

Superintendent's Memo #209-17

COMMONWEALTH of VIRGINIA
Department of Education

DATE: July 14, 2017
TO: Division Superintendents
FROM: Steven R. Staples, Superintendent of Public Instruction
SUBJECT: **Student Enrollment Requirements – School Year 2017-2018**

As you begin to prepare for the 2017-2018 school year, I want to take the opportunity to provide you with some general information and remind you about certain enrollment requirements. Please distribute this information as widely as possible throughout your school division to ensure that appropriate school division employees are aware of these requirements.

Compulsory Attendance

Section 22.1-254 of the *Code of Virginia* (the compulsory attendance law) provides: 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

The compulsory attendance law permits a child to attend a private or public school or receive an education through certain alternatives to school attendance, such as home instruction, unless the child is excused from attendance by a local school board, as stated in § 22.1-254 of the *Code of Virginia (Code)*. Parents who wish to seek a religious exemption to compulsory attendance must petition the school board and show that, by reason of bona fide religious training or belief, the pupil, together with his parents, is conscientiously opposed to attendance at school. (§ 22.1-254.B.1 of the *Code*)

Please refer to the Department of Education's Guidelines for Home Instruction in Virginia for additional information on home instruction and other alternatives to school attendance.

Further, any child who will not have reached his sixth birthday on or before September 30 of each school year whose parent or guardian notifies the appropriate school board that he does not wish the child to attend school until the following year because the child, in the opinion of the parent or guardian, is not mentally, physically, or emotionally prepared to attend school, may delay the child's attendance for one year. (§ 22.1-254 of the *Code*)

Residency

Section 22.1-31 of the *Code* provides “[t]he public schools in each school division shall be free to each *person of school age* who resides within the school division....” Section 22.1-1 of the *Code* defines a *person of school age* to mean a person who will have reached his fifth birthday on or before September 30 of the school year and who has not reached twenty years of age on or before August 1 of the school year.

For the purposes of enrollment, the local school division determines whether a student meets the following residency requirements set out in the *Code*:

- The student is living with a natural parent or a parent by legal adoption.
- The student has a parent in the military and is living with a noncustodial parent or other person standing in loco parentis, not solely for school purposes, pursuant to a Special Power of Attorney executed under Title 10, United States Code, § 1044b, by the custodial parent.
- The student’s parents are deceased, and the student is living in loco parentis with a person who resides in that locality.
- The student is living in the locality, not solely for school purposes, as an emancipated minor.
- The student is experiencing homelessness as described in Section 22.1-31(A)(6) of the *Code*.
- The student is living with another person who resides in the school division, not solely for school purposes, and that individual: (a) is the court-appointed guardian, or has legal custody, of the person; or (b) is acting in loco parentis pursuant to placement of the person for adoption by a person or entity authorized to do so under § 63.2-1200 of the *Code*; or (c) is an adult relative providing temporary kinship care as that term is defined in § 63.2-100 of the *Code* when the student’s parents are unable to care for him or her.

The school division may require one or both of the parents and the adult relative providing kinship care to submit certain documents and verifications in order to enroll the child. In addition, a school division may also require the parent or adult relative to obtain written verification from the department of social services where the parent or parents live, or from both that department and the department of social services where the kinship care provider lives, to show that the kinship care arrangement serves a legitimate purpose that is in the best interest of the child and is not solely for purposes of school enrollment.

Please see § 22.1-31 for more information regarding residency.

Students with a Parent or Parents in the Military

Virginia is a member of the Interstate Compact on Educational Opportunity for Military Children (the Compact). The purpose of the Compact is to streamline the transfer of children of military families into Virginia public schools. Specifically, the Compact addresses the following: (1) education records and enrollment (Article IV), which contains provisions regarding record transfers, immunizations, and school entrance age; (2) placement and attendance (Article V), which contains provisions regarding course and program placement and special education services; (3) eligibility (Article VI), which addresses documentation requirements for enrollment; and (4) graduation (Article VII), which addresses how receiving school divisions will facilitate the on-time graduation of military transfer students. (§ 22.1-360 of the *Code*)

