

HOUSE BILL NO. 777

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Callsen)

A BILL to amend and reenact §§ 22.1-3 and 22.1-3.4 of the Code of Virginia, relating to enrollment of and provision of free public education for certain students.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 22.1-3 and 22.1-3.4 of the Code of Virginia are amended and reenacted as follows:**

**§ 22.1-3. Persons to whom public schools shall be free.**

A. 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, in accordance with the provisions of § 22.1-360, the person is living with a noncustodial parent or other person standing in loco parentis, not solely for school purposes, pursuant to a Special Power of Attorney executed under 10 U.S.C. § 1044b by the custodial parent;

3. 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;

4. 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 (i) the court-appointed guardian, or has legal custody, of the person; (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; or (iii) an adult relative providing temporary kinship care as that term is defined in § 63.2-100. Local school divisions may require one or both parents and the relative providing kinship care to submit signed, notarized affidavits (a) explaining why the parents are unable to care for the person, (b) detailing the kinship care arrangement, and (c) agreeing that the kinship care provider or the parent will notify the school within 30

27 days of when the kinship care arrangement ends, as well as a power of attorney authorizing the adult  
28 relative to make educational decisions regarding the person. A school division may also require the parent  
29 or adult relative to obtain written verification from the local department of social services where the parent  
30 or parents live, or from both that department and the department of social services where the kinship  
31 provider lives, that the kinship arrangement serves a legitimate purpose that is in the best interest of the  
32 person other than school enrollment. With written consent from the parent or adult relative, for the  
33 purposes of expediting enrollment, a school division may obtain such written verification directly from  
34 the local department or departments of social services. The verification process shall be consistent with  
35 confidentiality provisions of Article 5 (§ 22.1-287 et seq.) of Chapter 14 of this title and Chapter 1 (§ 63.2-  
36 100 et seq.) of Title 63.2. If the kinship care arrangement lasts more than one year or the person transitions  
37 to a new kinship care arrangement, a school division may require continued verification directly from one  
38 or both departments of social services as to why the parents are unable to care for the person and that the  
39 kinship care arrangement serves a legitimate purpose other than school enrollment. In the event that a  
40 person in a kinship care arrangement moves into a different school division during the school year as a  
41 result of (1) safely returning home, (2) being emancipated pursuant to § 16.1-333, or (3) transitioning to  
42 a new kinship care arrangement, the provisions of this subdivision shall continue to apply through the end  
43 of such school year. A local school division may enroll a person living with a relative in a kinship care  
44 arrangement that has not been verified by a local department of social services;

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

47           6. When all or any portion of the building in which such person resides (i) with another person as  
48 set forth in subdivisions 1 through 4 or (ii) as an emancipated minor as set forth in subdivision 5 is taxable  
49 by the locality in which the school division is located; or

50           7. When the person living in the school division is a homeless child or youth, as set forth in this  
51 subdivision, who lacks a fixed, regular, and adequate nighttime residence. Such persons shall include (i)  
52 children and youths, including unaccompanied youths who are not in the physical custody of their parents,  
53 who (a) are sharing the housing of other persons due to loss of housing, economic hardship, or a similar

54 reason; are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate  
55 accommodations or in emergency or transitional shelters; or are abandoned in hospitals; (b) have a primary  
56 nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular  
57 sleeping accommodation for human beings; or (c) are living in parked cars, parks, public spaces,  
58 abandoned buildings, substandard housing, bus or train stations, or similar settings; and (ii) migratory  
59 children, as defined in the federal Elementary and Secondary Education Act of 1965, P.L. 89-10, as  
60 amended, who are deemed homeless as they are living in circumstances set forth in clause (i).

61 School divisions shall comply with the requirements of Subtitle VII-B of the federal McKinney-  
62 Vento Homeless Assistance Act, as amended (42 U.S.C. § 11431 et seq.), to ensure that homeless children  
63 and youths shall receive the educational services comparable to those offered to other public school  
64 students.

65 School divisions serving the students identified in this subdivision shall coordinate the  
66 identification and provision of services to such students with relevant local social services agencies and  
67 other agencies and programs providing services to such students, and with other school divisions as may  
68 be necessary to resolve interdivisional issues.

