



**#283-21**

**Commonwealth of Virginia  
Virginia Department of Education  
Superintendent's Memo #283-21**

DATE: October 1, 2021  
TO: Division Superintendents  
FROM: James F. Lane, Ed.D., Superintendent of Public Instruction  
SUBJECT: **Refugee Student Enrollment**

As a result of the ongoing crisis in Afghanistan, it is anticipated that thousands of Afghan refugees will be placed in localities throughout Virginia. Many of these refugees are school-aged children who will require enrollment in school as quickly as possible. This memo provides information to assist school divisions with enrollment requirements for these students.

### **Responsibility to Enroll**

All children in the United States have an equal right to enroll and participate in public education without regard to their or their parents' or guardians' immigration status. Joint guidance from the United States Department of Justice (DOJ) and Department of Education (USED) provides general information and resources for school divisions regarding students from other countries:

- [Confronting Discrimination Based on National Origin or Immigration Status](#)
- [Information on the Rights of All Children to Enroll in School](#)

The following subsections of this memo highlight some of the provisions of the *Code of Virginia* most relevant for divisions enrolling refugee and unaccompanied children.

## Residency

In Virginia, local school divisions determine whether a student meets the residency requirements in accordance with § [22.1-3](#) of the *Code*, including sufficient proof of residency. The *Code* states that a person of school age shall be deemed to reside in a school division under the following circumstances (among others):

- The student is living with a natural parent or a parent by legal adoption.
- The student's parents are deceased, and the student is living in loco parentis with a person who resides in that locality.
- The student is living with another person who resides in the school division, not solely for school purposes, and that individual: (a) is the court-appointed guardian, or has legal custody, of the person; or (b) is acting in loco parentis pursuant to placement of the person for adoption; or (c) is an adult relative providing temporary kinship care when the student's parents are unable to care for him or her.

In cases where a child is unaccompanied by a parent or guardian, ORR may place the student with a sponsor. ORR releases children to a sponsor in the following order of preference: (1) parent; legal guardian; an adult relative (brother, sister, aunt, uncle, grandparent or first cousin); (2) an adult individual or entity designated by the parent or legal guardian (through a signed declaration or other document that ORR determines is sufficient to establish the signatory's parental/guardian relationship); or (3) a licensed program willing to accept legal custody; or (4) an adult individual or entity seeking custody when it appears that there is no other likely alternative to long term ORR care and custody.

Typically, divisions require proof of residency documentation such as a property lease, driver's license, utility bill, income tax form, or bank statement. Due to the emergency nature of the refugee resettlement process, it is unlikely that such documents will be available for all students. VDOE encourages school divisions to accept alternative methods as proof of residency for these students.

## Birth Certificate

Section [22.1-3.1](#) of the *Code of Virginia* requires a certified copy of a pupil's birth record in order to be enrolled in school; however, the statute permits the enrollment of a child whose birth record cannot be obtained, if the person enrolling the pupil submits an affidavit setting

forth the pupil's age and explaining the inability to present a certified copy of the birth record. Furthermore, the law states that, 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.

Additional information regarding proof of age is provided in the DOJ/USED joint guidance document [Information on the Rights of All Children to Enroll in School](#). This guidance states that, although a division may request a birth certificate or affidavit setting forth the pupil's age, school divisions may not prevent or discourage a child from enrolling in or attending school because he or she lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate.

### **Immunizations and Physical Examination**

Section [22.1-270](#) of the *Code* requires a comprehensive physical examination completed by a U.S. licensed physician, nurse practitioner, or physician assistant acting under the supervision of a physician prior to admission in elementary school. Section [22.1-271.2](#) of the *Code* requires documentation of immunizations for enrollment.

Section 22.1-271.2(B) provides exceptions for students to be conditionally enrolled with incomplete immunizations: "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."

Unaccompanied children are vaccinated while in ORR custody in accordance with the Advisory Committee on Immunization Practices (ACIP) catch-up schedule. When children are released to sponsors, they are given their vaccination records.

VDOE encourages school divisions to work with school support personnel (e.g. school nurses, school psychologists, and school social workers) and local health departments to schedule

appointments for immunizations, physical exams, and/or any other health screening required for enrollment.

## Other Considerations for Enrollment

The [National Center for Homeless Education](#) has advised the Virginia Department of Education (VDOE) that families placed through the [Office of Refugee Resettlement](#) (ORR) do **not** meet the definition of “homeless” for the purposes of the McKinney-Vento Homeless Education Assistance Act.

ORR facilities are considered fixed, regular, and adequate housing; as such, children in ORR custody are not eligible for McKinney-Vento services. Upon release from an ORR facility, children and/or families are placed with sponsors who are obligated to provide for the housing, food, medical care, and education of the child.

However, if ORR placements change, students may become McKinney-Vento eligible on a case-by-case basis. Local school divisions will need to evaluate the circumstances of each incoming student and be aware that changing circumstances may impact their eligibility for homeless services.

If a child is deemed eligible for McKinney-Vento services, the school division must immediately enroll the student, in accordance with state law. Similarly, if a child transitions from ORR facilities to a foster care placement, section [22.1-3.4](#) of the *Code* requires the immediate enrollment of the child regardless of their inability to produce any of the documents required for enrollment. More information regarding enrollment for students experiencing homelessness and students in foster care can be found in [Superintendent's Memo #174-21](#).

Some refugee students and unaccompanied children may receive a special immigrant visa status or other designation, and as such, may be part of the U.S. Refugee Admission Program, administered by the U.S. Department of State. At this time, it is unclear where children arriving with these visa-types will be provided housing, sponsorships, or whether such students may be eligible for McKinney-Vento services. VDOE will communicate new guidance as soon as it becomes available.

## English Learner Services for Students

School divisions must offer language assistance services to all students with limited English proficiency and identify these students as English learners so that all students can meaningfully participate in all educational programs.

Please refer to [Superintendent's Memo #149-21](#) for information on entrance procedures and criteria for identifying English Learners.

### For more information

Please direct questions regarding enrollment to the Policy Office at [policy@doe.virginia.gov](mailto:policy@doe.virginia.gov) or (804) 225-2592.

JFL/LMS