A student of a military family is deemed a resident of a school division and cannot be denied admission or charged tuition if the student is living with a noncustodial parent or other person standing in loco parentis, not solely for school purposes, pursuant to a Special Power of Attorney

executed under Title 10, United States Code, § 1044b, by the custodial parent. (§ 22.1-3.1 of the *Code*). Such students may continue to attend school in the school division they attended while residing with the custodial parent without paying tuition, or they may attend school in the school division in which the noncustodial parent or other person standing in loco parentis resides without paying tuition. (§22.1-360 of the *Code*)

Military families may be frequently transferred from one duty-station to another. In some situations, students are being required to enroll in one school division for a few weeks even when the parents have a contract for a house located in a near-by division. School divisions are encouraged to be flexible and consider the best interest of the child when they are considering enrollment of a child whose family is temporarily living in a near-by school division while waiting for permanent housing to become available in another division.

For additional information about the enrollment of students of military families, please see http://www.doe.virginia.gov/support/student_family/military/index.shtml and http://www.doe.virginia.gov/support/student_family/military/guidance_training/index.shtml.

Students Experiencing Homelessness

School divisions must immediately enroll students experiencing homelessness and coordinate the provision of services to these students with relevant local social services agencies and other agencies and programs providing services to such students, and with other school divisions.

For more information regarding the enrollment of students experiencing homelessness, please see § 22.1-3.1 of the *Code* and visit <http://education.wm.edu/centers/hope/>.

Students in Foster Care

A student who has been placed in a foster care placement by a local social services agency (as defined in § 63.2-100 of the *Code*) shall be immediately enrolled in school even if the placing social services agency is unable to produce the documents required for enrollment. In such cases, the person enrolling the student must provide a written statement that, to the best of his knowledge, sets forth the student's age and compliance with the requirements of § 22.1-3.2 of the *Code* and indicates that the student is in good health and free from communicable or contagious disease. (§ 22.1-3.4 of the *Code*)

Within 72 hours of placing a child of school age in a foster care placement, the local social services agency making such placement shall, in writing: (a) notify the principal of the school in which the student is to be enrolled and the superintendent of the relevant school division or his designee of such placement; and (b) inform the principal of the status of the parental rights.

Please click on [Enrollment of Students in Foster Care](#) on the Virginia Department of Education's website for additional information regarding the enrollment of these students.

Birth Certificate

Except as provided in § 22.1-3.1 of the *Code*, no student shall be admitted for the first time to any public school in any school division in Virginia unless the person enrolling the student shall present, upon admission, a certified copy of the student's birth record. A photocopy of the child's

birth certificate will not meet this requirement. If a certified copy of the child's birth certificate cannot be obtained, the person enrolling the child must submit a sworn statement setting forth the child's age and explaining the inability to present a certified copy.

Students in Foster Care. If the birth certificate is required for enrollment of the foster child and is not immediately available upon taking the child into custody, the placing social services agency shall obtain and produce or otherwise ensure compliance with such requirement for the foster child within 30 days after the child's enrollment. (§ 63.2-900.D of the Code)

A certified copy of a birth record for a person born in Virginia may be obtained from the Division of Vital Records and Health Statistics at the Virginia Department of Health. Click [here](#) for information about that process.

Comprehensive Pre-school Physical Examination

Section 22.1-270 of the Code precludes the admission of students for the first time to any public kindergarten or elementary school in a school division unless the student furnishes, prior to admission, a report of a comprehensive physical examination from a qualified licensed physician, or a licensed nurse practitioner or a licensed physician assistant acting under the supervision of a licensed physician. The examination must be of the scope prescribed by the State Health Commissioner and must have been performed within 12 months before the date the student first enters the public school. In the alternative, students may provide records showing that they furnished such a report upon admission to another school or school division and provide the information that was contained in that report.

Religious Exemption. Section 22.1-270 of the Code includes an exemption from the physical examination for students whose parents object for religious reasons. Such physical examination is not required of any child whose parent objects on religious grounds and who shows no visual evidence of sickness, provided that the parent shall state in writing that, to the best of his knowledge, the child is in good health and free from any communicable or contagious disease.

In addition, § 22.1-3.4 of the Code provides specific requirements for the immediate enrollment of children in foster care who do not have the requisite physical examination report.

