

**FINAL REPORT OF THE
VIRGINIA COMMISSION ON YOUTH**

School Enrollment Practices for Virginia's Kinship Caregivers

**TO THE GOVERNOR AND
THE VIRGINIA GENERAL ASSEMBLY**



REPORT DOCUMENT 135

**COMMONWEALTH OF VIRGINIA
RICHMOND
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COMMONWEALTH of VIRGINIA
Commission on Youth

Delegate Christopher K. Peace, *Chair*
Senator Harry B. Blevins, *Vice-Chair*

Suite 269
General Assembly Building
Richmond, Virginia 23219-0406

Executive Director
Amy M. Atkinson

804-371-2481
FAX 804-371-0574
<http://vcoy.virginia.gov>

April 25, 2012

TO: The Honorable Robert F. McDonnell, Governor of Virginia
and
Members of the Virginia General Assembly

At the Commission's meeting on April 5, 2011, the Commission directed staff to convene an advisory group of representatives from impacted agencies and stakeholder organizations to study ways to clarify the school enrollment process for informal kinship caregivers.

At the December 19, 2011 meeting, the Commission on Youth approved a recommendation to request the State Executive Council to review the work of the Commission and Youth and develop a plan to ensure school stability for children in out-of-home care, including children in kinship care arrangements, both formal and informal.

This final report represents the work of several government and private agencies and individuals who provided input to the study effort. The Commission gratefully acknowledges their contributions to this effort.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Chris Peace'.

Christopher K. Peace

MEMBERS OF THE VIRGINIA COMMISSION ON YOUTH

From the Virginia House of Delegates

Christopher K. Peace, Chair
Mamye E. BaCote
Robert H. Brink
Mark L. Cole
Beverly Sherwood
Anne Crockett-Stark

From the Senate of Virginia

Harry B. Blevins, Vice-Chair
Yvonne B. Miller
Vacancy as of January 11, 2012

**Gubernatorial Appointments
from the Commonwealth at Large**

Gary L. Close, Esq.
Anthony Dale
Joy Myers

Commission on Youth Staff

Amy M. Atkinson
Joyce Garner
Leah Hamaker

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I. Authority for Study

Section 30-174 of the *Code of Virginia* establishes the Commission on Youth and directs it to "...study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families." This section also directs the Commission to "...encourage the development of uniform policies and services to youth across the Commonwealth and provide a forum for the continuing review and study of such services."

Section 30-175 of the *Code of Virginia* outlines the powers and duties of the Commission on Youth and directs it to "[u]ndertake studies and to gather information and data . . . and to formulate and report its recommendations to the General Assembly and the Governor."

II. Members Appointed to Serve

The Commission on Youth is a standing legislative commission of the Virginia General Assembly. It is comprised of twelve members: six Delegates, three Senators and three citizens appointed by the Governor.

Members of the Virginia Commission on Youth are:

- Delegate Mamy E. BaCote, Newport News
- Delegate Robert H. Brink, Arlington
- Delegate Mark L. Cole, Fredericksburg
- Delegate Christopher K. Peace, Mechanicsville, Chair
- Delegate Beverly J. Sherwood, Winchester
- Delegate Anne B. Crockett-Stark, Wytheville
- Senator Yvonne B. Miller, Norfolk
- Senator Harry B. Blevins, Chesapeake, Vice-Chair
- Gary L. Close, Esq., Culpeper
- Mr. Anthony Dale, Alexandria
- Ms. Joy Myers, Arlington

One Senate seat is vacant as of January 11, 2012.

III. Executive Summary

Kinship care complements federal requirements by providing children with stability and permanency. Kinship care offers a viable option for children who are unable to continue to live at home due to a family crisis such as a parent's illness, incarceration, lack of housing, insufficient income, abuse or neglect.¹ Children in kinship care arrangements experience less trauma, have positive perceptions of their placements, and have fewer behavioral

¹ Virginia Department of Social Services. (n.d.) *Kinship Care The "Heart" That Keeps Children Connected to Families A Guide to Exploring Kinship Care Options*. [Online]. Available: http://www.dss.virginia.gov/files/division/dfs/fc/intro_page/kinship_care/related_brochures/B032-01-0201-00-eng.pdf. [April 2012].

problems than children in foster care.² Virginia policy strives to preserve families and requires that family members be considered first when out-of home placements are sought.³

During the 2010 study year, the Commission on Youth conducted a study assessing the barriers to foster and kinship care placements in Virginia.⁴ A finding from this study acknowledged the challenges that informal kinship caregivers face when enrolling the child in their care in school if the child's parents do not reside in the same school division. At the Commission's meeting on April 5, 2011, the Commission adopted a study plan to convene an advisory group of representatives from impacted agencies and stakeholder organizations to study ways to clarify the school enrollment process for informal kinship caregivers.

