

**Sections of the 2002-2004 Appropriation Act
(Chapter 1042, 2003 Acts of Assembly) Referenced in
this Memorandum**

Item 147 A. 1. (Average Daily Membership)

"Average Daily Membership," or "ADM" - The average daily membership for grades K-12 including (1) handicapped students ages 5-21 and (2) students for whom English is a second language who entered school for the first time after reaching their twelfth birthday, and who have not reached twenty-two years of age on or before August 1 of the school year, for the first seven (7) months (or equivalent period) of the school year in which state funds are distributed from this appropriation. Preschool and postgraduate students shall not be included in ADM.

Item 147 A. 1. d. (Nonpublic School Students)

Students who are either (i) enrolled in a nonpublic school or (ii) receiving home instruction pursuant to §22.1-254.1 and who are enrolled in a public school on less than a full-time basis in any mathematics, science, English, history, social science, vocational education, health education or physical education, fine arts or foreign language course shall be counted in the ADM of the relevant school division. Each course shall be counted as 0.25, up to a cap of 0.5 of a student.

Item 147 A. 1. e. (Students in Individualized Student Alternative Education Programs [ISAEP])

Students enrolled in an Individualized Student Alternative Education Program (ISAEP) pursuant to § 22.1- 254D. shall be counted in the Average Daily Membership of the relevant school division. School divisions shall report these students separately in their March 31 reports of Average Daily Membership.

Item 147 C. 7. c.3) (Regional Alternative Education Programs)

Regional alternative education programs are funded through this Item based on the state's share of the incremental per pupil cost for providing such programs. This incremental per pupil payment shall be adjusted for the composite index of the school division that counts such students attending such program in its Average Daily Membership. It is the intent of the General Assembly that this incremental per pupil amount be in addition to the basic aid per pupil funding provided to the affected school division for such students. Therefore, local school divisions are encouraged to provide the appropriate portion of the basic aid per pupil funding to the regional programs for students attending these programs, adjusted for costs incurred by the school division for transportation, administration, and any portion of the school day or school year that the student does not attend such program.

Sections of Board of Education Regulations Referenced in this Memorandum

8VAC20-80-110. State funds for local school divisions.

A. State funds to assist local school divisions with the cost of providing special education and related services for children with disabilities shall be provided through the Virginia Department of Education's appropriation as provided in this section.

B. Children with disabilities enrolled in programs operated by a local school board:

1. Public school programs. In addition to the funds received for each pupil from state basic aid, local school divisions shall receive payment to support the state share of the number of special education teachers and paraprofessionals required by the Standards of Quality ([§22.1-253.13:1](#) et seq. of the Code of Virginia).

2. Homebound instruction. Subject to availability, local school divisions shall receive funds to assist with the cost of educating students who are temporarily confined for medical or psychological reasons. Such students may continue to be counted in the average daily membership (ADM) while

receiving homebound instruction. In addition, costs will be reimbursed based on the composite index, the hourly rate paid to homebound teachers by the local educational agency, and the number of instructional hours delivered. Reimbursement will be made in the year following delivery of instruction.

3. Transportation. Local school divisions that transport children with disabilities, aged two to 21, inclusive, on approved school buses or on public transit buses to public schools or approved private schools, pursuant to their IEPs, are reimbursed in accordance with pupil transportation regulations (8VAC20-70-10 et seq.).

C. Children with disabilities enrolled in regional special education programs:

1. Reimbursement is available for a portion of the tuition costs based on the local composite index computed as specified by the Virginia Appropriation Act. Rates will be approved following procedures established by the Virginia Board of Education. Regional special education programs operated by a joint board and the Woodrow Wilson Rehabilitation Center are eligible to receive reimbursement. Reimbursement is available to programs offering services to children who have one or more of the following disabilities:

- a. Severe disability;
- b. Emotional disturbance;
- c. Autism;
- d. Multiple disabilities;
- e. Deafness;
- f. Hearing impairment, including deafness;
- g. Deaf-blindness; or
- h. Traumatic brain injury.

