

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 500

An Act to amend and reenact §§ 22.1-3, 22.1-3.1, 22.1-4.1, 22.1-270, and 22.1-271.2 of the Code of Virginia, relating to enrollment of certain children in public schools.

[S 270]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-3, 22.1-3.1, 22.1-4.1, 22.1-270, and 22.1-271.2 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-3. Persons to whom public schools shall be free.

The public schools in each school division shall be free to each person of school age who resides within the school division. Every person of school age shall be deemed to reside in a school division:

1. When the person is living with a natural parent, or a parent by legal adoption;

2. When the parents of such person are dead and the person is living with a person in loco parentis who actually resides within the school division;

3. When the parents of such person are unable to care for the person and the person is living, not solely for school purposes, with another person who resides in the school division and is either (i) the court-appointed guardian, or has legal custody, of the person or (ii) 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;

4. ~~When the person is living with a parent, guardian, or person in loco parentis in a temporary shelter in the school division, not solely for school purposes;~~

5. When the person is living in the school division not solely for school purposes, as an emancipated minor; or

6 5. When the person *living in the school division is a homeless child or youth, as set forth in this subdivision, who lacks a fixed, regular, and adequate nighttime residence and has a primary nighttime residence located within the school division that is:*

~~a. a supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing for the mentally ill;~~

~~b . Such persons shall include (i) children and youths, including unaccompanied youths who are not in the physical custody of their parents, who (a) are sharing the housing of other persons due to loss of housing, economic hardship, or other causes; are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations or in emergency, congregate, temporary, or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement; (b) are living in an institution that provides a temporary residence for the mentally ill or individuals intended to be institutionalized; or (c) have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or (d) are living in parked cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and (ii) migratory children, as defined in the Elementary and Secondary Education Act of 1965, as amended, who are deemed homeless as they are living in circumstances set forth in clause (i) of this subdivision.~~

For purposes of *clause (i) of subdivision 4 5*, "temporary shelter" means (i) any home, single or multi-unit dwelling or housing unit in which persons who are without housing or a fixed address receive temporary housing or shelter or (ii) any facility specifically designed or approved for the purpose of providing temporary housing or shelter to persons who are without permanent housing or a fixed address.

If a person resides within housing, temporary shelter, or primary nighttime residence as described in subdivision 6 5 that is situated in more than one school division, the person shall be deemed to reside in and shall be entitled to attend a public school within either school division. However, if a person resides in housing, temporary shelter, or primary nighttime residence as described in subdivision 6 5 that is located in one school division, but the property on which such housing, temporary shelter, or primary nighttime residence is located lies within more than one school division, such person shall be deemed to reside only in the single school division in which the housing, temporary shelter, or primary nighttime residence is located. Notwithstanding any such residency determination, any person residing in housing, a temporary shelter, or primary nighttime residence as described in subdivision 6 5 that is located in one school division, but the property on which such housing, temporary shelter, or primary nighttime residence is located lies within more than one school division, shall be deemed to reside in either school division, if such person or any sibling of such person residing in the same housing or temporary shelter attends, prior to July 1, 1999, or, in the case of a primary nighttime residence as described in

subdivision 6 5, prior to July 1, 2000, a school within either school division in which the property on which the housing, temporary shelter, or primary nighttime residence is located.

School divisions shall comply with the requirements of the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001, as amended (42 U.S.C. § 11431 et seq.), to ensure that homeless children and youths shall receive the educational services comparable to those offered to other public school students.

School divisions serving the students identified in subdivision 5 shall coordinate the identification and provision of services to such students with relevant local social services agencies and other agencies and programs providing services to such students, and with other school divisions as may be necessary to resolve interdivisional issues.

§ 22.1-3.1. Birth certificates required upon admission; required notice to the local law-enforcement agency.

A. *Except as otherwise provided in this subsection, no pupil shall be admitted for the first time to any public school in any school division in this Commonwealth unless the person enrolling the pupil shall present, upon admission, a certified copy of the pupil's birth record. The principal or his designee shall record the official state birth number from the pupil's birth record into the pupil's permanent school record. If a certified copy of the pupil's birth record cannot be obtained, the person so enrolling the pupil shall submit an affidavit setting forth the pupil's age and explaining the inability to present a certified copy of the birth record. If the school division cannot ascertain a child's age because of the lack of a birth certificate, the child shall nonetheless be admitted into the public schools if the division superintendent determines that the person submitting the affidavit presents information sufficient to estimate with reasonable certainty the age of such child.*

However, if the student seeking enrollment is a homeless child or youth as defined in § 22.1-3, the school shall immediately enroll such student, even if such student is unable to produce the records required for enrollment, and shall immediately contact the school last attended by the student to obtain relevant academic and other records, and shall comply with the provisions of the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001, as amended (42 U.S.C. § 11431 et seq.), including immediately referring the parent of the student or the youth to the local school division liaison, as described in the federal Act, who shall assist in obtaining the necessary records for enrollment.

