

**MEMORANDUM**

**TO:** DR. JO LYNNE DeMARY  
Superintendent for Public Instruction  
Department of Education

**FROM:** RANDOLPH A. BEALES  
Attorney General of Virginia

**DATE:** October 4, 2001

**RE:** *School Enrollment of Children of Military Personnel Temporarily Relocated  
Due to Deployment to Active Military Operations*

**Issue**

Due to declarations of a State of Emergency in Virginia and a National State of Emergency, some members of the armed forces who have been deployed have had to leave their child(ren) in the care of relatives or other caretakers in another school division or another jurisdiction, and have done so through a Special Power of Attorney. You ask whether such a Special Power of Attorney is sufficient to allow the enrollment of such child(ren) in the public schools of Virginia.

**Analysis**

Section 22.1-3 of the *Code of Virginia* provides in pertinent part that:

**The public schools in each school division shall be free to each person of school age who resides within the school division.**

The Special Power of Attorney prepared and signed by deployed military personnel appoints a caretaker to take and maintain custody of their child(ren) and authorizes the caretaker to do all acts necessary or desirable for maintaining the health, education and welfare of their

child(ren), including the authorization to enroll their child(ren) in school. It is prepared pursuant to Title 10, United States Code, Section 1044b, and executed by a person authorized to receive legal assistance from the military service. The Special Power of Attorney does not grant custody to the caretaker solely for school enrollment purposes. Rather, it authorizes the caretaker to act for the child(ren)'s benefit and protection for all purposes, including the purpose of providing medical care, during the parent's military absence.

Upon examination of § 22.1-3 of the Code, the provisions of the Special Power of Attorney form, and consideration of the fact that such Special Powers of Attorney are being prepared and signed by military parents prior to their deployment in response to the State of Emergency that has been declared in the Commonwealth and Nation, I conclude that a Special Power of Attorney (or substantially similar designation of a power of attorney) prepared and signed by a deployed military parent is sufficient to properly place custody of a child(ren) with the person designated as holder of the Special Power of Attorney. Under these emergency circumstances, a Special Power of Attorney is ample evidence that the affected child(ren) resides in the same school division in which the holder resides; therefore, such child(ren) can be enrolled in school without delay.

Some school divisions may require in specific cases (e.g., if the school division is aware that the non-custodial parent of the child has attempted previously to enroll the child in the school over the objection of the custodial parent) that a caretaker obtain a court order granting custody. A court order granting custody can be one factor which would lead a school board to conclude that a child is a resident and qualifies for free schooling under § 22.1-3, but it is not the exclusive means of determining such qualification for free public schooling in Virginia. 87-88 Va. A.G. 374 (1987). Therefore, in these emergency conditions, school divisions should exercise caution not to exclude children from an education while they are requiring that the caretaker obtain a custody order.

If the school division determines that a custody order should be sought from the court, I ask you to urge local school divisions to conditionally enroll children whose deployed military parents have signed Special Powers of Attorney. My Office is available to work with the Executive Secretary of the Supreme Court of Virginia to secure, as necessary, expedited treatment for any necessary custody determinations by the courts.