2. Such reimbursement shall be in lieu of the state per pupil basic aid otherwise available for each child.

D. Children with disabilities receiving special education and related services in regional or local jails. Local school divisions will be reimbursed for the instructional costs of providing required special education and related

services to children with disabilities in regional or local jails.

E. Funds under the Comprehensive Services Act for At-Risk Youth and Families.

1. Funds are available under the Comprehensive Services Act to support the cost of:

a. Special education and related services for children with disabilities whose IEPs specify private day or private residential placement;

b. Certain nonspecial education services for children with disabilities whose Comprehensive Services Act team identifies that such services are necessary to maintain the child in a less restrictive special education setting, in accordance with Comprehensive Services Act requirements; and

c. Special education and related services for children with disabilities who are placed by a Comprehensive Services Act team in a private residential placement for noneducational reasons.

2. Local school divisions shall be responsible for payment of transportation expenses associated with implementing the child's IEP.

3. Comprehensive Services Act reimbursement requirements shall be applicable.

4. When a parent unilaterally places a child with a disability in an approved private nonsectarian school for children with disabilities, the local school division shall not be responsible for the cost of the placement. If a hearing officer or court determines that such placement, rather than the IEP proposed by the local school division, is appropriate and no appeal is perfected from that decision, the local school division is responsible for placement and funds are available under the Comprehensive Services Act to support the costs.

F. Reimbursement for educating children with disabilities receiving foster care or noncustodial foster care across geographic boundaries and educated in the local school division shall be made in accordance with procedures established by the Virginia Department of Education.

Statutory Authority

§§[22.1-16](#) and [22.1-214](#) of the Code of Virginia and the Individuals with Disabilities Education Act (20 USC §1400 et seq.).

Historical Notes

Derived from VR270-01-0007 §4.2, eff. August 21, 1986; amended, Virginia Register Volume 6, Issue 11, eff. July 1, 1990; Volume 7, Issue 20, eff. July 31, 1991; Volume 10, Issue 5, eff. January 1, 1994; Volume 17, Issue 5, eff. January 1, 2001.

8VAC20-110-130: §1.13 When pupil dropped from roll.

A pupil shall be dropped from the roll and marked "Withdrawn"

1. When a certificate of transfer is executed;
2. When a pupil has been expelled or suspended for more than 15 days;
3. When a pupil has been absent for 15 consecutive days or more; or
4. When a pupil is transferred to a state-operated institution or hospital.

Sections of the Code of Virginia Referenced in this Memorandum

§22.1-1 Definitions

As used in this title unless the context requires otherwise or it is otherwise specifically provided:

"Board" or "State Board" means the Board of Education.

"Division superintendent" means the division superintendent of schools of a school division.

"Elementary" includes kindergarten.

"Elementary and secondary" and "elementary or secondary" include elementary, middle, and high school grades.

"Governing body" or "local governing body" means the governing body of the county, city, or town responsible for appropriating funds for such locality.

"Middle school" means separate schools for early adolescents and the middle school grades that might be housed at elementary or high schools.

"Parent" or "parents" means any parent, guardian, legal custodian, or other person having control or charge of a child.

"Person of school age" means 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.

"School board" means the school board of a school division.

§22.1-2 System of free public elementary and secondary schools to be maintained; administration.

There shall be a system of free public elementary and secondary schools established and maintained as provided in this title and administered by the Board of Education, the Superintendent of Public Instruction, division superintendents and school boards.

§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 parents of such person are dead and the person is living with a person in loco parentis who actually resides within the school division;

3. 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;

4. 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;

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

6. 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, "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 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 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 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, 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.

§22.1-3.1 Birth certificates required upon admission; required notice to the local law-enforcement agency.

