

CHAPTER 3

ENROLLMENT IN AND ACCESS TO SCHOOL

3.1 INTRODUCTION

Court-involved, migrant, and other vulnerable youth often experience multiple school placements or have difficulty enrolling in school. For that reason, specific provisions in the Virginia Code protect and promote school stability for students in foster care; homeless youth receive similar protections under the McKinney-Vento Homeless Assistance Act. There are also protections for juveniles who are leaving the custody of the Department of Juvenile Justice to ensure that they are reenrolled in school as quickly and with as little disruption to their educational services as possible.

3.2 GENERAL ENROLLMENT PRINCIPLES

All children in the Commonwealth of Virginia between the ages of 5 and 18 must be enrolled in school.¹ To comply with the mandatory attendance requirements of the Virginia Code, children can be enrolled in either public or private school or can be home-schooled.²

Although students are only required to be enrolled in and attend school until they are eighteen years old, schools have an obligation under the Virginia Constitution to provide an education to students until they are twenty years old. Section 1 of Article 8 of the Virginia Constitution requires that “a system of free public elementary and secondary schools [be provided] for all children of school age.” Children of “school age” are defined by statute as students who turn five years old by September 30th of the school year and who have not reached age twenty by August 1st of the school year.³ For example, a nineteen year old who has not yet completed high school and who wants to continue attending school may do so, so long as the person turns twenty after August 1st of the school year.

The public schools must be free to all children who “reside” within a school division.⁴ Residency must be “bona fide,” meaning that it may not be

¹ VA. CODE ANN. § 22.1-254(A).

² *Id.*

³ VA. CODE ANN. § 22.1-1.

⁴ VA. CODE ANN. § 22.1-3(A).

solely for school purposes.⁵ Section 22.1-3(A) of the Virginia Code sets forth a list of children who must be deemed to reside in a school division. Children reside in a school division if:

1. their biological or adoptive parents reside in the school division;
2. their parents are in the military and are deployed outside the United States, and their legal guardians, who have been so designated by a Special Power of Attorney pursuant to 10 U.S.C. § 1044b, reside in the school division;
3. their parents are deceased and they are living with someone who is acting *in loco parentis* and lives in the school division;
4. their parents are unable to care for them, and they live with a person in the school division who is a court-appointed guardian, has legal custody, or is acting *in loco parentis* pursuant to the placement of the children for adoption by a person or entity authorized to do so under Section 63.2-1200 of the Virginia Code;
5. the student is an emancipated minor and living in the school division not solely for the purposes of attending school there; or
6. they are homeless youths as defined by the McKinney-Vento Act and Section 22.1-3 of the Virginia Code.⁶

However, this list of students is not exhaustive. It merely constitutes a set of students who must be deemed bona fide residents of a school division.⁷ Any student who can provide evidence of a non-school related reason for living in the school division is a bona fide resident of a school division.

⁵ 1987-88 Va. Op. Atty. Gen. 374 (Va.A.G.).

⁶ VA. CODE ANN. § 22.1-3(A).

⁷ 1987-88 Va. Op. Atty. Gen. 374 (1987).

3.3 DOCUMENTS AND CERTIFICATIONS REQUIRED FOR ENROLLMENT

The Virginia Code requires that certain paperwork be presented to schools before children can be enrolled. First, a certified copy of a child's birth certificate must be presented to the school.⁸ If a certified copy of the birth certificate cannot be obtained, then an affidavit must be presented that sets forth the child's age and explains the reason that a certified copy of the child's birth certificate cannot be obtained.⁹ Schools are required to notify local law enforcement when a student is enrolled without furnishing a copy of his or her birth certificate. The notification must include copies of the proof of age submitted by the parent and the affidavit explaining why the birth certificate could not be produced.¹⁰

Except in circumstances described later regarding homeless students and students in foster care, the school may also require proof of the child's residence, a medical report stating that the child has had a full physical examination within the twelve months prior to the time when he or she will enter school,¹¹ and documentation indicating that the child has received the required immunizations.¹² In 2015, Virginia eliminated the requirement that students present a federal social security number within ninety days of enrollment, and implemented a new requirement for all school districts to assign unique student identification numbers to all students.¹³

Prior to admission, parents must also certify under oath whether the student has been: (1) expelled from school attendance at another school (public or private) for an offense in violation of school board policies relating to weapons, alcohol or drugs, or for willful infliction of injury to another person; or (2) found guilty of or adjudicated delinquent for any offense listed in Virginia Code § 16.1-260(G). Enrollment issues for suspended, expelled, and court-involved youth are reviewed later in this chapter.

⁸ VA. CODE ANN. § 22.1-3.1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ VA. CODE ANN. § 22.1-270.

¹² VA. CODE ANN. § 22.1-271.2.

¹³ VA. CODE ANN. § 22.1-287.02.

3.4 ENROLLMENT FOR SPECIAL POPULATIONS

3.401 Students Living with Non-Parent Relatives. It is not uncommon for students to live with non-parent relatives or other non-parent adults. Often grandparents, aunts, older siblings, and cousins care for children without any court-ordered guardianship or other formal legal relationship with the children. Enrollment in these cases can be confusing for students, caretakers, and school staff.

