | 52 | 25 | 30 | 0 | 107 | 11 | 5 | 7 | 14 | 37 |
| 38 | Grayson County Public Schools | 21 | 7 | 16 | 0 | 44 | 10 | 4 | 3 | 13 | 30 |
| 39 | Greene County Public Schools | 86 | 32 | 38 | 0 | 156 | 17 | 17 | 10 | 0 | 44 |
| 40 | Greensville County Public Schools | 14 | 4 | 9 | 0 | 27 | 1 | 0 | 0 | 0 | 1 |
| 41 | Halifax County Public Schools | 57 | 40 | 32 | 0 | 129 | 6 | 4 | 1 | 0 | 11 |
| 42 | Hanover County Public Schools | 204 | 127 | 139 | 0 | 470 | 48 | 37 | 32 | 0 | 117 |
| 43 | Henrico County Public Schools | 333 | 150 | 160 | 0 | 643 | 2 | 0 | 2 | 7 | 11 |
| 44 | Henry County Public Schools | 62 | 36 | 28 | 0 | 126 | 21 | 33 | 56 | 0 | 110 |
| 45 | Highland County Public Schools | 7 | 2 | 2 | 0 | 11 | 6 | 2 | 2 | 0 | 10 |
| 46 | Isle of Wight County Public Schools | 81 | 31 | 34 | 0 | 146 | 22 | 9 | 11 | 0 | 42 |
| 48 | King George County Public Schools | 122 | 56 | 57 | 0 | 235 | 46 | 23 | 22 | 0 | 91 |
| 49 | King and Queen County Public Schools | 17 | 12 | 12 | 0 | 41 | 6 | 6 | 13 | 0 | 25 |

| Div. No. | Division Name | Home Instruction K-5 | Home Instruction 6-8 | Home Instruction 9-12 | Home Instruction Other | Total Home Instruction | Religious Exemptions K-5 | Religious Exemptions 6-8 | Religious Exemptions 9-12 | Religious Exemptions Other | Total Religious Exemptions |
|----------|--------------------------------------|----------------------|----------------------|-----------------------|------------------------|------------------------|--------------------------|--------------------------|---------------------------|----------------------------|----------------------------|
| 50 | King William County Public Schools | 29 | 25 | 26 | 0 | 80 | 9 | 6 | 12 | 0 | 27 |
| 51 | Lancaster County Public Schools | 14 | 6 | 5 | 0 | 25 | 1 | 6 | 12 | 0 | 19 |
| 52 | Lee County Public Schools | 20 | 14 | 11 | 0 | 45 | 1 | 2 | 2 | 0 | 5 |
| 53 | Loudoun County Public Schools | 734 | 301 | 224 | 0 | 1,259 | 0 | 0 | 0 | 52 | 52 |
| 54 | Louisa County Public Schools | 65 | 46 | 55 | 0 | 166 | 3 | 0 | 0 | 0 | 3 |
| 55 | Lunenburg County Public Schools | 7 | 5 | 3 | 0 | 15 | 4 | 1 | 0 | 0 | 5 |
| 56 | Madison County Public Schools | 36 | 25 | 18 | 0 | 79 | 19 | 20 | 45 | 0 | 84 |
| 57 | Mathews County Public Schools | 13 | 5 | 9 | 0 | 27 | 4 | 0 | 1 | 0 | 5 |
| 58 | Mecklenburg County Public Schools | 23 | 8 | 13 | 0 | 44 | 12 | 8 | 1 | 0 | 21 |
| 59 | Middlesex County Public Schools | 6 | 2 | 7 | 0 | 15 | 10 | 4 | 8 | 0 | 22 |
| 60 | Montgomery County Public Schools | 188 | 80 | 101 | 0 | 369 | 39 | 22 | 29 | 0 | 90 |
| 62 | Nelson County Public Schools | 27 | 15 | 26 | 0 | 68 | 11 | 12 | 22 | 0 | 45 |
| 63 | New Kent County Public Schools | 43 | 23 | 27 | 0 | 93 | 6 | 6 | 7 | 0 | 19 |
| 65 | Northampton County Public Schools | 11 | 3 | 7 | 0 | 21 | 6 | 0 | 1 | 0 | 7 |
| 66 | Northumberland County Public Schools | 5 | 8 | 7 | 0 | 20 | 1 | 0 | 0 | 0 | 1 |
| 67 | Nottoway County Public Schools | 35 | 11 | 22 | 0 | 68 | 15 | 7 | 13 | 0 | 35 |
| 68 | Orange County Public Schools | 79 | 36 | 52 | 167 | 334 | 13 | 4 | 15 | 32 | 64 |
| 69 | Page County Public Schools | 21 | 17 | 8 | 0 | 46 | 22 | 16 | 24 | 0 | 62 |
| 70 | Patrick County Public Schools | 22 | 19 | 14 | 0 | 55 | 26 | 21 | 21 | 0 | 68 |
| 71 | Pittsylvania County Public Schools | 91 | 44 | 57 | 0 | 192 | 0 | 0 | 0 | 91 | 91 |
| 72 | Powhatan County Public Schools | 83 | 48 | 62 | 0 | 193 | 36 | 29 | 36 | 2 | 103 |
| 73 | Prince Edward County Public Schools | 38 | 11 | 18 | 0 | 67 | 2 | 2 | 3 | 0 | 7 |
| 74 | Prince George County Public Schools | 52 | 17 | 26 | 0 | 95 | 17 | 10 | 9 | 0 | 36 |
| 75 | Prince William County Public Schools | 955 | 372 | 276 | 0 | 1,603 | 24 | 6 | 6 | 0 | 36 |