A. No pupil shall be admitted for the first time to any public school in any school division in this Commonwealth unless the person enrolling the pupil shall present, upon admission, a certified copy of the pupil's birth record. The principal or his designee shall record the official state birth number from the pupil's birth record into the pupil's permanent school record. If a certified copy of the pupil's birth record cannot be obtained, the person so enrolling the pupil shall submit an affidavit setting forth the pupil's age and explaining the inability to present a certified copy of the birth record. If the school division cannot ascertain a child's age because of the lack of a birth certificate, the child shall nonetheless be admitted into the public schools if the division superintendent determines that the person submitting the affidavit presents information sufficient to estimate with reasonable certainty the age of such child.

B. Upon the failure of any person enrolling a pupil to present a certified copy of the pupil's birth record, the principal of the school in which the pupil is being enrolled or his designee shall immediately notify the local law-enforcement agency. The notice to the local law-enforcement agency shall include copies of the submitted

proof of the pupil's identity and age and the affidavit explaining the inability to produce a certified copy of the birth record.

C. Within fourteen days after enrolling a transferred pupil, the principal of the school in which the pupil has been enrolled or his designee shall request that the principal or his designee of the school in which the pupil was previously enrolled submit documentation that a certified copy of the pupil's birth record was presented upon the pupil's initial enrollment.

D. Principals and their designees shall be immune from any civil or criminal liability in connection with any notice to a local law-enforcement agency of a pupil lacking a birth certificate or failure to give such notice as required by this section.

§22.1-3.2 Notice of student's school status required as condition of admission.

Prior to admission to any public school of the Commonwealth, a school board shall require the parent, guardian, or other person having control or charge of a child of school age to provide, upon registration, a sworn statement or affirmation indicating whether the student has been expelled from school attendance at a private school or in a public school division of the Commonwealth or in another state for an offense in violation of school board policies relating to weapons, alcohol or drugs, or for the willful infliction of injury to another person. Any person making a materially false statement or affirmation shall be guilty upon conviction of a Class 3 misdemeanor. The registration document shall be maintained as a part of the student's scholastic record.

§22.1-3.3 Transfer of students under certain circumstances.

Whenever any student has been the victim of any crime against the person pursuant to Chapter 4 (§ 18.2-30 et seq.) of Title 18.2, and such crime was committed by another student attending classes in the school, or by any employee of the school board, or by any volunteer, contract worker or other person who regularly performs services in the school, or if the crime was committed upon school

property or on any school bus owned or operated by the school division, the student upon whom the crime was committed shall, upon written request from the student's parent, or the student, if such student is an emancipated minor, be permitted by the relevant school board to transfer to another comparable school within the school division, if available. Any transportation services for such students shall be provided in accordance with school board policies.

For the purposes of this section, "victim" means any student who has been the victim of a crime against the person pursuant to Chapter 4 (§ 18.2-30 et seq.) of Title 18.2, and who has suffered physical, psychological, or economic harm as a direct result of the commission of such crime.

§22.1-4

Repealed by Acts 1991, c. 523.

§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 has no fixed, regular, and adequate nighttime residence, and has a primary nighttime residence as described in subsection 6 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.

§ 22.1-5. 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. 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.
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 fifty 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 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.

§ 22.1-101.1. Increase of funds for certain nonresident students; how increase computed and paid; billing of out-of-state placing agencies or persons.

A. To the extent such funds are appropriated by the General Assembly, a school division shall be reimbursed for the cost of educating a child who is not a child with disabilities and who is not a resident of such school division under the following conditions:

1. When such child has been placed in foster care or other custodial care within the geographical boundaries of the school division by a Virginia agency, whether state or local, which is authorized under the laws of this Commonwealth to place children;
2. When such child has been placed within the geographical boundaries of the school division in an orphanage or children's home which exercises legal guardianship rights; or
3. When such child, who is a resident of Virginia, has been placed, not solely for school purposes, in a child-caring institution or group home licensed under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 which is located within the geographical boundaries of the school division.