Students with a Parent or Parents in the Military. Children of military parents must meet the physical examination requirements as the Interstate Compact on Educational Opportunity for Military Children does not waive this requirement for them.

Students Experiencing Homelessness. Students experiencing homelessness cannot be excluded from school attendance because the requisite health information required of other students cannot be provided. School divisions must immediately refer the student to the school division liaison to assist the student in obtaining the necessary physical examination.

Students in Foster Care. If the report of a comprehensive physical examination is not immediately available upon taking the child into custody, the placing social services agency shall obtain and produce or otherwise ensure compliance with such requirements for the foster child within 30 days after the child's enrollment. (§ 63.2-900.D of the Code)

Please note that while the report of the comprehensive physical examination must contain the elements prescribed by the State Health Commissioner, state law does not require it to be on the School Entrance Health Form, MCH 213G in order to be accepted by the local school board. Therefore, school divisions cannot deny enrollment to a student who provides the necessary report

on a different form, as long as that form is attached to a MCH 213G. For more information, please refer to Superintendent's Memorandum #103-12, issued on April 20, 2012:
http://www.doe.virginia.gov/administrators/superintendents_memos/2012/103-12.shtml.

Immunizations

Pursuant to § 22.1-271.2 of the *Code*, no student shall be admitted by a school if his parent does not submit documentary proof of immunization to the admitting official unless, at the time of admission, the student is exempted from immunization pursuant to subsection C, or the student is a homeless child or youth as defined in § 22.1-3 of the *Code*. If a student does not have documentary proof of immunization, the school shall notify the student or his parent: (i) that it has no documentary proof of immunization for the student; (ii) that it may not admit the student without proof unless the student is exempted pursuant to subsection C, including any homeless child or youth as defined in § 22.1-3 of the *Code*; (iii) that the student may be immunized and receive certification by a licensed physician, licensed nurse practitioner, registered nurse, or an employee of a local health department; and (iv) how to contact the local health department to learn where and when it performs these services. Documentation indicating that the child has received the required immunizations must be provided.

Any child whose immunizations are incomplete may be admitted conditionally if the parent or guardian provides documentation, at the time of enrollment, that the child has received at least one dose of the required immunizations and has a written schedule for completing the remaining doses within 90 days. If the student requires more than two doses of hepatitis B vaccine, the conditional enrollment period shall be 180 calendar days.

Religious Exemption. No certificate of immunization shall be required for a student's school admission if the student or his parent submits an affidavit to the admitting official stating that the administration of immunizing agents conflicts with the student's religious tenets or practices; or the school has written certification from a licensed physician, licensed nurse practitioner, or a local health department that one or more of the required immunizations may be detrimental to the student's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

Students with a Parent or Parents in the Military. Children of military families without documentation of immunizations should be immediately enrolled and shall have up to 30 days from the date of enrollment to obtain any immunizations required by the receiving state. (§ 22.1-360 of the *Code*)

Students Experiencing Homelessness. Students experiencing homelessness cannot be excluded from school attendance because the requisite immunization information required of other students cannot be provided. School divisions must immediately refer the student to the school division liaison to assist the student in obtaining the necessary proof of completion of immunizations.

Students in Foster Care. If the proof of immunization is not immediately available upon taking the child into custody, the placing social services agency shall obtain and produce or otherwise ensure compliance with such requirements for the foster child within 30 days after the child's enrollment. (§ 63.2-900.D of the *Code*)

Please review the [School and Day Care Minimum Immunization Requirements](#) (available on the website for the Virginia Department of Health) for a list of the required immunizations.

Expulsion Statement

When a student is registered, the parent must provide a sworn statement or affirmation indicating whether the child has been expelled from attending a private school or another public school in Virginia or a school in another state for an offense involving weapons, alcohol or drugs, or for willful infliction of injury to another person. In addition, the parent must provide a sworn statement or affirmation indicating whether the student has been found guilty of or adjudicated delinquent for any offense listed in subsection G of § 16.1-260 of the *Code* or any substantially similar offense under the laws of any state, the District of Columbia, or the United States or its territories. (§ 22.1-3.2 of the *Code*)