Like all students, students living with non-parent relatives or other non-relative adults have a right to be enrolled in school in the school division in which they are bona fide residents as long as they are not living with the non-parent relative or adult solely for the purpose of attending school in the school division.¹⁴ According to Opinions of the Virginia Attorney General, bona fide residency can be established by a number of means, and a guardianship order is only one means of establishing residency.¹⁵ Therefore, a school cannot require a guardianship order to enroll a child in school if bona fide residency can be established in other ways.¹⁶

In 2013, Virginia enacted new legislation allowing children receiving kinship care to enroll in the school division where their kinship care provider resides. Kinship care is defined as “full-time care, nurturing, and protection of children by relatives.”¹⁷ This legislation allows local school divisions to require one legal parent and the kinship provider to sign affidavits detailing the arrangement as well as a power of attorney authorizing the kinship providers to make educational decisions. In addition to this documentation, a school division may require confirmation from the local department of social services. These provisions are codified in Virginia Code § 22.1-3, which outlines who is entitled to free public schooling.

There is, however, a specific statute that governs the enrollment of children who reside in a school division in Virginia but whose parents reside out of state. When an adult residing in Virginia is caring for a school-age child whose parents live outside of Virginia, and that child has resided with the adult for 60 days or more, the adult must enroll the child in a Virginia school.¹⁸ Adults caring for children who have parents outside of Virginia must

¹⁴ VA. CODE ANN. §§ 22.1-3(A)(2)-(4).

¹⁵ 1987-88 Va. Op. Atty. Gen. 374 (1987).

¹⁶ *Id.*

¹⁷ VA. CODE ANN. § 63.2-100.

¹⁸ VA. CODE ANN. § 22-1-255.

either pay tuition charges for the child's school attendance or must find some way of having others pay tuition for the child's school attendance.¹⁹

NOTE: JustChildren has worked with some school districts that have allowed children living with relatives and other caretakers to be enrolled in school if the caretaker provides a power of attorney signed by the parent and a sworn statement from the resident caretaker that the child is living in the jurisdiction not solely for school purposes. If a school district does not accept a power of attorney and a sworn statement, the child may still be entitled to tuition-free schooling. Please contact JustChildren for technical assistance. For samples of an enrollment cover sheet, a power of attorney and a sworn statement, see the attachments for this chapter. For Spanish translations of these samples, please contact JustChildren.

3.402 Homeless Students (McKinney-Vento Rights). The McKinney-Vento Homeless Assistance Act, originally passed in 1987 and most recently re-authorized in December 2015 by the Every Student Succeeds Act (ESSA), protects the educational rights of homeless youth. In general, its protections prevent homeless students from having to transfer schools simply because of their status as homeless. Homeless youth are defined as those “who lack a fixed, regular, and adequate nighttime residence.”²⁰ The definition includes a series of categories of housing instability that cover most if not all forms of homelessness.²¹ With the passage of ESSA in 2015, two key changes were made to the definition.²² Preschool aged children are now specifically included among other homeless children and youth²³ while children who are awaiting foster care were removed from the definition of homeless youth.²⁴ The definition now includes:

- children who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;

¹⁹ *Id.*

²⁰ 42 U.S.C. § 11434a(2).

²¹ *Id.*

²² For more information on the amendments to McKinney-Vento, please see U.S. Dep't of Educ., *Education for Homeless Children and Youths Program Non-Regulatory Guidance (Title VII-B of the McKinney-Vento Homeless Assistance Act, as amended by the Every Student Succeeds Act)* (July 27, 2016), available at <https://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716.pdf> (last visited July 30, 2018).

²³ 42 U.S.C. § 11432(d)(2).

²⁴ See Section in this chapter entitled “Youth in Foster Care,” below.

- children who are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
- children who are living in emergency or transitional shelters; or are abandoned in hospitals;
- children who have a primary nighttime residence that is a public or private place not designated for or ordinarily used as a regular sleeping accommodation for human beings, as defined by 42 U.S.C. § 11302(a)(2)(C);
- children who are living in cars, parks, public places, abandoned buildings, substandard housing, bus or train stations, or similar settings; and,
- migratory children as defined by 20 U.S.C. § 6399 who also meet one of the preceding types of homelessness.²⁵

Pursuant to McKinney-Vento, Virginia must ensure that homeless youth are able to enroll in, attend, and succeed in school. Homeless youth are entitled to the same access to education including extracurricular activities, summer school, career and technical education, advanced placement, and other educational programming as any other eligible child.²⁶ States must designate an Office of the Coordinator for Education of Homeless Children and Youths within their respective State Educational Agency (SEA), to coordinate the state's educational efforts for homeless children.²⁷ They must also develop professional development programs and training for liaisons within each Local Educational Agency (LEA).²⁸ The LEA liaisons have an obligation to ensure that homeless youth in their area are identified, enrolled in, and transported to school.²⁹ They must also engage parents or guardians of homeless children and make them aware of educational opportunities and related medical and housing services that they and their children can utilize.³⁰

²⁵ 42 U.S.C. § 11434a(2)(B).

²⁶ 42 U.S.C. § 11431(1).

²⁷ *Id.* at § 11432(d)(3).

²⁸ *Id.* at § 11432(d)(5).

²⁹ *Id.* at § 11432(g)(6)(A).

³⁰ *Id.*