The Advisory Group reviewed current law, local practices, and two Attorney General Opinions addressing school enrollment. The Advisory Group found that school enrollment practices vary among school divisions. Some public school divisions require a court order giving custody to the kinship caregiver in order for the child to be enrolled in school. Other school divisions require a signed affidavit or Power of Attorney. Others require only that the kinship caregiver provide proof of residency.

In addition to evaluating school enrollment practices, the Commission also reviewed policies and practices of the Department of Social Services related to kinship care. Kinship care arrangements can be either informal or formal. In Virginia, informal arrangements are the more common of the two types. Unlike formal kinship care (which typically refers to relative foster placements), informal kinship care allows parents to make temporary arrangements with a family member when they are unable to care for their child during a serious family hardship and/or absence, but do not want to relinquish their parental rights. This means that there is no child welfare involvement or no formal action by a local department of social services. Instead, a relative cares for the child in the absence of either parent. As a result, informal kinship caregivers typically do not file a petition for custody with the Juvenile and Domestic Relations District Court.

When a kinship caregiver is awarded legal custody by the court, the caregiver has all of the rights and responsibilities of a parent as outlined in the court order. Since conflicts with school enrollment occurs only when the kinship caregiver does not have legal custody, this study focused solely on informal kinship care arrangements.

The Advisory Group considered several legislative options that would have created a school enrollment process for Virginia's kinship caregivers; however, the Group was unable to come to a consensus on the options considered. As a result, at the

² Virginia Children's Services System Transformation. (2010). *Addressing Kinship Care in Virginia—Stock Presentation*. [Online]. Available: <http://vafamilyconnections.com/documents/Stock%20Presentation.pdf>. [April 2012].

³ Va. Code § 63.2-900. (2011).

⁴ Virginia Commission on Youth. (2011). *Study of Barriers to Kinship Care Report Document 17*. [Online]. Available: <http://leg2.state.va.us/dls/h&sdocs.nsf/4d54200d7e28716385256ec1004f3130/42187efbe69474ed8525797d00609e1d?OpenDocument>. [March 2012].

Commission's meeting on December 19, 2011, the Commission adopted the following recommendation:

Request the State Executive Council to review the work of the Commission on Youth and develop a plan to ensure school stability for children in out-of-home care, including children in kinship care arrangements, both formal and informal.

IV. Study Goals and Objectives

At the Commission on Youth meeting on April 5, 2011, the Commission adopted a recommendation to convene an advisory group of representatives from impacted agencies and stakeholder organizations to study ways to clarify the school enrollment process for informal kinship caregivers. The Advisory Group was directed to formulate recommendations for presentation to the Commission on Youth prior to the 2012 General Assembly Session.

A. ISSUES

- Informal kinship care is a living arrangement in which a relative of a child provides for the care and custody of the child due to a serious family hardship. In Virginia, the majority of kinship care arrangements are informal kinship care in that there is no child welfare involvement and care is provided by relatives in the absence of the parent(s). Informal kinship care refers to the lack of child welfare agency involvement, not the lack of permanency.
- Informal kinship caregivers may face challenges enrolling the child they are caring for in school. Kinship caregivers report that is difficult for a relative who is caring for a child to enroll the child in school if the parents do not live in that school area. This is because some public school officials assume that the child must live with their biological parents or a legal guardian for purposes of school enrollment.
- This issue was addressed in two separate Attorney General's Opinions dated December 1, 1987 and June 14, 2007. These Opinions stated that residence solely for school attendance purposes will not be considered *bona fide* pursuant to the §22.1-3. of the *Code of Virginia*. However, situations in addition to those listed in the *Code* may also entitle persons to free admission to public schools in the locality. School divisions must provide the opportunity to demonstrate a *bona fide* residence and make a determination based on all pertinent facts. School divisions may not refuse to provide free education to a *bona fide* resident of the school division based solely on the categories set forth in the *Code*.
- The "presumptions of residency" for purposes of receiving a free public education set forth in § 22.1-3. of the *Code of Virginia*, as well as the school enrollment process, need to be clarified for informal kinship caregivers.