B. To the extent such funds are appropriated by the General Assembly, a school division shall be reimbursed for the cost of educating a child with disabilities who is not a resident of such school division under the following conditions:

1. When the child with disabilities has been placed in foster care or other custodial care within the geographical boundaries of the school division by a Virginia agency, whether state or local, which is authorized under the laws of this Commonwealth to place children;
2. When such child with disabilities has been placed within the geographical boundaries of the school division in an orphanage or children's home which exercises legal guardianship rights; or
3. When such child with disabilities, who is a resident of Virginia, has been placed, not solely for school purposes, in a child-caring institution or group home licensed under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of Title

63.2 which is located within the geographical boundaries of the school division.

C. Each school division shall keep an accurate record of the number of days which any child, identified in subsection A or B above, was enrolled in its public schools, the required local expenditure per child, the handicapping condition, if applicable, the placing agency or person and the jurisdiction from which the child was sent. Each school division shall certify this information to the Board of Education by July 1 following the end of the school year in order to receive proper reimbursement. No school division shall charge tuition to any such child.

D. When a child who is not a resident of Virginia, whether disabled or not, has been placed by an out-of-state agency or a person who is the resident of another state in foster care or other custodial care or in a child-caring institution or group home licensed under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 located within the geographical boundaries of the school division, the school division shall not be reimbursed for the cost of educating such child from funds appropriated by the General Assembly. The school division in which such child has been enrolled shall bill the sending agency or person for the cost of the education of such child as provided in subsection C of § 22.1-5.

The costs of the support and maintenance of the child shall include the cost of the education provided by the school division; therefore, the sending agency or person shall have the financial responsibility for the educational costs for the child pursuant to Article V of the Interstate Compact on the Placement of Children as set forth in Chapters 10 (§ 63.2-1000 et seq.) and 11 (§ 63.2-1100 et seq.) of Title 63.2. Upon receiving the bill for the educational costs from the school division, the sending agency or person shall reimburse the billing school division for providing the education of the child. Pursuant to Article III of the Interstate Compact on the Placement of Children, no sending agency or person shall send, bring, or cause to be sent or brought into this Commonwealth any child for placement unless the sending agency or person has complied with this section by honoring the financial responsibility for the educational cost as billed by a local school division.

§22.1-199 Kindergarten programs suitable for certain children.

A. The kindergarten program in each school division shall include a program suitable for children who will reach their fifth birthday on or before September 30 of the school year. The school board's plan for such program shall be furnished to the Board of Education and shall include the following:

1. A statement of purpose and objectives of the kindergarten program that reflects consideration of the different readiness and maturity levels of children in the program;
2. A description of the organization, scheduling and staffing of the program that reflects a responsiveness to the needs of the children of the age span to be served in the program;
3. Evidence that the program plan was developed by a committee that included early childhood specialists, parents, teachers and administrators;
4. Scheduling and an agenda of in-service activities for kindergarten teachers to ensure adequate preparation for the program;
5. A plan for the interface of the kindergarten program with the primary program to allow for continuous progress.

B. The Superintendent of Public Instruction shall disseminate to the school divisions information concerning the ages when children are required or eligible to attend school. Each school division shall disseminate such information to parents of such children of such ages upon or prior to enrollment of such children in the public schools of the division.

C. The age requirements set forth in subsection A of this section shall not affect the operation of any two-tiered, junior or other developmentally appropriate pre-kindergarten program or transitional first grade. In those school divisions implementing such programs, children whose fifth birthday occurs between October 1 and December 31 of the school year may be enrolled in kindergarten after an appropriate readiness evaluation has demonstrated that

attendance in these programs will educationally benefit such children.

§22.1-215. School divisions to provide special education; plan to be submitted to Board.

Each school division shall provide free and appropriate education, including special education, for the children with disabilities residing within its jurisdiction in accordance with regulations of the Board of Education.