B. Upon the failure of any person enrolling a pupil to present a certified copy of the pupil's birth record, the principal of the school in which the pupil is being enrolled or his designee shall immediately notify the local law-enforcement agency. The notice to the local law-enforcement agency shall include copies of the submitted proof of the pupil's identity and age and the affidavit explaining the inability to produce a certified copy of the birth record.

C. Within ~~fourteen~~ 14 days after enrolling a transferred pupil, the principal of the school in which the pupil has been enrolled or his designee shall request that the principal or his designee of the school in which the pupil was previously enrolled submit documentation that a certified copy of the pupil's birth record was presented upon the pupil's initial enrollment.

D. Principals and their designees shall be immune from any civil or criminal liability in connection with any notice to a local law-enforcement agency of a pupil lacking a birth certificate or failure to give such notice as required by this section.

§ 22.1-4.1. Street addresses required in certain school admission documents.

Documents submitted for admission of any child to public schools in the Commonwealth, except such documents required in accordance with §§ 22.1-3.1 and 22.1-270, shall include the street address or route number of each pupil's residence. If no street address or route number exists for such residence, a post office box number shall be required.

~~If the pupil has no fixed, regular, and adequate nighttime residence, and has a primary nighttime residence as described in subsection 6 of~~ *is a homeless child or youth as defined in subdivision 5 of § 22.1-3, and for that reason the school division determines, on the basis of the affidavit of the person seeking to enroll the pupil, that a street address, route number, or post office box number cannot be provided, it may accept an address in an alternate form it deems appropriate.*

Address information provided under this section shall not be released to any person unless otherwise authorized by law.

§ 22.1-270. Preschool physical examinations.

A. No pupil shall be admitted for the first time to any public kindergarten or elementary school in a school division unless such pupil shall furnish, prior to admission, (i) a report from a qualified licensed physician, or a licensed nurse practitioner or licensed physician assistant acting under the supervision of a licensed physician, of a comprehensive physical examination of a scope prescribed by the State Health Commissioner performed within the ~~twelve~~ 12 months prior to the date such pupil first enters such public kindergarten or elementary school or (ii) records establishing that such pupil furnished such report upon prior admission to another school or school division and providing the information contained in such report.

~~If the pupil has no fixed, regular, and adequate nighttime residence, and has a primary nighttime~~

~~residence as described~~ *is a homeless child or youth as defined in subdivision 6 5 of § 22.1-3, and for that reason cannot furnish the report or records required by (i) or (ii) of this subsection, and the person seeking to enroll the pupil furnishes to the school division an affidavit so stating and also indicating that, to the best of his knowledge, such pupil is in good health and free from any communicable or contagious disease, the school division shall immediately refer the student for to the local school division liaison, as described in the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001, as amended (42 U.S.C. § 11431 et seq.) (the Act), who shall, as soon as practicable, assist in obtaining the necessary physical examination by the county or city health department or other clinic or physician's office and shall immediately admit the pupil to school pending receipt of the report from such physical examination, as required by such Act.*

B. The physician, or licensed nurse practitioner or licensed physician assistant acting under the supervision of a licensed physician, making a report of a physical examination required by this section shall, at the end of such report, summarize the abnormal physical findings, if any, and shall specifically state what, if any, conditions are found that would identify the child as handicapped.

C. Such physical examination report shall be placed in the child's health record at the school and shall be made available for review by any employee or official of the State Department of Health or any local health department at the request of such employee or official.

D. Such physical examination shall not be required of any child whose parent ~~or guardian~~ shall object on religious grounds and who shows no visual evidence of sickness, provided that such parent ~~or guardian~~ shall state in writing that, to the best of his knowledge, such child is in good health and free from any communicable or contagious disease.

E. The health departments of all of the counties and cities of the Commonwealth shall conduct such physical examinations for medically indigent children without charge upon request and may provide such examinations to others on such uniform basis as such departments may establish.