B. STUDY ACTIVITIES

At the Commission's meeting on April 5, 2011, the Commission approved a study plan which included the following activities:

- Convene an Advisory Group to assist in study effort.
 - Invite representatives from the impacted groups, including:
 - Virginia Department of Social Services

Local Departments of Social Services
 Virginia League of Social Service Executives
 Special Advisor to the Governor on Virginia's Children's Services System
 Virginia Association of School Superintendents
 Educators/Guidance Counselors
 Virginia Association of Secondary School Principals
 Virginia Department of Education
 Virginia Department of Aging
 Area Agency on Aging
 Local School Divisions
 Advocacy Organizations
 Parent Representatives
 Virginia School Boards Association
 Virginia Association of Elementary School Principals
 Project HOPE – Virginia

- Review Virginia laws, regulations, and terminology.
 - Current school enrollment statutes
 - Legal guardianship statutes pertaining to school enrollment
 - Statutes applicable to military families
- Analyze Virginia practices and data.
 - Review Virginia Department of Education's policies
 - Review local school divisions practices and procedures for school enrollment
 - Review state and local Department of Social Services' (LDSS) policies and practices
- Analyze other states' practices and procedures.
 - California, New York kinship care policies
 - Maryland's recent statutory changes easing school enrollment practices for informal kinship caregivers
- Develop recommendations.
 - Synthesize findings from school divisions, other states and constituent groups
 - Develop recommendations for improvement
 - Solicit feedback to recommendations from constituents, families and school officials
- Solicit feedback to recommendations.
- Refine findings and recommendations.
- Present findings and recommendations to the Commission on Youth.
- Prepare final report.

V. Methodology

The findings of the study are based on several distinct research activities.

A. RESEARCH AND ANALYSIS

Commission on Youth staff reviewed data, reports, statutes and codes in order to fully research kinship foster care in Virginia. Specifically, staff analyzed sections of the *Code of Virginia* defining and addressing the various categories which create "presumptions of residency" for purposes of receiving a free public education.⁵ Attorney General Opinions

⁵ Va. Code § 63.2-1719. (2011).

were read and discussed with regard to public school options for children living with kinship caregivers.⁶ Federal legislative provisions dealing with kinship care were reviewed. Staff further analyzed data and reports presented by the Virginia Department of Social Services, along with comparable reports offering a national perspective. Finally, research collected from other states helped present a broader understanding of school enrollment practices.

B. ADVISORY GROUP

The Commission established an advisory group in order to help identify, refine and prioritize issues of the study. Members of the Advisory Group met to discuss specific barriers to kinship and foster care in Virginia, articulate findings, and propose recommendations.

Represented on the Advisory Group were the following agencies and organizations:

- Albemarle County Public Schools
- Catholic Charities of Hampton Roads
- FACES of Virginia
- Hanover County Public Schools
- Kinship Caregivers
- JustChildren
- New Kent Department of Social Services
- Norfolk Department of Human Services
- Office of the Secretary of Health and Human Services
- Project HOPE-VA
- Supreme Court of Virginia
- The Capital City Program/Richmond Alternative School
- United Methodist Family Services
- Virginia Association of Secondary School Principals
- Virginia Commission on Youth
- Virginia Department for the Aging
- Virginia Department of Education
- Virginia Department of Social Services
- Virginia Poverty Law Center
- Virginia School Board Association
- Voices for Virginia's Children

A complete listing of the Advisory Group membership is provided as Appendix A. The Advisory Group met three times in 2011: June 7, September 7, and October 18. Minutes of the Advisory Group meetings may be found in Appendix B.

In addition to these meetings, a drafting workgroup met on August 30 and a second workgroup met on December 6.

C. PRESENTATIONS AND DISCUSSIONS

The Advisory Group heard presentations from a number of speakers.

At the Advisory Group meeting on June 7, 2011, Courtney Stewart, International and English for Speakers of Other Languages (ESOL) Coordinator for Albemarle County Public Schools, presented information on the procedure for Albemarle County related to enrolling

⁶ 2007 Westlaw 1958946 (Va. A.G.); 1987 Westlaw 271800 (Va. A.G).

students in kinship care arrangements. With the assistance of JustChildren,⁷ Albemarle County developed instructions to assist in the school enrollment of these children, including a Special Power of Attorney, which is provided as Appendix C. Ms. Stewart indicated that she employed an interview protocol to assess whether the student is residing with the caregiver due to a legitimate reason versus a potentially illegitimate reason. The caregiver may request assistance from the Legal Aid Justice Center. Once the sworn statement on the Special Power of Attorney is completed by the resident caretaker, the student is then registered for school.