For the purposes of this section, "children with disabilities, residing within its jurisdiction" shall include: (i) those individuals of school age identified as appropriate to be placed in public school programs, who are residing in a state institution operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services located within the school division, or (ii) those individuals of school age who are Virginia residents and are placed and living in a foster care home or child-caring institution or group home located within the school division and licensed under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 as a result of being in the custody of a local department of social services or welfare or being privately placed, not solely for school purposes.

The Board of Education shall promulgate regulations to identify those children placed within facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services who are eligible to be appropriately placed in public school programs.

The cost of the education provided to children residing in the state institutions, who are appropriate to place within the public schools, shall remain the responsibility of the Department of Mental Health, Mental Retardation and Substance Abuse Services. The cost of the education provided to children who are not residents of the Commonwealth and are placed and living in a foster care home or child-caring institution or group home located within the school division and licensed under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 shall be billed to the sending agency or person by the school division as provided in subsection C of § 22.1-5. No

school division shall refuse to educate any such child or charge tuition to any such child.

Each school division shall submit to the Board of Education in accordance with the schedule and by the date specified by the Board, a plan acceptable to the Board for such education for the period following and a report indicating the extent to which the plan required by law for the preceding period has been implemented. However, the schedule specified by the Board shall not require plans to be submitted more often than annually unless changes to the plan are required by federal or state law or regulation.

§22.1-218. Reimbursement for placement in private schools; reimbursement of school boards from state funds.

A. If a child's individualized education program calls for placement in a private nonsectarian school, agency, or institution, payment for reasonable tuition cost and other reasonable charges shall be made from the state pool of funds pursuant to § 2.2-5211.

B. Where a school board enters into an agreement with the Woodrow Wilson Rehabilitation Center or a special education regional program established pursuant to regulations of the Board of Education, the Board of Education is authorized to reimburse the school board from such funds as are appropriated for this purpose.

C. The Board of Education is further authorized to reimburse each school board operating a preschool special education program for children with disabilities aged two through four, through the Standards of Quality Special Education account.

§22.1-253.13:1. Standard 1. Basic skills, selected programs, and instructional personnel.

H. Students enrolled in a public school on a less than full-time basis shall be counted in ADM in the relevant school division. Students who are either (i) enrolled in a nonpublic school or (ii) receiving home instruction pursuant to § 22.1-254.1, and who are enrolled in public

school on a less than full-time basis in any mathematics, science, English, history, social science, career and technical education, fine arts, foreign language, or health education or physical education course shall be counted in the ADM in the relevant school division on a pro rata basis as provided in the appropriation act. However, no such nonpublic or home school student shall be counted as more than one-half a student for purposes of such pro rata calculation. Such calculation shall not include enrollments of such students in any other public school courses.

§22.1-254. Compulsory attendance required; excuses and waivers; alternative education program attendance; exemptions from article.

A. 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.

As prescribed in the regulations of the Board of Education, the requirements of this section may also be satisfied by sending a child to an alternative program of study or work/study offered by a public, private, denominational or parochial school or by a public or private degree-granting institution of higher education. Further, in the case of any five-year-old child who is subject to the provisions of this subsection, the requirements of this section may be alternatively satisfied by sending the child to any public educational prekindergarten program, including a Head Start program, or in a private, denominational or parochial educational prekindergarten program.

Instruction in the home of a child or children by the parent, guardian or other person having control or charge of such child or children shall not be classified or defined as a private, denominational or parochial school.

The requirements of this section shall apply to (i) any child in the custody of the Department of Juvenile Justice or the Department of Corrections who has not passed his eighteenth birthday and (ii) any child whom the division superintendent has required to take a special program of prevention, intervention, or remediation as provided in subsection C of § 22.1-253.13:1 and in § 22.1-254.01. However, the requirements of this section shall not apply to any child who has obtained a high school diploma, its equivalent, or a certificate of completion or who has otherwise complied with compulsory school attendance requirements as set forth in this article.

