

Virginia Commission on Youth

Study of School Enrollment Practices for Virginia's Kinship Caregivers Advisory Group

5th Floor East Conference Room
General Assembly Building
September 7, 2011
10:00 a.m.

MINUTES

Advisory Group Members:

Senator Yvonne Miller, Delegate Robert Brink, Lisa Bennett, Michelle Cowling, Jessica Eades, D. Patrick Lacy, Christie Marra, Cate Newbanks, Patricia Popp, Courtney Stewart, Rosemarie Stocky, Michelle Vucci, Betty Jo Zarris

Participating Electronically:

Ellen Nau

Guests:

Joel Andreus, Rebecca Bowers, Kamala Lannetti, Melissa Luchau, Ellen Porter, Janet Van Cuyk

Staff Attending:

Amy M. Atkinson, Leah Hamaker

Welcome and Introductions

Study Overview

Amy M. Atkinson, Executive Director

Ms. Atkinson welcomed the Advisory Group and asked the members and guests to introduce themselves.

As background, Ms. Atkinson briefed the members on the status of this study. Senator Miller stated that it seemed that it would be helpful to request Attorney General Cuccinelli for an Attorney General's Opinion on this complex issue. The Advisory Group concurred with this recommendation.

Ms. Atkinson informed the members about the work of the Virginia State Crime Commission on reviewing Virginia's barrier crime statutes. Last year, as a recommendation from the Commission's *Barriers to Kinship Care Study*, the Commission asked the Virginia State Crime Commission to evaluate Virginia's barrier crime statutes in the *Code of Virginia* and offer recommendations to make the provisions more consistent. The Crime Commission included this request on their work plan and will present findings and recommendations at their September 20 meeting. Public comment will be also received.

Ms. Atkinson asked Ms. Newbanks with Virginia's Foster, Adoption and Kinship Association (FACES) to share her story with the members and guests of the Advisory Group. Ms. Newbanks explained that she was caring for her three young grandchildren at the request of her son, who was going through a difficult divorce. Her son was a resident of Powhatan County, whereas Ms. Newbanks resided in Hanover County. Ms. Newbanks was unable to enroll her grandchildren in Hanover County schools without obtaining custody. She petitioned and was awarded custody of her grandchildren. However, her son was very upset about this and refused to speak to her for six months. Ms. Newbanks noted that this was contrary to the Department of Social Services' efforts to encourage the placement of children with relatives.

Review of Legislative Drafts

Advisory Group Discussion

Ms. Atkinson informed the members that, while a legislative draft emerged from the June 7 Advisory Group meeting, the Commission had received several comments expressing concerns with the legislation. She referred the members to the handout in their packets listing the comments received and then distributed a letter received from Virginia Beach Public Schools.

Ms. Atkinson then referred to a separate legislative draft, which was discussed at the August 30 Drafting Work Group meeting. The legislative draft was developed by Christie Marra of the Virginia Poverty Law Center. Ms. Atkinson asked Ms. Marra to discuss this draft legislation.

Ms. Marra stated this draft was an attempt to amend § 22.1-3. of the *Code of Virginia* to include circumstances why a child may be in an informal kinship arrangement. This draft was initially reviewed at the August 30 Drafting Work Group meeting. The version before the Advisory Group was revised during the August 30 meeting to move this new language in A.7 to A.4 as iii. This version did not include the language originally received from JustChildren because it was stricken at the request of the members who attended the August 30 Drafting Work Group meeting. Ms. Marra noted that this revised version incorporated the definition of kinship care set forth in § 63.2-1200.

Mr. Lacy stated he was impressed with this legislative draft. He recommended removing "arrangement" after "kinship care" in A.4.iii. He noted that the second category of individuals discussed in this draft were not kinship caregivers because they were not providing full-time care of a relative child. Mr. Lacy asked about including guardianship in this discussion. The Advisory Group noted that it would not be necessary because such individuals could already make educational decisions and sign necessary forms. Ms. Marra noted that there was no guardianship for minors in Virginia.

The Advisory Group discussed how such legislation could affect the rights of the biological parents. Questions arose about how the kinship caregiver could access special education services for their child if they were not the custodial parent or legal guardian. Parents may give up physical custody of their children, but not their parental rights. The Advisory Group members asked whether a reciprocal assertion could be noted in an affidavit, which would transfer educational rights from the parent to the caregiver. Both the parent and the caregiver would sign the affidavit. The Advisory Group discussed the Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA); both statutes include provisions discussing the transfer of rights, but such a transfer of rights must be specific. FERPA

contains provisions about access to records; however, each specific educational record must be specifically identified. The Advisory Group members stated that an affidavit might not cover this concern.