The September 7, 2011 meeting focused on a review of draft legislative proposals developed at the August 30, 2011 drafting workgroup. The legislative draft presented at the September meeting attempted to capture the issues set forth in the two Attorney General's Opinions⁸ and required each local school division to develop their own process in determining residency for purposes of school enrollment. The Advisory Group discussed how changes to the process would affect the school's ability to authorize medical care, field trip permission procedures, and disciplinary actions. The Advisory Group discussed requiring both the kinship caregiver and the parent to sign an affidavit of educational rights.

Other items discussed at the meeting included:

- ♦ testimony from a kinship caregiver;
- ♦ the rights of the biological parents;
- ♦ the *Family Educational Rights and Privacy Act* (FERPA);
- ♦ the *Individuals with Disabilities Education Act* (IDEA);
- ♦ the potential for fraud and "school shopping"; and
- ♦ the *McKinney-Vento Homeless Assistance Act*.

More details regarding the Advisory Group discussion are provided in Appendix B.

Betty Jo Zarris, Assistant Director, Division of Family Services, gave an update on kinship care activities at the Virginia Department of Social Services at the October 18, 2011 Advisory Group meeting. She presented findings from the 2011 Division of Family Services Prevention Survey which was conducted in the spring of 2011. The focus of the survey was Early Prevention services, which are defined as those prevention-related services provided prior to, or in the absence of, a current valid Child Protective Services (CPS) referral. Three types of services were identified: public education and awareness activities to the public; services to groups of individuals at high risk for abuse/neglect/out of home care; and services to specific families who are at risk of abuse/neglect/out of home care, but not currently involved with Child Protective Services.

Survey responses revealed that the great majority of local agencies provide some type of Early Prevention services. Ms. Zarris noted that the Safe and Stable Families Program and local community resources most frequently fund these services. Comprehensive Services Act funds, Family Preservation funds, and the Promoting Safe and Stable

⁷ JustChildren is a program of the Virginia Legal Aid Justice Center.

⁸ 2007 Westlaw 1958946 (Va. A.G.); 1987 Westlaw 271800 (Va. A.G).

Families Program are the most frequently-used funding sources for individual families, although community resources also play a significant role.

She noted that 93 percent of local agencies utilized current staff to provide prevention services. A key component of these services is to strengthen families so they can remain intact and their children do not have to enter foster care. The survey results also revealed that Family Partnership meetings were frequently used as a family strengthening tool. Local departments collaborated with a wide variety of community groups and organizations to deliver Early Prevention services. Ms. Zarris noted that 94 percent of the agencies responding indicated that they diverted children from foster care, suggesting that foster care diversion is a widespread prevention practice in Virginia.

In addition to the presentations at the Advisory Group meetings, Advisory Group members and the public had an open discussion on the practical and legal implications of school enrollment practices and developed several legislative drafts. The Advisory Group discussed why school divisions were denying school enrollment to these youth and whether there was data which could clarify the reasons for the denials. It was also noted that school divisions were facing other challenges impacting school enrollment. For example, families may have a family member or daycare provider residing within the boundaries of a school division and determine that it is more convenient for the child to attend school in that division.

The Advisory Group also discussed other issues linked to school enrollment for informal kinship caregivers. These included:

- clarifying the definition of kinship care;
- informal kinship caregivers access to information under FERPA and IDEA;
- penalties for falsifying information;
- lack of statewide uniformity and an established enrollment process;
- appropriate utilization of the juvenile and domestic relations courts; and the
- impact of “school shopping” and eligibility for high school sports and extracurricular activities.

At the conclusion of the study, the Advisory Group was unable to reach consensus on how to balance the concerns of the schools with the needs of the kinship caregivers.

VI. Study Issues

A major focus of this study was to clarify the school enrollment process for informal kinship caregivers. This section summarizes the results of the research and analysis conducted by Commission staff.

A. DEFINING KINSHIP CARE

Kinship care is defined in the *Code* as the “full-time care, nurturing, and protection of children by relatives.”⁹ Kinship care arrangements can be either informal or formal. In Virginia, informal arrangements are the more common of the two types.