B. A school board shall excuse from attendance at school:

1. Any pupil who, together with his parents, by reason of bona fide religious training or belief is conscientiously opposed to attendance at school. For purposes of this subdivision, "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code; and

2. On the recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides and for such period of time as the court deems appropriate, any pupil who, together with his parents, is opposed to attendance at a school by reason of concern for such pupil's health, as verified by competent medical evidence, or by reason of such pupil's reasonable apprehension for personal safety when such concern or apprehension in that pupil's specific case is determined by the court, upon consideration of the recommendation of the principal and division superintendent, to be justified.

C. A school board may excuse from attendance at school:

1. On recommendation of the principal and the division superintendent and with the written consent of the parent or guardian, any pupil who the school board determines, in accordance with regulations of the Board of Education, cannot benefit from education at such school; and

2. On recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides, any pupil who, in the judgment of such court, cannot benefit from education at such school.

D. Local school boards may allow the requirements of subsection A of this section to be met under the following conditions:

For a student who is at least 16 years of age, there shall be a meeting of the student, the student's parents, and the principal or his designee of the school in which the student is enrolled in which an individual student alternative education plan shall be developed in conformity with guidelines prescribed by the Board, which plan must include:

- a. Career guidance counseling;
- b. Mandatory enrollment and attendance in a general educational development preparatory program or other alternative education program approved by the local school board with attendance requirements that provide for reporting of student attendance by the chief administrator of such GED preparatory program or approved alternative education program to such principal or his designee;
- c. Counseling on the economic impact of failing to complete high school; and
- d. Procedures for reenrollment to comply with the requirements of subsection A of this section.

A student for whom an individual student alternative education plan has been granted pursuant to this subsection and who fails to comply with the conditions of such plan shall be in violation of the compulsory school attendance law, and the division superintendent or attendance officer of the school division in which such student was last enrolled shall seek immediate compliance with the compulsory school attendance law as set forth in this article.

Students enrolled with an individual student alternative education plan shall be counted in the average daily membership of the school division.

E. A school board may, in accordance with the procedures set forth in Article 3 (§ 22.1-276.01 et seq.) of Chapter 14 of this title and upon a finding that a school-age child has been (i) charged with an offense relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person; (ii) found guilty or not innocent

of a crime that resulted in or could have resulted in injury to others, or of an offense that is required to be disclosed to the superintendent of the school division pursuant to subsection G of § 16.1-260; (iii) suspended pursuant to § 22.1-277.05; or (iv) expelled from school attendance pursuant to § 22.1-277.06 or § 22.1-277.07 or subsection B of § 22.1-277, require the child to attend an alternative education program as provided in § 22.1-209.1:2 or § 22.1-277.2:1.

F. Whenever a court orders any pupil into an alternative education program offered in the public schools, the local school board of the school division in which the program is offered shall determine the appropriate alternative education placement of the pupil, regardless of whether the pupil attends the public schools it supervises or resides within its school division.

The juvenile and domestic relations district court of the county or city in which a pupil resides or in which charges are pending against a pupil, or any court in which charges are pending against a pupil, may require the pupil who has been charged with (i) a crime which resulted in or could have resulted in injury to others, (ii) a violation of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend an alternative education program, including, but not limited to, night school, adult education, or any other education program designed to offer instruction to students for whom the regular program of instruction may be inappropriate.

This subsection shall not be construed to limit the authority of school boards to expel, suspend, or exclude students, as provided in §§ 22.1-277.04, 22.1-277.05, 22.1-277.06, 22.1-277.07, and 22.1-277.2. As used in this subsection, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.

G. Within one calendar month of the opening of school, each school board shall send to the parents or guardian of each student enrolled in the division a copy of the compulsory school attendance law and the enforcement procedures and policies established by the school board.

H. The provisions of this article shall not apply to:

1. Children suffering from contagious or infectious diseases while suffering from such diseases;
2. Children whose immunizations against communicable diseases have not been completed as provided in § 22.1-271.2;
3. Children under 10 years of age who live more than two miles from a public school unless public transportation is provided within one mile of the place where such children live;
4. Children between the ages of 10 and 17, inclusive, who live more than 2.5 miles from a public school unless public transportation is provided within 1.5 miles of the place where such children live; and
5. Children excused pursuant to subsections B and C of this section.

