

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 586

An Act to amend and reenact §§ 22.1-3, 22.1-4.1, 22.1-270, and 22.1-271.2 of the Code of Virginia, relating to free public elementary and secondary education; eligibility criteria.

[H 2297]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-3, 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.

A. 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, in accordance with the provisions of § 22.1-360, the person 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 10 U.S.C. § 1044b by the custodial parent;

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 (i) the court-appointed guardian, or has legal custody, of the person; (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; or (iii) an adult relative providing temporary kinship care as that term is defined in § 63.2-100. Local school divisions may require one or both parents and the relative providing kinship care to submit signed, notarized affidavits (a) explaining why the parents are unable to care for the person, (b) detailing the kinship care arrangement, and (c) agreeing that the kinship care provider or the parent will notify the school within 30 days of when the kinship care arrangement ends, as well as a power of attorney authorizing the adult relative to make educational decisions regarding the person. A school division may also require the parent or adult relative to obtain written verification from the local department of social services where the parent or parents live, or from both that department and the department of social services where the kinship provider lives, that the kinship arrangement serves a legitimate purpose that is in the best interest of the person other than school enrollment. With written consent from the parent or adult relative, for the purposes of expediting enrollment, a school division may obtain such written verification directly from the local department or departments of social services. The verification process shall be consistent with confidentiality provisions of Article 5 (§ 22.1-287 et seq.) of Chapter 14 of this title and Chapter 1 (§ 63.2-100 et seq.) of Title 63.2. If the kinship care arrangement lasts more than one year, a school division may require continued verification directly from one or both departments of social services as to why the parents are unable to care for the person and that the kinship care arrangement serves a legitimate purpose other than school enrollment. A local school division may enroll a person living with a relative in a kinship care arrangement that has not been verified by a local department of social services;

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

6. *When all or any portion of the building in which such person resides (i) with another person as set forth in subdivisions 1 through 4 or (ii) as an emancipated minor as set forth in subdivision 5 is taxable by the locality in which the school division is located; or*

7. 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. 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 a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations or in emergency or transitional shelters; or are abandoned in hospitals; (b) 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 (c) 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 federal Elementary and Secondary Education Act of 1965, P.L. 89-10, as amended, who are deemed homeless as they are living in circumstances set forth in clause (i).

School divisions shall comply with the requirements of Subtitle VII-B of the federal McKinney-Vento Homeless Assistance Act, 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 *this* subdivision 6 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.

B. In the interest of providing educational continuity to the children of military personnel, no child of a person on active military duty:

1. Who is attending a school free of charge in accordance with this section shall be charged tuition by that school division upon such child's relocation to military housing located in another school division in the Commonwealth, pursuant to orders received by such child's parent to relocate to base housing. Such children shall be allowed to continue attending school in the school division they attended immediately prior to the relocation and shall not be charged tuition for attending such school;

2. Who is attending a school free of charge in accordance with this section shall be charged tuition by that school division upon such child's relocation pursuant to orders received by such child's parent to relocate to a new duty station or to be deployed. Such children shall be allowed to remain enrolled in the current school division free of tuition through the end of the school year; and

3. Who is eligible to attend school free of charge in accordance with this section shall be charged tuition by a school division that will be the child's school division of residence once his service member parent is relocated pursuant to orders received. Such a child shall be allowed to enroll in the school division of the child's intended residence if documentation is provided, at the time of enrollment, of military orders of the service member parent or an official letter from the service member's command indicating such relocation. Documentation indicating a permanent address within the school division shall be provided to the school division within 120 days of a child's enrollment or tuition may be charged, including tuition for the days since the child's enrollment in school. In the event that the child's service member parent is ordered to relocate before the 120th day following the child's enrollment, the school division shall not charge tuition. The assignment of the school such child will attend shall be determined by the local school division.

Such children as listed in subdivisions 1, 2, and 3 shall be counted in the average daily membership of the school division in which they are enrolled. Further, the school division in which such children are enrolled subsequent to their relocation to base housing shall not be responsible for providing for their transportation to and from school.

§ 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 is a homeless child or youth as defined in subdivision A 6 7 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 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 is a homeless child or youth as defined in subdivision A 6 7 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 to the local school division liaison, as described in Subtitle VII-B of the federal McKinney-Vento Homeless Assistance Act, 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, 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 shall object on religious grounds and who shows no visual evidence of sickness, provided that such parent 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. Parents 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 15 days of receipt unless reasonable extensions have been granted by the superintendent or his designee. Upon failure of the parent to complete such form within the extended time, the superintendent may send to the parent 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 A 6 7 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 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 A 6 7 of § 22.1-3. 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 subdivision A 6 7 of § 22.1-3; (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. Neither this Commonwealth nor any school or admitting official shall be liable in damages to any person for complying with this section.

Any physician, nurse practitioner, registered nurse or local health department employee performing immunizations shall provide to any person who has been immunized or to his parent, 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 90 calendar days. If the student requires more than two doses of hepatitis B vaccine, the conditional enrollment period shall be 180 calendar 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 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, licensed nurse practitioner, or 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 A 6 7 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 A 6 7 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 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 A 6 7 of § 22.1-3.

F. 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 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.

2. That (i) each student who resides on property that is located in more than one school division and who registers for enrollment at a public school in one such local school division prior to July 1, 2019, and (ii) any sibling of any such student shall be deemed to reside in such local school division and is eligible to attend public school in such local school division for free.