The definition of “relative”, however, varies from program to program. For example, the Virginia Department of Social Services (VDSS) narrowed the definition of “relative” for the

⁹ Va. Code § 63.2-100. (2011).

custody assistance program to mean only those related by blood, marriage, or adoption.¹⁰ A close relative, for the purposes of adoption, is defined as “the child’s grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.”¹¹

The need for kinship care arises in a number of different fashions, and is frequently used as a diversion from foster care. At the most informal level of kinship care, families arrange for the care of their children with another family member. Thus, the State does not play any role in the arrangement. Another type of informal kinship care is when a family may have contact with the local Department of Social Services (LDSS); however, the child is “informally” diverted to a family placement. Under this arrangement, a child is not in the custody of a local department of social services. Assistance to an informal kinship caregiver may include:

- General Relief,
- Supplemental Nutrition Assistance Program (SNAP),
- Women, Infants and Children (WIC) Program,
- Medical Assistance Programs,
- Temporary Assistance to Needy Families (TANF), and
- Preservation and Support Services.¹²

An example of informal kinship care is a child is being placed with a relative as a result of a CPS investigation. Typically, the arrangement is temporary and non-custodial and ceases once it is established that the problem which prompted the investigation has been resolved. State involvement is usually brief.

An example of a formal kinship care is a family member being awarded custody of the child. When the kinship caregiver has legal custody of a child, they assume all of the rights and responsibilities of a parent as specified in the order from the Juvenile and Domestic Relations Court.¹³ Finally, at the most formal end of the spectrum, the child’s kinship care arrangement becomes permanent, typically through adoption. This arrangement benefits children because they now are entitled to all the benefits and rights of a biological child including, financial assistance, social security, insurance or pension benefits.¹⁴ However, this situation occurs only upon a parent’s voluntary petition to a court or through a LDSS involuntarily terminating parental rights.¹⁵

¹⁰ Virginia Department of Social Services. (2011). *Virginia’s Annual Report on the Five Year Child Welfare Plan*. [Online]. Available: http://www.dss.virginia.gov/files/about/reports/children/annual_progress_services/apsr2011.pdf. [March 2012].

¹¹ Va. Code § 63.2-1242.1. (2011).

¹² Virginia Department of Social Services. (n.d.) *About Kinship Care*. [Online]. Available: <http://www.dss.virginia.gov/family/fc/index.cgi>. [March 2012].

¹³ Virginia Department of Social Services. (n.d.) *Kinship Care The “Heart” That Keeps Children Connected to Families A Guide to Exploring Kinship Care Options*. [Online]. Available: http://www.dss.virginia.gov/files/division/dfs/fc/intro_page/kinship_care/related_brochures/B032-01-0201-00-eng.pdf. [April 2012].

¹⁴ Ibid.

¹⁵ Ibid.

As school enrollment conflicts for kinship caregivers occur only when they have not obtained legal custody through the Court, this study focuses on informal kinship care arrangements.

B. SCHOOL ENROLLMENT REQUIREMENTS

Article VIII of the Virginia Constitution requires the General Assembly to “provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth...” Section 22.1-3. of the *Code of Virginia* delineates the “persons to whom public schools shall be free” as those persons who reside within the school division and further defines residency as when:

1. The person is living with a natural parent, or a parent by legal adoption;
2. The person is living with an individual who is defined as a parent in § 22.1-1, not solely for school purposes, pursuant to a Special Power of Attorney executed under Title 10, United States Code, § 1044b, by the custodial parent while such custodial parent is deployed outside the United States as a member of the Virginia National Guard or as a member of the United States Armed Forces;
3. 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;
4. 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;
5. The person is living in the school division not solely for school purposes, as an emancipated minor; or
6. The person living in the school division is a homeless child or youth, as set forth in this subdivision, who lacks a fixed, regular, and adequate nighttime residence.

Moreover, § 22.1-4. of the *Code* states that children in foster care cannot be denied free public schooling or be charged tuition. The LDSS are responsible for coordinating the immediate enrollment of foster care children.