Further, any child who will not have reached his sixth birthday on or before September 30 of each school year whose parent or guardian notifies the appropriate school board that he does not wish the child to attend school until the following year because the child, in the opinion of the parent or guardian, is not mentally, physically or emotionally prepared to attend school, may delay the child's attendance for one year.

The distances specified in subdivisions 3 and 4 of this subsection shall be measured or determined from the child's residence to the entrance to the school grounds or to the school bus stop nearest the entrance to the residence of such children by the nearest practical routes which are usable for walking or riding. Disease shall be established by the certificate of a reputable practicing physician in accordance with regulations adopted by the Board of Education.

§22.1-254.1 Declaration of policy; requirements for home instruction of children.

A. When the requirements of this section have been satisfied, instruction of children by their parents is an acceptable alternative form of education under the policy of the Commonwealth of Virginia. Any parent 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 may elect to provide home instruction in lieu of school attendance if he (i) holds a baccalaureate degree in any subject from an accredited institution of higher education; or (ii) is a teacher of qualifications prescribed by the Board of Education; or (iii) has enrolled the child or children in a correspondence course approved by the Superintendent of Public Instruction; or (iv) provides a program of study, or curriculum which, in the judgment of the division superintendent, includes the standards of learning objectives adopted by the Board of Education for language arts and mathematics and provides evidence that the parent is able to provide an adequate education for the child.

B. Any parent who elects to provide home instruction in lieu of school attendance shall annually notify the division superintendent in August of his intention to so instruct the child and provide a description of the curriculum to be followed for the coming year and evidence of having met one of the criteria for providing home instruction as required by subsection A of this section. Effective July 1, 2000, parents electing to provide home instruction shall provide such annual notice no later than August 15. Any parent who moves into a school division or begins home instruction after the school year has begun shall notify the division superintendent of his intention to provide home instruction as soon as practicable and shall comply with the requirements of this section within thirty days of such notice. The division superintendent shall notify the Superintendent of Public Instruction of the number of students in the school division receiving home instruction.

C. The parent who elects to provide home instruction shall provide the division superintendent by August 1 following the school year in which the child has received home instruction with either (i) evidence that the child has attained a composite score in or above the fourth stanine on a battery of achievement tests which have been approved by the Board of Education for use in the public schools or (ii) an evaluation or assessment which, in the judgment of the division superintendent, indicates that the child is achieving an adequate level of educational growth and progress.

In the event that evidence of progress as required in this subsection is not provided by the parent, the home instruction program for that child may be placed on probation for one year. Parents shall file with the division superintendent evidence of their ability to provide an adequate education for their child in compliance with subsection A of this section and a remediation plan for the probationary year which indicates their program is designed to address any educational deficiency. Upon acceptance of such evidence and plan by the division superintendent, the home instruction may continue for one probationary year. If the remediation plan and evidence are not accepted or the required evidence of progress is not provided by August 1 following the probationary year, home instruction shall cease and the parent shall make other arrangements for the education of the child which comply with §22.1-254. The requirements of subsection C shall not apply to children who are under the age of six as of September 30 of the school year.

D. For purposes of this section, "parent" means the biological parent or adoptive parent, guardian or other person having control or charge of a child.

Nothing in this section shall prohibit a pupil and his parents from obtaining an excuse from school attendance by reason of bona fide religious training or belief pursuant to § 22.1-254 B 1.

E. Any party aggrieved by a decision of the division superintendent may appeal his decision within thirty days to an independent hearing officer. The independent hearing officer shall be chosen from the list maintained by the Executive Secretary of the Supreme Court for hearing appeals of the placements of children with disabilities. The costs of the hearing shall be apportioned among the parties by the hearing officer in a manner consistent with his findings.