| Div. No. | Division Name | Home Instruction K-5 | Home Instruction 6-8 | Home Instruction 9-12 | Home Instruction Other | Total Home Instruction | Religious Exemptions K-5 | Religious Exemptions 6-8 | Religious Exemptions 9-12 | Religious Exemptions Other | Total Religious Exemptions |
|----------|-------------------------------------|----------------------|----------------------|-----------------------|------------------------|------------------------|--------------------------|--------------------------|---------------------------|----------------------------|----------------------------|
| 77 | Pulaski County Public Schools | 58 | 27 | 35 | 0 | 120 | 4 | 4 | 2 | 0 | 10 |
| 78 | Rappahannock County Public Schools | 8 | 8 | 2 | 0 | 18 | 1 | 2 | 2 | 0 | 5 |
| 79 | Richmond County Public Schools | 8 | 0 | 4 | 0 | 12 | 2 | 0 | 1 | 0 | 3 |
| 80 | Roanoke County Public Schools | 64 | 83 | 86 | 0 | 233 | 47 | 46 | 43 | 0 | 136 |
| 81 | Rockbridge County Public Schools | 34 | 25 | 40 | 0 | 99 | 3 | 9 | 17 | 0 | 29 |
| 82 | Rockingham County Public Schools | 170 | 88 | 78 | 0 | 336 | 88 | 73 | 161 | 4 | 326 |
| 83 | Russell County Public Schools | 23 | 8 | 13 | 0 | 44 | 3 | 3 | 5 | 0 | 11 |
| 84 | Scott County Public Schools | 12 | 11 | 12 | 0 | 35 | 3 | 3 | 2 | 0 | 8 |
| 85 | Shenandoah County Public Schools | 47 | 43 | 42 | 4 | 136 | 49 | 46 | 53 | 0 | 148 |
| 86 | Smyth County Public Schools | 23 | 23 | 25 | 0 | 71 | 15 | 19 | 24 | 0 | 58 |
| 87 | Southampton County Public Schools | 22 | 24 | 33 | 0 | 79 | 6 | 5 | 13 | 0 | 24 |
| 88 | Spotsylvania County Public Schools | 331 | 168 | 213 | 2 | 714 | 14 | 6 | 7 | 0 | 27 |
| 89 | Stafford County Public Schools | 283 | 112 | 93 | 110 | 598 | 0 | 0 | 0 | 244 | 244 |
| 90 | Surry County Public Schools | 23 | 26 | 41 | 2 | 92 | 0 | 2 | 9 | 1 | 12 |
| 91 | Sussex County Public Schools | 13 | 12 | 10 | 0 | 35 | 0 | 2 | 2 | 0 | 4 |
| 92 | Tazewell County Public Schools | 36 | 18 | 29 | 0 | 83 | 8 | 4 | 7 | 2 | 21 |
| 93 | Warren County Public Schools | 129 | 54 | 57 | 0 | 240 | 79 | 52 | 93 | 0 | 224 |
| 94 | Washington County Public Schools | 74 | 32 | 27 | 1 | 134 | 75 | 43 | 79 | 0 | 197 |
| 95 | Westmoreland County Public Schools | 0 | 1 | 3 | 0 | 4 | 14 | 3 | 12 | 0 | 29 |
| 96 | Wise County Public Schools | 46 | 15 | 22 | 0 | 83 | 28 | 12 | 34 | 0 | 74 |
| 97 | Wythe County Public Schools | 29 | 12 | 16 | 0 | 57 | 4 | 0 | 1 | 0 | 5 |
| 98 | York County Public Schools | 111 | 55 | 36 | 0 | 202 | 5 | 2 | 3 | 0 | 10 |
| 101 | Alexandria City Public Schools | 57 | 23 | 19 | 0 | 99 | 0 | 0 | 0 | 0 | 0 |
| 102 | Bristol City Public Schools | 25 | 9 | 16 | 0 | 50 | 2 | 0 | 1 | 0 | 3 |
| 103 | Buena Vista City Public Schools | 3 | 2 | 5 | 0 | 10 | 4 | 3 | 3 | 0 | 10 |
| 104 | Charlottesville City Public Schools | 34 | 17 | 9 | 0 | 60 | 0 | 0 | 0 | 0 | 0 |