In addition to requirements outlined in the *Code*, the Virginia Department of Education (VDOE) requires that a parent or guardian must produce the following to enroll a child into a Virginia public school:

1. Birth Certificate – An official certified copy, not a photocopy, of the child’s birth record must be provided. If an official certified copy cannot be submitted, the person enrolling the child must submit a sworn statement setting forth the child’s age and explaining why a certified copy cannot be produced.
2. Street Address – Documentation of the child’s residence must be provided. If the child does not have a regular address, the school division may determine that the street address/route number cannot be provided. If a child has no regular, fixed residence but resides within the school division in a temporary shelter, institution, or place not ordinarily used as a residence, the school division may determine that a street address, route number, or post office box number, cannot be provided. The school division may accept an alternative form of address that it considers appropriate.
3. School Entrance Health Form – A MCH 213F three-part health form must be completed by a licensed physician, nurse practitioner, or physician’s assistant regarding the child and submitted at the time of enrollment. This form includes health information, immunization records and a physical examination report.
4. Immunizations – This is part II of the MCH 2313 F form and indicates that the child has received the required immunizations. Any child whose immunizations are incomplete may

be admitted conditionally, if the parent or guardian provides documentation at the time of enrollment, that the child has received at least one dose of the required immunizations and has a written schedule for completing the remaining doses within 90 days. No certificate of immunization shall be required for the admission to school of any student if (i) the student or his parent submits an affidavit to the admitting official stating that the administration of immunizing agents conflicts with the student's religious tenets or practices; or (ii) the school has written certification from a licensed physician or a local health department that one or more of the required immunizations may be detrimental to the student's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

5. Social Security Number – The child's federal social security number must be provided upon enrollment or within 90 days of enrollment. A child cannot be excluded from school for not providing a social security number.
6. Expulsion Statement – The parent of the child being enrolled must provide a sworn statement about the child's expulsion status. The parent must report if their child was expelled from a private or public school in Virginia and another state for possessing weapons, drugs, alcohol, or willfully injuring another person.
7. Enrollment of Homeless Students – Project HOPE ensures the enrollment, attendance, and the success of homeless children and youth in school and through public awareness efforts across the commonwealth and subgrants to local school divisions.¹⁶

The federal *McKinney-Vento Homeless Assistance Act* was authorized in 1987 and later reauthorized by the *No Child Left Behind Act of 2001*. This Act requires each state to ensure that homeless children have access to the same free and appropriate public education as other children. Project Hope, a federally-funded grant program, meets this federal requirement in Virginia by ensuring the enrollment, attendance, and the success of homeless children and youth in school through public awareness efforts across the commonwealth and subgrants to local school divisions.¹⁷

The following information is taken from the U.S. Department of Education's non-regulatory guidance of Title VII-B of the *McKinney-Vento Homeless Assistance Act* as amended by the *No Child Left Behind Act of 2001*.¹⁸ The *McKinney-Vento Act* defines "homeless children and youth" as individuals lacking a fixed, regular and adequate nighttime residence, including:

- Children and youth who are:
 - sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as *doubled-up*);
 - living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations;
 - living in emergency or transitional shelters;
 - abandoned in hospitals; or
 - awaiting foster care placement;

¹⁶ Virginia Department of Education. (2011). *Enrollment in Virginia Public Schools*. [Online.] Available: http://www.doe.virginia.gov/students_parents/student_enrollment.shtml. [March 2012].

¹⁷ William & Mary School of Education. (2012). *Project HOPE-Virginia, Education for Homeless Children and Youth*. [Online]. Available: <http://education.wm.edu/centers/hope>. [January 2012].

¹⁸ U.S. Department of Education. (2004). *Education for Homeless Children and Youth Program, Title VII-B of the McKinney-Vento Homeless Assistance Act, As Amended by the No Child Left Behind Act of 2001, Non-Regulatory Guidance*. [Online]. Available: http://center.serve.org/nche/downloads/guidance_jul2004.pdf. [January 2012].

- Children and youth who have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;
- Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- Migratory children who qualify as homeless because they are living in circumstances described above.¹⁹

A homeless child must be enrolled into the school where he/she was enrolled before becoming homeless or the school in the attendance area where the child is currently living. Appendix D provides a flow chart for the determination of eligibility of McKinney-Vento.

C. CHALLENGES TO ENROLLING CHILDREN IN KINSHIP CARE ARRANGEMENTS

A major finding from this study acknowledged the challenges that informal kinship caregivers face when enrolling the child placed in their care in school if the child's parents do not reside in the same school division. This is because some public school officials require a court order giving custody to the kinship caregiver for the child to be enrolled in school. However, some parents do not want to relinquish their parental rights to the relative caregiver. Obtaining custody of a relative's child may be a lengthy and emotionally draining process, especially if the biological parent does not want to give up custody voluntarily. Also, in calendar year 2010, the Supreme Court of Virginia reported 129,278 new petitions for custody/visitation filed in Juvenile and Domestic Relations Court. As a result of these petitions, 260,357 hearings were held. In some localities, it takes several months for a custody hearing to be held.