Transfer Students

Section 22.1-253.13:4 of the *Code* (Standard 4 of the Standards of Quality) requires local school boards to make provisions for students who transfer between public secondary schools and from nonpublic schools or from home instruction as outlined in the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* (SOA). The SOA, at 8VAC20-131-60 provides:

...Students transferring in grades K-8 from Virginia public schools or nonpublic schools accredited by one of the approved accrediting constituent members of the Virginia Council for Private Education shall be given recognition for all grade-level work completed. The academic record of students transferring from all other schools shall be evaluated to determine appropriate grade placement in accordance with policies adopted by the local school board.... (8VAC20-131-60.A of the SOA)

...A secondary school shall accept credits toward graduation received from Virginia nonpublic schools accredited by one of the approved accrediting constituent members of the Virginia Council for Private Education (VCPE).... (8VAC20-131-60.D of the SOA)

All school divisions should have policies regarding the transfer process.

Students from Other Countries

Generally, students who are 18 and 19 and who are transferring from high schools in other countries should be counseled on all options. However, they are still eligible for enrollment as a person of school age as provided in the *Code* unless they have a comparable diploma from a high school located in a foreign country. If a receiving school division has questions about a student's diploma or transcript, the receiving school division should research the issues to determine what kind of diploma the student has and to determine whether it comparable to Virginia's diploma requirements. In addition, students who are from other countries and who have special education needs may be eligible for special education and related services through age 21 if they have not graduated with a comparable diploma from a high school located in a foreign country. If an English Learner is enrolled in a Virginia public school and turns 22 during the school year, that student may continue through the end of that school year.

Questions have arisen regarding a local school board's authority to inquire into a prospective student's citizenship or visa status and to bar enrollment to those students who reside within the school division but do not hold a student visa. School divisions are not permitted to inquire into a prospective student's citizenship or visa status in order to enroll that student in school. Pursuant to a decision by the United States Supreme Court, *Plyler v. Doe*, 457 U.S. 202 (1982), school

divisions are required to accept students who meet residency requirements under § 22.1-31 of the *Code* and may not deny a free public education to undocumented school-age children who reside within their jurisdiction because they do not hold valid United States citizenship or a student visa.

On May 8, 2014, the United States Department of Education (USED), in conjunction with the United States Department of Justice (USDOJ), issued an advisory letter reminding educational agencies that, under federal law, state and local educational agencies are required to provide all children with equal access to public education at the elementary and secondary levels. In the advisory letter, USED and USDOJ indicated that they had become aware of student enrollment practices that may discourage or lead to the exclusion of students based on their or their parents' or guardians' citizenship or immigration status. The letter of May 8, 2014 replaced the advisory letter previously issued May 6, 2011 and was written in response to inquiries the Department received about the May 6, 2011 letter. The guidance in the May 8, 2014 letter is applicable to the 2017-2018 school year.

Here are highlights from the May 8, 2014 advisory letter:

- A school division should review the list of documents that can be used to establish residency and ensure that any required documents would not unlawfully bar or discourage a student who is undocumented or whose parents are undocumented from enrolling in or attending school.
- As with residency requirements, rules vary among states and school divisions as to what documents students may use to show that they fall within state or district mandated minimum and maximum age requirements, and jurisdictions typically accept a variety of documents for this purpose. A school division may not bar a student from enrolling in its schools because he or she lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate.
- School divisions have federal obligations, and in some instances, state obligations to report certain data, such as the race and ethnicity of their student populations. While the USED requires divisions to collect and report such information, divisions cannot use the acquired data to discriminate against students; nor should a parent's or guardian's refusal to respond to a request for this data lead to a denial of the child's enrollment.

To ensure compliance, please read the advisory letter of May 8, 2014 very carefully.

Social Security Numbers

The Department of Education and local school boards are prohibited from requiring any student enrolled in a public school or receiving home instruction, or his parent, to provide the student's federal social security number. (§ 22.1-287.03 of the *Code*)

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance

All school divisions must comply with 34 CFR PART 110 (Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance). In addition, Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin by recipients of federal funds, and refusal by a school division to enroll qualified students on the

basis of race, color, or national origin is a violation of this prohibition against discrimination. Please contact the Office of Policy at (804) 225-2092, or by email at policy@doe.virginia.gov, if you have any questions.

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