



COMMONWEALTH of VIRGINIA  
Department of Education

July 25, 2014

TO: Division Superintendents

FROM: Steven R. Staples, Superintendent of Public Instruction

**SUBJECT: Student Enrollment Requirements**

As you prepare for the 2014-2015 school year, I want to take the opportunity to remind you about certain enrollment requirements. Please distribute this information as widely as possible throughout your school division.

Residency

Section [22.1-3](#) of the *Code of Virginia* provides that the public schools in each school division shall be free to each person of school age who resides within the school division. A student is deemed a resident of a school division and entitled to enroll in school if he or she is living with a natural parent. A court order or proof of custody cannot be required of a natural parent for the enrollment of a student who is living with him/her. The student is also deemed to reside within the school division when the student is living with an adult relative providing temporary kinship care as defined in § [63.2-100](#) of the *Code*. The school division may require one or both of the parents and the adult relative providing kinship care to submit certain documents and verifications in order to enroll the child. Please see § [22.1-3](#) for more information on kinship care and the other instances under which a student is deemed a resident and entitled to enrollment.

Questions have arisen regarding a local school board's authority to inquire into a prospective student's citizenship or visa status and to bar enrollment to those students who reside within the school division but do not hold a student visa. Pursuant to a decision by the United States Supreme Court, [Plyler v. Doe](#), 457 U.S. 202 (1982), school divisions are required to accept students who meet residency requirements under § [22.1-3](#) of the *Code* and may not deny a free public education to undocumented school-age children who reside within their jurisdiction because they do not hold valid United States citizenship or a student visa.

On May 8, 2014, the United States Department of Education (USED) in conjunction with the United States Department of Justice (USDOJ) issued an [advisory letter](#) reminding educational agencies that under Federal law, state and local educational agencies are required to provide all children with equal access to public education at the elementary and secondary levels. In the advisory letter, USED and USDOJ indicated that they had become aware of student enrollment practices that may discourage or lead to the exclusion of students based on their or their parents' or guardians' citizenship or immigration status. The letter of May 8, 2014 replaced the [advisory letter](#) previously issued May 6, 2011 and was written in response to inquiries USED received about the May 6, 2011 letter. The guidance in the May 8, 2014 letter is applicable to the 2014-2015 school year.

Here are highlights from the May 8, 2014 advisory letter:

- A school division should review the list of documents that can be used to establish residency and ensure that any required documents would not unlawfully bar or discourage a student who is undocumented or whose parents are undocumented from enrolling in or attending public school.
- As with residency requirements, rules vary among states and school divisions as to what documents students may use to show that they fall within state or district mandated minimum and maximum age requirements, and jurisdictions typically accept a variety of documents for this purpose. A school division may not bar a student from enrolling in its schools because he or she lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate.
- School divisions have federal obligations, and in some instances, state obligations to report certain data, such as the race and ethnicity of their student population. While the USED requires divisions to collect and report such information, divisions cannot use the acquired data to discriminate against students; nor should a parent's or guardian's refusal to respond to a request for this data lead to a denial of the child's enrollment.

To ensure compliance, please read the [advisory letter](#) of May 8, 2014 very carefully.

### Students with a Parent or Parents in the Military

A student is deemed a resident of a school division and cannot be denied admission or charged tuition if the student 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 Title 10, United States Code, § 1044b, by the custodial parent. Such students may continue to attend school in the school division they attended while residing with the custodial parent without paying tuition or they may attend school in the school division in which the noncustodial parent or other person standing in loco parentis resides without paying tuition.

Virginia is a member of the Interstate Compact on Educational Opportunity for Military Children. The purpose of the Compact (§ [22.1-360 Code of Virginia](#)) is to streamline the transfer of children of military families into Virginia public schools. Specifically, the Compact addresses the following: 1) records and enrollment (Article IV), which contains provisions regarding record transfers, immunizations, and school entrance age; 2) placement and attendance (Article V), which contains provisions regarding course and program placement and special education services; 3) eligibility (Article VI), which addresses documentation requirements for enrollment; and 4) graduation (Article VII), which addresses how receiving school divisions will facilitate the on-time graduation of military transfer students.

The Department's Web page provides additional information about the enrollment of students of military families. The section labeled 'Guidance Documents for Military Families' contains a listing of all related superintendent's memoranda and other enrollment resources. The Web page may be found at [http://www.doe.virginia.gov/support/student\\_family/military/index.shtml](http://www.doe.virginia.gov/support/student_family/military/index.shtml).

### Social Security Numbers

School divisions may not refuse to enroll a student whose parent does not furnish a social security number for that student. If your enrollment forms include a space for a social security number, you must explain to the parent that they are not required to provide the number, why you want the number, and how it will be used. You must also explain the consequences of not providing the number. The division superintendent or his designee may assign another identifying number or waive the requirement if a parent is unwilling to present a social security number for the child. Please see [Public Law 93-579](#) (federal law) and § [22.1-260](#) of the *Code* for additional information.

### Expulsion Statement

When a student is registered, the parent must provide a sworn statement indicating whether the child has been expelled from attending a private school or another public school in Virginia or a school in another state for an offense involving weapons, alcohol or drugs, or for willful infliction of injury to another person. In addition, the parent must provide a sworn statement or affirmation indicating whether the student has been found guilty of or

adjudicated delinquent for any offense listed in subsection G of § [16.1-260](#) of the *Code of Virginia* or any substantially similar offense under the laws of any state, the District of Columbia, or the United States or its territories. (§ [22.1-3.2](#) of the *Code of Virginia*).