The Advisory Group reviewed two Attorney General's Opinions, dated December 1, 1987 and June 14, 2007. The issue presented was the availability of a free education for a child in the legal custody of someone other than a parent. Summaries of the two Opinions are highlighted below.

Opinion of Attorney General Mary Sue Terry, Dec. 18, 1987

- Attorney General Terry recognized the fundamental importance that the residence in a school division must be *bona fide* in order to entitle a child to tuition-free schooling. Residence solely for school purposes will not be considered *bona fide* under the Virginia Code §22.1-3., the Code section enumerating situations where residency is *bona fide*.
- Attorney General Terry also acknowledged that §22.1-3. is not exclusive, but merely factors to be considered.
- There can be other situations in addition to those in §22.1-3., in which a person who resides in a locality is entitled to free schooling in that locality
- While guardianship orders is one way to establish residency of a child, school officials can look to establish *bona fide* residency through other means
- Just because a child has a guardian does not mean they are entitled to free schooling – they must not be residing in the jurisdiction solely for purposes of schooling.

Opinion of Attorney General Bob McDonnell, June 14, 2007

- There are categories enumerated in the Virginia Code (§ 22.1-3.) that describe different situations in which children will be deemed to reside in a school division.

¹⁹ Ibid.

- Attorney General McDonnell takes the position that this list of categories creates merely a presumption of residency, and is therefore not an exclusive list.
- The situation of a child living with a custodian who was awarded custody by a Juvenile court is not a situation enumerated in the statute, but Attorney General McDonnell recognizes that there might be a *bona fide* residency in the school division even without specifically falling into one of the listed categories.
- School divisions who examine a person's claim of entitlement to a free education, when that person does not meet one of the §22.1-3. categories, must look to all the relevant facts and determine that the child is not residing there solely for school purposes.
- School divisions cannot refuse to provide free education to *bona fide* residents of the division based solely on the categories in §22.1-3.²⁰

These Opinions noted that a school division may not refuse to provide a free education to a *bona fide* resident of the school division based solely on the categories in § 22.1-3. of the *Code*. These categories create "presumptions of residency" and, therefore, entitlement to the free education offered by that school division. The Opinions concluded that these statutory categories were factors for school divisions to consider in determining the residence of a child. However, situations in addition to those listed in the *Code* may also entitle persons residing in a locality to free admission to public schools in the locality. Local school divisions must provide the opportunity to demonstrate *bona fide* residency and make a determination based on all pertinent facts. The categories listed in § 22.1-3. are not exclusive but are factors school divisions may not refuse to provide free education to a *bona fide* resident of the school division based solely on the categories set forth in the *Code*. While these Opinions provide insight and guidance, Attorney General's Opinions in Virginia are not binding and do not create or change existing law.

D. LOCAL SCHOOL DIVISION ENROLLMENT PRACTICES

Twenty-one states have enacted legislation allowing kinship caregivers to enroll a child in their care into school without court ordered custody, including California, Connecticut, Delaware, Hawaii, Idaho, Indiana, Louisiana, Maryland, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, Utah, Vermont and Wyoming.²¹ Of these states, most require a signed affidavit or consent form.²² In Virginia, school enrollment practices for enrolling children in informal kinship care vary among school divisions. Some public school divisions require a court order giving custody to the kinship caregiver for the child to be enrolled in school, while others require a signed affidavit or Power of Attorney. Some may require only proof of residency.

In conducting the study, the Commission received input from variety of stakeholders. One concern expressed by some education stakeholders dealt with the problem of parents lying about residency to school officials in order to enroll their child in a more desirable school division for academic, sports, convenience or safety concerns. Some school representatives contended that, regardless of the circumstances, taxpayers should not be

²⁰ 2007 Westlaw 1958946 (Va. A.G.); 1987 Westlaw 271800 (Va. A.G).

²¹ American Bar Association. (n.d.) *Education Consent and School Enrollment Laws: Why They Matter*. [Online]. Available:

http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/summary_memo3.authcheckdam.pdf. [March 2012].

²² *Ibid*.

burdened with funding the educational needs of students who reside outside the school division. A summary of the public comments that were submitted in writing is provided as Appendix E.