| Div. No. | Division Name | Home Instruction K-5 | Home Instruction 6-8 | Home Instruction 9-12 | Home Instruction Other | Total Home Instruction | Religious Exemptions K-5 | Religious Exemptions 6-8 | Religious Exemptions 9-12 | Religious Exemptions Other | Total Religious Exemptions |
|----------|---|----------------------|----------------------|-----------------------|------------------------|------------------------|--------------------------|--------------------------|---------------------------|----------------------------|----------------------------|
| 106 | Colonial Heights City Public Schools | 10 | 11 | 25 | 0 | 46 | 9 | 9 | 5 | 0 | 23 |
| 107 | Covington City Public Schools | 4 | 4 | 7 | 0 | 15 | 0 | 0 | 1 | 0 | 1 |
| 108 | Danville City Public Schools | 18 | 10 | 11 | 0 | 39 | 0 | 2 | 1 | 0 | 3 |
| 109 | Falls Church City Public Schools | 13 | 8 | 3 | 0 | 24 | 2 | 2 | 0 | 0 | 4 |
| 110 | Fredericksburg City Public Schools | 39 | 14 | 21 | 0 | 74 | 2 | 2 | 4 | 1 | 9 |
| 111 | Galax City Public Schools | 6 | 2 | 1 | 0 | 9 | 3 | 1 | 0 | 0 | 4 |
| 112 | Hampton City Public Schools | 135 | 71 | 71 | 2 | 279 | 13 | 22 | 23 | 0 | 58 |
| 113 | Harrisonburg City Public Schools | 37 | 15 | 9 | 0 | 61 | 8 | 6 | 7 | 0 | 21 |
| 114 | Hopewell City Public Schools | 13 | 7 | 21 | 0 | 41 | 2 | 7 | 4 | 0 | 13 |
| 115 | Lynchburg City Public Schools | 0 | 0 | 0 | 327 | 327 | 0 | 0 | 0 | 9 | 9 |
| 116 | Martinsville City Public Schools | 9 | 4 | 3 | 0 | 16 | 7 | 0 | 5 | 0 | 12 |
| 117 | Newport News City Public Schools | 246 | 87 | 99 | 0 | 432 | 20 | 4 | 4 | 0 | 28 |
| 118 | Norfolk City Public Schools | 219 | 98 | 101 | 0 | 418 | 10 | 5 | 3 | 0 | 18 |
| 119 | Norton City Public Schools | 5 | 0 | 4 | 0 | 9 | 0 | 0 | 1 | 0 | 1 |
| 120 | Petersburg City Public Schools | 16 | 8 | 5 | 0 | 29 | 2 | 0 | 0 | 0 | 2 |
| 121 | Portsmouth City Public Schools | 93 | 51 | 46 | 12 | 202 | 7 | 2 | 7 | 0 | 16 |
| 122 | Radford City Public Schools | 14 | 2 | 4 | 0 | 20 | 2 | 1 | 0 | 0 | 3 |
| 123 | Richmond City Public Schools | 97 | 51 | 44 | 0 | 192 | 12 | 6 | 0 | 3 | 21 |
| 124 | Roanoke City Public Schools | 94 | 32 | 43 | 0 | 169 | 3 | 3 | 1 | 0 | 7 |
| 126 | Staunton City Public Schools | 69 | 33 | 28 | 0 | 130 | 14 | 8 | 10 | 0 | 32 |
| 127 | Suffolk City Public Schools | 181 | 75 | 56 | 0 | 312 | 48 | 16 | 5 | 0 | 69 |
| 128 | Virginia Beach City Public Schools | 469 | 211 | 221 | 0 | 901 | 13 | 2 | 3 | 0 | 18 |
| 130 | Waynesboro City Public Schools | 29 | 11 | 21 | 0 | 61 | 0 | 0 | 0 | 0 | 0 |
| 131 | Williamsburg-James City County Public Schools | 172 | 96 | 101 | 0 | 369 | 0 | 0 | 0 | 75 | 75 |
| 132 | Winchester City Public Schools | 25 | 24 | 16 | 0 | 65 | 3 | 3 | 4 | 0 | 10 |
| 135 | Franklin City Public Schools | 14 | 12 | 10 | 0 | 36 | 2 | 1 | 1 | 0 | 4 |
| 136 | Chesapeake City Public Schools | 462 | 242 | 218 | 0 | 922 | 122 | 35 | 0 | 0 | 157 |