### Homeless Students

School divisions must immediately enroll homeless students and coordinate the provision of services to homeless students with relevant local social services agencies and other agencies and programs providing services to such students, and with other school divisions. 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 review: <http://education.wm.edu/centers/hope/>.

### Students in Foster Care

A student who has been placed in foster care by a local social services agency shall be immediately enrolled even if the placing social services agency is unable to produce the documents required for enrollment. In such cases, the person enrolling the student must provide a written statement at the time of enrollment. See § [22.1-3.4](#) of the *Code* for additional information regarding the enrollment of students in foster care.

### Comprehensive Preschool Physical Examination

Section [22.1-270](#) of the *Code* precludes the admission of students for the first time to any public kindergarten or elementary school in a school division unless the student furnishes either a report of a comprehensive physical examination from a qualified licensed physician, or a licensed nurse practitioner or licensed physician assistant acting under the supervision of a licensed physician. The examination must be of the scope prescribed by the State Health Commissioner and must have been performed within 12 months before the date the student first enters the public school. In the alternative, students may provide records showing that they furnished such a report upon admission to another school or school division and provide the information that was contained in that report.

Please note that while the report of the comprehensive physical examination must contain the elements prescribed by the State Health Commissioner, state law does not require it to be on the School Entrance Health Form, MCH 213F, in order to be accepted by the local school board. Therefore, school divisions cannot deny enrollment to a student who provides the necessary report on a different form. Section [22.1-270](#) also includes special provisions for homeless students as well as an exemption from the physical examination for students whose parents object for religious reasons. Additionally, § [22.1-3.4](#) of the *Code* provides specific requirements for the immediate enrollment of children in foster care who do not have the requisite physical examination report. For more information, please refer to Superintendent's Memorandum #103-12, issued on April 20, 2012: [http://www.doe.virginia.gov/administrators/superintendents\\_memos/2012/103-12.shtml](http://www.doe.virginia.gov/administrators/superintendents_memos/2012/103-12.shtml).

### Transfer Students

Section [22.1-253.13:4](#) of the *Code of Virginia* (Standard 4 of the Standards of Quality) requires local school boards to make provisions for students who transfer between public secondary schools and from nonpublic schools or from home instruction as outlined in the [Regulations Establishing Standards for Accrediting Public Schools in Virginia](#) (SOA). The SOA provides:

*...Students transferring in grades K-8 from Virginia public schools or nonpublic schools accredited by one of the approved accrediting constituent members of the [Virginia Council for Private Education](#) shall be given recognition for all grade-level work completed. The academic record of students transferring from all other schools shall be evaluated to determine appropriate grade placement in accordance with policies adopted by the local school board.... ([8VAC20-131-60.4](#))*

*...A secondary school shall accept credits toward graduation received from Virginia nonpublic schools accredited by one of the approved accrediting constituent members of the Virginia Council for Private Education (VCPE).... (8VAC20-131-60.D)*

Section [22.1-254](#) of the *Code of Virginia* (the compulsory attendance law) provides:

*Except as otherwise provided in this article, every parent, guardian, or other person in the Commonwealth having control or charge of any child who will have reached the fifth birthday on or before September 30 of any school year and who has not passed the eighteenth birthday shall, during the period of each year the public schools are in session and for the same number of days and hours per day as the public schools, send such child to a public school or to a private, denominational, or parochial school or have such child taught by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the division superintendent, or provide for home instruction of such child as described in [§ 22.1-254.1](#)....*

Section [22.1-1](#) of the *Code* defines a *person of school age* to mean a person who will have reached his fifth birthday on or before September 30 of the school year and who has not reached twenty years of age on or before August 1 of the school year.

Section [22.1-3](#) of the *Code* provides “[t]he public schools in each school division shall be free to each person of school age who resides within the school division....”

Generally, students transferring from foreign high schools who are 18 and 19 should be counseled on all options. However, they are still eligible for enrollment as a person of school age as provided in the *Code* unless they have a comparable diploma from a high school located in a foreign country. If a receiving school division has questions about a student’s diploma or transcript, the receiving school division should research the issues to determine what kind of diploma the child has. In addition, foreign students with special education needs may be eligible for special education and related services through age 21 if they have not graduated with a comparable diploma from a high school located in a foreign country. If a limited English proficient student is enrolled in a Virginia public school and turns 22 during the school year, that student may continue through the end of that school year.

All school divisions must comply with [34 CFR PART 110](#) (**Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance**). In addition, Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin by recipients of federal funds, and refusal by a school division to enroll qualified students on the basis of race, color, or national origin is a violation of this prohibition against discrimination.

You may wish to review §§ [22.1-1](#), [22.1-3](#), and [22.1-5](#) of the *Code of Virginia* for additional enrollment information. These sections provide more details regarding requirements related to school age and residency in a school division.

I hope you will find this information helpful. Please do not hesitate to contact the Office of Policy at (804) 225-2092, or by e-mail at [policy@doe.virginia.gov](mailto:policy@doe.virginia.gov), if you need additional information.

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