VII. Findings and Recommendations

In 2011, the Commission completed the study of *School Enrollment Practices for Virginia's Kinship Caregivers*. A major finding from this study acknowledged the challenges that informal kinship caregivers face when enrolling the child in their care in school if the child's parents do not reside in the school division. This is because some public school officials require a court order giving custody to the kinship caregiver for the child to be enrolled in school. This practice is contrary to two Attorney General's Opinions and existing LDSS efforts to divert children to informal kinship care as an alternative to foster care. A recent study conducted by the Virginia Department of Social Services found that 94 percent of the responding agencies divert children from foster care, suggesting that informal kinship care is a viable option for families during times of crisis and is commonly used to maintain family connections.

In conducting this study, the Commission convened an advisory group comprised of representatives from agencies and organizations with expertise and/or special interest in this topic. The Advisory Group considered several legislative options that would have created a school enrollment process for Virginia's kinship caregivers; however, the Group was unable to come to a consensus on the options considered. As a result, at the Commission's meeting on December 19, 2011, the Commission adopted the following recommendation:

Request the State Executive Council to review the work of the Commission on Youth and develop a plan to ensure school stability for children in out-of-home care, including children in kinship care arrangements, both formal and informal.

VIII. Acknowledgments

University of Virginia, Frank Batten School of Leadership and Public Policy
Jasmine Jefferson
Kristen Sweaney

SCHOOL ENROLLMENT PRACTICES FOR VIRGINIA'S KINSHIP CAREGIVERS

Advisory Group Membership

Karin Addison

Special Advisor to the Governor on Children's
Services
Office of the Secretary of Health and Human
Resources
Richmond, Virginia

Lisa A. Bennett, Esq.

Managing Attorney
JustChildren
Legal Aid Justice Center
Richmond, Virginia

The Hon. Robert H. Brink

Virginia House of Delegates
Virginia Commission on Youth Member
Arlington, Virginia

Michelle Lauter Cowling

Director
New Kent Department of Social Services
New Kent, Virginia

Kathy Dial

Program Director
Catholic Charities of Hampton Roads
Norfolk, Virginia

FACES of Virginia Families

Cate Newbanks, Executive Director
Sarah Smalls, Vice President of Kinship Care
Richmond, Virginia

Lelia Baum Hopper

Director, Court Improvement Program
Office of the Executive Secretary
Supreme Court of Virginia
Richmond, Virginia

Ruth McCall-Miller

Foster Care and Adoption Supervisor
Norfolk Department of Human Services
Portsmouth, Virginia

Peyton McCoy, M.A.

Education Specialist
Independent Living Program
Virginia Department of Social Services
Richmond, Virginia

Christine E. Marra, Esq.

Staff Attorney
Virginia Poverty Law Center
Richmond, Virginia

The Hon. Yvonne B. Miller

Senator of Virginia
Virginia Commission on Youth Chair
Norfolk, Virginia

Joy Myers

Virginia Commission on Youth Member
Executive Director
Borromeo Housing, Inc.
Arlington, Virginia

Ellen M. Nau

Human Services Program Coordinator
Virginia Department for the Aging
Richmond, Virginia

Bet Neale

Director of Government Relations
Virginia Association of Secondary School Principals
West Point, Virginia

Alberta Person

Assistant Principal, Curriculum and Instruction
The Capital City Program/Richmond Alternative School
Richmond, Virginia

Patricia A. Popp, Ph.D.

State Coordinator, Project HOPE-VA
Clinical Associate Professor, School of Education
The College of William & Mary
Williamsburg, Virginia

Rosemarie Stocky, Ed.D.

Director, Instructional Support Services
Hanover County Public Schools
Ashland, Virginia

The Hon. Anne Crockett-Stark

Virginia House of Delegates
Virginia Commission on Youth Member
Wytheville, Virginia

Courtney Stewart

International & ESOL Coordinator
Albemarle County Public Schools
Charlottesville, Virginia

Mary Dunne Stewart, M.S.W.

Policy Director
Voices for Virginia's Children
Richmond, Virginia

Virginia Department of Education

Anne Wescott, Asst. Superintendent for Policy
and Communications
Michelle Vucci, Director of Policy
Richmond, Virginia

Virginia School Board Association

Wendell C. Roberts, Esq., Staff Attorney
Charlottesville, Virginia

D. Patrick Lacy, Jr., Esq., VSBA Special Counsel
Reed Smith LLP
Richmond, Virginia

Adalay Wilson

Program Director, Tidewater Regional Center
United Methodist Family Services
Virginia Beach, Virginia

Betty Jo Zarris

Assistant Director, Division of Family Services
Virginia Department of Social Services
Richmond, Virginia