F., G., H. [Repealed.]

I. Parents ~~or guardians~~ of entering students shall complete a health information form which shall be distributed by the local school divisions. Such forms shall be developed and provided jointly by the Department of Education and Department of Health, or developed and provided by the school division and approved by the Superintendent of Public Instruction. Such forms shall be returnable within ~~fifteen~~ 15 days of receipt unless reasonable extensions have been granted by the superintendent or his designee. Upon failure of the parent ~~or guardian~~ to complete such form within the extended time, the superintendent may send to the parent ~~or guardian~~ written notice of the date he intends to exclude the child from school; *however, no child who is a homeless child or youth as defined in subdivision 5 of § 22.1-3 shall be excluded from school for such failure to complete such form.*

§ 22.1-271.2. Immunization requirements.

A. No student shall be admitted by a school unless at the time of admission the student or his parent ~~or guardian~~ submits documentary proof of immunization to the admitting official of the school or unless the student is exempted from immunization pursuant to subsection C *or is a homeless child or youth as defined in subdivision 5 of § 22.1-3*. If a student does not have documentary proof of immunization, the school shall notify the student or his parent ~~or guardian~~ (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 subdivision 5 of § 22.1-3*; (iii) that the student may be immunized and receive certification by a licensed physician, 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. Neither this Commonwealth nor any school or admitting official shall be liable in damages to any person for complying with this section.

Any physician, registered nurse or local health department employee performing immunizations shall provide to any person who has been immunized or to his parent ~~or guardian~~, upon request, documentary proof of immunizations conforming with the requirements of this section.

B. Any student whose immunizations are incomplete may be admitted conditionally if that student provides documentary proof at the time of enrollment of having received at least one dose of the required immunizations accompanied by a schedule for completion of the required doses within ~~ninety~~ 90 days.

The immunization record of each student admitted conditionally shall be reviewed periodically until the required immunizations have been received.

Any student admitted conditionally and who fails to comply with his schedule for completion of the required immunizations shall be excluded from school until his immunizations are resumed.

C. No certificate of immunization shall be required for the admission to school of any student if (i) the student or his parent ~~or guardian~~ submits an affidavit to the admitting official stating that the administration of immunizing agents conflicts with the student's religious tenets or practices; or (ii) the school has written certification from a licensed physician 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.

However, if a student is a homeless child or youth as defined in subdivision 5 of § 22.1-3 and (a)

does not have documentary proof of necessary immunizations or has incomplete immunizations and (b) is not exempted from immunization pursuant to clauses (i) or (ii) of this subsection, the school division shall immediately admit such student and shall immediately refer the student to the local school division liaison, as described in the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001, as amended (42 U.S.C. § 11431 et seq.) (the Act), who shall assist in obtaining the documentary proof of, or completing, immunization and other services required by such Act.

D. The admitting official of a school shall exclude from the school any student for whom he does not have documentary proof of immunization or notice of exemption pursuant to subsection C, *including notice that such student is a homeless child or youth as defined in subdivision 5 of § 22.1-3.*

E. Every school shall record each student's immunizations on the school immunization record. The school immunization record shall be a standardized form provided by the State Department of Health, which shall be a part of the mandatory permanent student record. Such record shall be open to inspection by officials of the State Department of Health and the local health departments.

The school immunization record shall be transferred by the school whenever the school transfers any student's permanent academic or scholastic records.

Within ~~thirty~~ 30 calendar days after the beginning of each school year or entrance of a student, each admitting official shall file a report with the local health department. The report shall be filed on forms prepared by the State Department of Health and shall state the number of students admitted to school with documentary proof of immunization, the number of students who have been admitted with a medical or religious exemption and the number of students who have been conditionally admitted, *including those students who are homeless children or youths as defined in subdivision 5 of § 22.1-3.*

F. ~~The requirement for mumps immunization as provided in § 32.1-46 shall not apply to any child admitted for the first time to any grade level, kindergarten through grade twelve, of a school prior to August 1, 1981.~~

The requirement for Haemophilus Influenzae Type b immunization as provided in § 32.1-46 shall not apply to any child admitted to any grade level, kindergarten through grade ~~twelve~~ 12.

G. The Board of Health shall promulgate rules and regulations for the implementation of this section in congruence with rules and regulations of the Board of Health promulgated under § 32.1-46 and in cooperation with the Board of Education.