| Div. No. | Division Name | Home Instruction K-5 | Home Instruction 6-8 | Home Instruction 9-12 | Home Instruction Other | Total Home Instruction | Religious Exemptions K-5 | Religious Exemptions 6-8 | Religious Exemptions 9-12 | Religious Exemptions Other | Total Religious Exemptions |
|----------|-----------------------------------|----------------------|----------------------|-----------------------|------------------------|------------------------|--------------------------|--------------------------|---------------------------|----------------------------|----------------------------|
| 137 | Lexington City Public Schools | 13 | 3 | 0 | 0 | 16 | 0 | 0 | 0 | 0 | 0 |
| 139 | Salem City Public Schools | 30 | 12 | 14 | 1 | 57 | 3 | 3 | 4 | 0 | 10 |
| 142 | Poquoson City Public Schools | 13 | 11 | 7 | 0 | 31 | 0 | 1 | 3 | 0 | 4 |
| 143 | Manassas City Public Schools | 62 | 50 | 53 | 0 | 165 | 10 | 5 | 14 | 0 | 29 |
| 144 | Manassas Park City Public Schools | 26 | 6 | 2 | 0 | 34 | 0 | 0 | 0 | 0 | 0 |
| 207 | West Point Public Schools | 5 | 3 | 2 | 0 | 10 | 7 | 0 | 4 | 0 | 11 |
| | | | | | | | | | | | |
| | State totals | 12,157 | 5,869 | 6,008 | 648 | 24,682 | 2,412 | 1,571 | 1,997 | 1,316 | 7,296 |

APPENDIX B

ELECTRONIC SURVEY QUESTIONS

Survey Instructions: Please answer the following to the best of your knowledge about religious exemptions in your school division. If you choose to provide us with identifying information in the last question of the survey, this information will not be used to identify your individual responses.

1. How many students are in your school division?

- a. Less than 2,000
- b. 2,001-5,000
- c. 5,001-10,000
- d. Greater than 10,000

2. Has your division received any requests for a religious exemption in the last five years?

- a. Yes
- b. No

2a. For which grade range do you get the most requests for religious exemptions?

- a. Kindergarten entry
- b. Elementary school (grades 1 – 5)
- c. Middle school (grades 6 – 8)
- d. High school (grades 9 – 12)

Please make any additional comments. [Comment box]

2b. Have any requests for religious exemption been denied?

- a. Yes
- b. No

2b(1). Approximately what percentage of requests has been denied?

[Open response]

2b(2). For which of the following reasons have requests for religious exemptions been denied?

(Mark all that apply)

- a. Failure to comply with administrative procedures or requirements
- b. Insufficient evidence of bona fide religious beliefs

- c. Student opposition to exemption
- d. Other (Please explain)

3. When a family requests a religious exemption, which of the following steps must they take in your division?

(Mark any or all that apply)

- a. Fill out a standard form provided by the school division
- b. Provide a statement from church or clergy
- c. Provide a statement from the parent(s) describing their religious beliefs
- d. Provide a statement from the student describing their religious beliefs
- e. Have parent(s) meet in-person with school officials (e.g., school board, administrators, etc.)
- f. Have student meet in-person with school officials (e.g., school board, administrators, etc.)
- g. None
- h. Other (Please explain)

4. Once a religious exemption is granted, do you typically have any further contact with the exempted students and/or families?