69 B. In the interest of providing educational continuity to the children of military personnel, no child  
70 of a person on active military duty:

71 1. Who is attending a school free of charge in accordance with this section shall be charged tuition  
72 by that school division upon such child's relocation to military housing located in another school division  
73 in the Commonwealth, pursuant to orders received by such child's parent to relocate to base housing. Such  
74 children shall be allowed to continue attending school in the school division they attended immediately  
75 prior to the relocation and shall not be charged tuition for attending such school;

76 2. Who is attending a school free of charge in accordance with this section shall be charged tuition  
77 by that school division upon such child's relocation pursuant to orders received by such child's parent to  
78 relocate to a new duty station or to be deployed. Such children shall be allowed to remain enrolled in the  
79 current school division free of tuition through the end of the school year; and

80           3. Who is eligible to attend school free of charge in accordance with this section shall be charged  
81 tuition by a school division that will be the child's school division of residence once his service member  
82 parent is relocated pursuant to orders received. Such a child shall be allowed to enroll in the school division  
83 of the child's intended residence if documentation is provided, at the time of enrollment, of military orders  
84 of the service member parent or an official letter from the service member's command indicating such  
85 relocation. Documentation indicating a permanent address within the school division shall be provided to  
86 the school division within 120 days of a child's enrollment or tuition may be charged, including tuition for  
87 the days since the child's enrollment in school. In the event that the child's service member parent is  
88 ordered to relocate before the 120th day following the child's enrollment, the school division shall not  
89 charge tuition. Students eligible to enroll in a school division pursuant to this subdivision may register,  
90 remotely or in-person, for courses and other academic programs and participate in the lottery process for  
91 charter schools and college partnership laboratory schools in the school division in which such student  
92 will reside at the same time and in the same manner as students who reside in the local school division.  
93 The assignment of the school such child will attend shall be determined by the local school division.

94           Such children as listed in subdivisions 1, 2, and 3 shall be counted in the average daily membership  
95 of the school division in which they are enrolled. Further, the school division in which such children are  
96 enrolled subsequent to their relocation to base housing shall not be responsible for providing for their  
97 transportation to and from school.

98           **§ 22.1-3.4. Enrollment of certain children placed in foster care.**

99           A. Whenever a student has been placed in foster care by a local social services agency and the  
100 placing social services agency is unable to produce any of the documents required for enrollment pursuant  
101 to § 22.1-3.1, 22.1-270, or 22.1-271.2, the student shall immediately be enrolled; however, the person  
102 enrolling the student shall provide a written statement that, to the best of his knowledge, sets forth (i) the  
103 student's age, (ii) compliance with the requirements of § 22.1-3.2, and (iii) that the student is in good  
104 health and is free from communicable or contagious disease.

105           B. The sending and receiving school divisions shall cooperate in facilitating the enrollment of any  
106 child placed in foster care across jurisdictional lines for the purpose of enhancing continuity of instruction.

107 The child shall be allowed to continue to attend the school in which he was enrolled prior to the most  
108 recent foster care placement, upon the joint determination of the placing social services agency and the  
109 local school division that such attendance is in the best interest of the child.

110 C. In the event the student continues to attend the school in which he was enrolled prior to the  
111 most recent foster care placement, the receiving school division shall be accorded foster children education  
112 payments pursuant to § 22.1-101.1; further, the receiving school division may enter into financial  
113 arrangements with the sending school division pursuant to subsection C of § 22.1-5. Under no  
114 circumstances shall a child placed in foster care be charged tuition regardless of whether such child is  
115 attending the school in which he was enrolled prior to the most recent foster care placement or attending  
116 a school in the receiving school division.

117 D. For the purposes of subsections A, B, and C:

118 "A child or student placed in foster care" means a pupil who is the subject of a foster care placement  
119 through an entrustment or commitment of such child to the local social services board or licensed child-  
120 placing agency pursuant to clause (ii) of the definition of "foster care placement" as set forth in § 63.2-  
121 100.

122 For the purposes of this section:

123 "Receiving school division" means the school division in which the residence of the student's foster  
124 care placement is located.

125 "Sending school division" means the school division in which the student last attended school.

126 E. Notwithstanding the provisions of subsections A, B, and C or § 22.1-3 or 22.1-5, no person of  
127 school age who is the subject of a foster care placement, as such term is defined in § 63.2-100, shall be  
128 charged tuition.

129 F. The provisions of this section shall apply to any student who was in foster care upon reaching  
130 18 years of age but who has not yet reached 22 years of age.

131 G. The provisions of this section, with the exception of the provision of subsection C that requires  
132 a receiving school division to be accorded foster children education payments pursuant to § 22.1-101.1,

133 shall apply to a student who has transitioned out of foster care and (i) whose custody has been transferred  
134 to the student's parent or prior legal guardian or (ii) who has been emancipated pursuant to § 16.1-333.

135 #