



COMMONWEALTH of VIRGINIA
Department of Education

DATE: August 10, 2018
TO: Division Superintendents
FROM: James F. Lane, Superintendent of Public Instruction
SUBJECT: **Guidance Regarding School Division Responsibilities and Actions under the Law for Immigrant Students and Resources Available to Local School Divisions**

This memo provides information concerning the responsibilities of school divisions regarding students with immigration status, whether with their families, homeless, in the custody of the Department of Social Services, or unaccompanied. The memo also lists resources available to school divisions for supporting and teaching students affected by trauma.

Local school divisions have a constitutional and statutory obligation to provide education to K-12 students regardless of their immigration status, and to take active steps to guard their public education rights. In 1982, the United States Supreme Court ruled in *Plyler v. Doe*, 457 U.S. 202 (1982), that students who are illegal aliens may not be presumptively excluded from free public schooling. In 1999, the Office of the Attorney General, in response to an inquiry from then-Senator William C. Mims, stated that:

“School divisions are not permitted to inquire into a prospective student's citizenship or visa status in order to enroll that student in school.”

“School divisions shall accept students who meet the residency requirements under [Section 22.1-3 of the Code of Virginia](#) and may not deny a free public education to undocumented school-age children who reside within their jurisdictions because they do not hold valid United States citizenship or a student visa.”

While a case-by-case review of each child's circumstances upon enrolling in a Virginia public school is necessary, many of these unaccompanied children may be deemed homeless under applicable state and federal law. An unaccompanied alien child is a child who has no lawful immigration status in the United States; has not attained 18 years of age; and, with respect to whom, there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody. Pursuant to [§ 22.1-3 of the Code of Virginia](#), a homeless child is one who lacks a fixed, regular, and adequate nighttime residence. The statute specifies that, included in this definition, are “unaccompanied youths who are not in the physical custody of their parents, who... 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 ...”

School divisions must immediately enroll homeless students, even if those students are unable to produce the records required for enrollment. In addition, division superintendents cannot exclude from school attendance those homeless children who do not provide the requisite health or immunization information required of other students. School divisions must immediately refer the student to the school division liaison required to assist the student in obtaining necessary physical examinations or proof of completion of immunizations. For more

information regarding the enrollment of homeless students, please visit: <http://education.wm.edu/centers/hope/> ➔. See also Superintendent's Memos [Number 159](#) (2001) and [059](#) (2017), addressing enrollment of undocumented students from other countries.

It is the legal duty of school divisions to protect and to promote the safety and well-being of their students. The Virginia Department of Education (VDOE) encourages school divisions to develop or review their policies and procedures for students who cannot go home to their parents or legal guardians, in case the parent or guardian is separated from family or detained by immigration officials.

The Department provides technical assistance, materials, and professional development for school divisions working with students experiencing trauma. Attached is a list of resources. In addition, you or your staff may wish to attend the Mental Health in Schools conference planned for August 15 and 16 in Richmond. This conference focuses on coordinating and aligning a comprehensive array of school mental health services – promotion, prevention, and intervention – to maximize student outcomes. The intended audience is school personnel that provide mental health/social emotional supports to students in K-12 schools, including school counselors, school psychologists, school social workers, and other student support professionals and administrators. [Information about the conference and registration](#) ➔ can be found at <https://rampages.us/studentservices/event/mental-health-in-schools/>. [Materials from past years' sessions and supporting documents](#) can be found at: <http://www.doe.virginia.gov/support/prevention/mental-health/index.shtml>.

The VDOE and the Virginia Board of Education are committed to educating all students, regardless of nationality or immigration status. The Department and Board will work to support divisions whose students have been impacted by trauma. The Department and Board understand the long-term psychological impacts of childhood trauma, and reaffirm the commitment to safe and welcoming school environments and to the well-being of all children.

If you have questions regarding the above policies, please contact Zachary Robbins, Director of the Office of Policy, at 804-225-2092, or zachary.robbins@doe.virginia.gov ✉. If you have questions regarding student support services, please contact Maribel Saimre, Acting Director of the Office of Student Services, at 804-225-2071, or maribel.saimre@doe.virginia.gov ✉.

JFL/CAC/evw

Attachment:

- A. [Resources for Trauma Informed Instruction and Learning](#) (Word)