

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 967

An Act to amend and reenact §§ 22.1-3, 22.1-5, and 22.1-270 of the Code of Virginia, relating to the admission of certain persons to the public schools of the Commonwealth.

[H 1443]

Approved April 15, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-3, 22.1-5, and 22.1-270 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 person is living with an individual who is defined as a parent in § 22.1-1, not solely for school purposes, pursuant to a Special Power of Attorney executed under Title 10, United States Code, § 1044b, by the custodial parent while such custodial parent is deployed outside the United States as a member of the Virginia National Guard or as a member of the United States Armed Forces;*

3. 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;

4. 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;

5. 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;

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

7. When the person 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. an institution that provides a temporary residence for individuals intended to be institutionalized; or

c. a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

For purposes 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 7 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 7 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 7 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 7, 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.

§ 22.1-5. Regulations concerning admission of certain persons to schools; tuition charges.

A. Consistent with Article VIII, Section 1 of the Constitution of Virginia, no person may be charged tuition for admission or enrollment in the public schools of the Commonwealth, whether on a full-time or part-time basis, who meets the residency criteria set forth in § 22.1-3. No person of school age shall

be charged tuition for enrollment in a general education development or alternative program offered as a regional or divisionwide initiative by the local school division in which such person is deemed to reside pursuant to § 22.1-3. *Further, no person of school age shall be denied admission or charged tuition when (i) such person's custodial parent has been deployed outside the United States as a member of the Virginia National Guard or as a member of the United States Armed Forces; (ii) such person's custodial parent has executed a Special Power of Attorney under Title 10, United States Code, § 1044b providing for the care of the person of school age by an individual who is defined as a parent in § 22.1-1 during the time of his deployment outside the United States; and (iii) such person has been attending a public school in this Commonwealth while residing with his custodial parent. The person of school age shall be allowed to attend a school in the school division in which the individual providing for his care, pursuant to the Special Power of Attorney under Title 10, United States Code, § 1044b, resides or, when practicable, to continue to attend the school in which he was enrolled while residing with his custodial parent.*

The following persons may, however, in the discretion of the school board of a school division and pursuant to regulations adopted by the school board, be admitted into the public schools of the division and may, in the discretion of the school board, be charged tuition:

1. Persons who reside within the school division but who are not of school age.
2. Persons of school age who are residents of the Commonwealth but who do not reside within the school division, *except as provided in this section.*
3. Persons of school age who are attending school in the school division pursuant to a foreign student exchange program approved by the school board.
4. Persons of school age who reside beyond the boundaries of the Commonwealth but near thereto in a state or the District of Columbia which grants the same privileges to residents of the Commonwealth.
5. Persons of school age who reside on a military or naval reservation located wholly or partly within the geographical boundaries of the school division and who are not domiciled residents of the Commonwealth of Virginia; however, no person of school age residing on a military or naval reservation located wholly or partly within the geographical boundaries of the school division may be charged tuition if federal funds provided under P.L. 874 of 1950, commonly known as Impact Aid, shall fund such students at not less than ~~forty~~ 50 percent of the total per capita cost of education, exclusive of capital outlay and debt service, for elementary or secondary pupils, as the case may be, of such school division.
6. Persons of school age who, as domiciled residents of the Commonwealth who were enrolled in a public school within the school division, are required as a result of military or federal orders issued to their parents to relocate and reside on federal property in another state or the District of Columbia, if the school division subsequently enrolling such persons is contiguous to such state or District of Columbia.
7. Persons of school age who reside in the school division and who are enrolled in summer programs, exclusive of required remediation as provided in § 22.1-253.13:1, or in local initiatives or programs not required by the Standards of Quality or the Standards of Accreditation.

For the purposes of determining the residency of persons described in subdivisions 1 and 2 of this subsection, local school boards shall adopt regulations consistent with the residency requirements regarding persons residing in housing or temporary shelter, or on property located in multiple jurisdictions, as articulated in § 22.1-3.

B. Persons of school age who are not residents of the Commonwealth but are living temporarily with persons residing within a school division may, in the discretion of the school board and pursuant to regulations adopted by it, be admitted to the public schools of the school division. Tuition shall be charged such persons.

C. No tuition charge authorized or required in this section shall exceed the total per capita cost of education, exclusive of capital outlay and debt service, for elementary or secondary pupils, as the case may be, of such school division and the actual, additional costs of any special education or gifted and talented program provided the pupil, except that if the tuition charge is payable by the school board of the school division of the pupil's residence pursuant to a contract entered into between the two school boards, the tuition charge shall be that fixed by such contract.

D. School boards may accept and provide programs for students for whom English is a second language who entered school in Virginia for the first time after reaching their twelfth birthday, and who have not reached ~~twenty-two~~ 22 years of age on or before August 1 of the school year. No tuition shall be charged such students, if state funding is provided for such programs.

§ 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 in ~~subdivision 6 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, the school division shall refer the student for physical examination by the county or city health department and admit the pupil to school pending receipt of the report from such physical examination.

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.