- a. Yes
- b. No

4a. Which of the following contacts with parents or students do you typically have after a religious exemption is granted? (Mark all that apply)

- a. Regular reviews of continued bona fide religious beliefs of the children or parents opposing school attendance (If yes, how often?)
- b. Evaluation of student academic progress (If yes, how often?)
- c. Involvement of student in sports or other school activities
- d. Requests by parents for additional exemptions for additional children
- e. Other contact with parents (If yes, please describe)
- f. Other contact with student (If yes, please describe)

5. Do you have any mechanisms for verifying whether exempted students continue to reside in your school district past the initial year of exemption?

- a. Yes (If yes, please explain)
- b. No

6. Do you track whether or not exempted students receive education services elsewhere, including a private or parochial school, another public school, or home instruction?

- a. Yes (If yes, please explain)

b. No

7. **Would you be willing to have us contact you to ask some short follow-up questions?** (This information will be stored in a separate data system, will not be shared with anyone other than the researchers and will not be used to identify your previous responses.)

a. Yes (If yes, please provide your name and contact information: name, phone, email)*

b. No (end survey)

* Clicking “yes” will forward participants to a separate database in which they can enter contact information separate from their survey responses.

APPENDIX C

RELIGIOUS EXEMPTION PHONE SURVEY

Hello, this is _____. I am with the UVA Law School's Child Advocacy Clinic.

You recall that UVA's Youth-Nex and the UVA Law School's Child Advocacy Clinic recently sent out an electronic survey to superintendents to ask about their practices and policies regarding granting religious exemptions from compulsory school attendance. You graciously agreed to give us your contact information so that we could contact you for further information.

Is now a convenient time, or should I call back at another time? [If not convenient, make appointment to call back.]

As you likely know, local school boards in Virginia must excuse from compulsory attendance laws children whose parents are, by reason of a bona fide religious training or belief, or who themselves by reason of their religious beliefs, are conscientiously opposed to their child's attendance at school. This means that if families request religious exemptions, school boards must review those requests and exempt children from compulsory education. It is important to note that this does not include exemptions from school attendance for home instruction or home schooling.

This should not take more than about 15 minutes, and – as before – neither your name nor district will be connected to your answers, they will all be confidential, and you do not have to answer any of the questions I ask and can ask to stop at any time. OK?

Great. Now, since all the electronic survey questions were anonymous, I need to ask you a just a couple of those questions again.

- 1. Has your division received any requests for a religious exemption in the last five years?**
- 2. When a request for a religious exemption is made, do you involve the student in your evaluation process?**
 - a. If yes:
 - i. At what age do you include the student?
 - ii. Could you describe the process that you use?
 - iii. Have you ever had a situation in which the opinions of the student and his/her parents differ? If so, how have you dealt with that?
- 3. Who/what entity makes the final decision as to granting or denying the exemption?**
- 4. Have any of those requests for a religious exemption been denied?**
 - a. If yes:
 - i. Please describe why those requests were denied.
 - ii. Was it later granted with revisions to the application? For what reason?

5. Once a religious exemption is granted, does your division typically have any further contact with the exempted students?

a. If yes:

- i. How often do you have contact with students?
- ii. What is the nature of those contacts?

b. If they have regular check-ins:

- i. What is covered in those check-ins?

c. Does the family/child have to reapply every year to verify their continued beliefs, or to confirm that they still want the exemption?

- i. Do you think that this follow-up is required by law?
- iii. Do you follow similar check-in procedures for your homeschooling-exempted students?

6. Does your division require testing or other proof of educational progress in the case of religious exemptions?

- a. What testing or proof of education is required in the case of home schooling?
- b. Do you believe that, in the case of religious exemption, school divisions are required to obtain testing and/or other proof of educational progress?
- c. If they require testing or other proof of education progress for religious exemptions: what types of testing or other proof are required?
- d. Does your division ever revoke exemptions based on lack of progress or submission of testing results?

7. How clear and understandable is the religious exemption statute?

8. How easy or difficult is it to implement the religious exemption statute?

9. Do you have any thoughts or recommendations about how it could be improved?

Thank you so very much for taking the time at the end of this school year to talk with me about how your division handles religious exemptions. Are there any questions you have for me?

This information will be used to understand and report how Virginia's approach to religious exemptions from compulsory attendance compares to other states' approaches, how local school systems implement state law, and to potentially make recommendations to Virginia's educators and policy makers regarding areas in need of further study and/or improvement.

Thank you again for your time. Have a wonderful end of term and summer.