Ms. Atkinson invited Kamala Lannetti with Virginia Beach Public Schools to share her concerns about the proposed legislative draft. Ms. Lannetti introduced herself to the Advisory Group and noted that she obtained child welfare experience during her tenure as an attorney representing the Department of Social Services. She also had experience as a foster parent. Currently, she represents Virginia Beach Public Schools and much of her time representing the school division in special education matters.

Ms. Lannetti noted that the Department of Education offered guidance for schools regarding special education for families. This guidance helps families obtain a power of attorney so that their child may access special education services. This enables families to avoid going to court. Ms. Lannetti stated that, in order for this to occur, the child must be deemed incompetent. This ensures that parents do not have to relinquish their parental rights. She noted that, in Virginia Beach schools, there were over 10,000 students receiving special education services.

Ms. Lannetti noted that school registration was a separate area of concern. In 2010-2011, Virginia Beach had 1,200 residence verification cases. She stated that Virginia Beach has a reputation as a first class school system. She made note of cases where parents of students residing in Norfolk were falsifying records so that their children could attend Virginia Beach schools. Ms. Lannetti asserted that schools need clearly defined terms. She stated the language in the draft legislation (family event, or circumstances, that seriously impede the parents' present ability to care for the person) does not help school divisions avoid a discrimination suit.

The Advisory Group agreed that a clear process was needed to allow families and schools to verify this information. Ms. Eades noted that other states use affidavits. Several Advisory Group members stated their belief that a power of attorney may not be sufficient to establish residency for children residing with kinship caregivers. The Advisory Group discussed using an affidavit. Ms. Eades noted that Advisory Group could also create an affidavit form and incorporate it in the draft legislation.

Ms. Marra informed the Advisory Group that informal kinship care was typically an informal transfer of physical custody. Formal kinship care originates from a custody order or a transfer of custody to the local department of social services. The Advisory Group discussed whether a document for school enrollment would have to be formal.

Ms. Marra stated that the current foster care practice was encouraging the placement of children with relatives in lieu of foster care. It may not be appropriate for a judge to determine the best interest of the child if the family had already made this determination. It was noted that most judges would not rule on custody cases purely for school enrollment purposes.

Ms. Stewart with Albemarle County Schools discussed their process for enrolling in school students residing with relatives. She stated undocumented immigrants who reside in a school division may attend grades K-12 on the same terms as resident children. However, these children frequently reside with relative caregivers, particularly if their parents were not in the country or had been deported. To address this issue,

JustChildren developed a Special Power of Attorney form and instructions to assist Albemarle County Schools with school enrollment of these children. Ms. Stewart stated that she employs the interview protocol to assess whether the case legitimate. She stated that last year her school division processed approximately ten cases. Ms. Stewart noted this process was not appropriate for all situations, e.g., students with significant disciplinary infractions or students residing with their relative while on holiday or vacation.

Ms. Marra noted that the Albemarle County process was a good model. Most students do not choose to reside with their relatives and most cases are very clear. The Advisory Group concurred that the process must not be too broad and not be open for everyone. Mr. Lacy suggested that some level of discretion be incorporated into the process.

Senator Miller noted that this option should be clarified for children living with relatives. The court process should not drive this process. Senator Miller was hopeful that school systems could address their concerns regarding staff time and resources and provide feedback to help shape the final recommendations.

The Advisory Group returned to the legislative version submitted by Ms. Marra. Section A.4.iii of the draft was discussed. The Advisory Group agreed that the draft text following § 63.2-100 be stricken to remove references to *non-relative caregivers acting in loco parentis* and *family event (or circumstances) that seriously impede the parents' present ability to care for the person*.

Senator Miller suggested codifying the process and designing it so it included defined steps. She acknowledged that schools will enroll these students only if it is legal to do so. The Advisory Group should create a process in the legislation to allow these children to be enrolled in school, while also protecting schools from being sued. This approach must be realistic. A request for an Attorney General's Opinion should ask for assistance with the "knottier" problems of this issue.

The Advisory Group discussed the McKinney-Vento Homeless Assistance Act. If a student's parents were unavailable, then the child was deemed to be abandoned and enrolled in school pursuant to McKinney-Vento. The Advisory Group agreed that this law should not be used in order to enroll children residing with relative caregivers in school.

Dr. Stocky stated that she concurred with the position expressed by Virginia Beach Public Schools. Her school had just received 100 school enrollment requests. Both relative and non-relative caregivers initiated these requests. These requests came in on the Thursday prior to Labor Day weekend and continued through the first day of school.

Ms. Eades' draft, which arose from the August 30 Drafting Work Group meeting, was then discussed. Ms. Eades noted her attempt to capture the issues set forth in the Attorney General's Opinions. This draft requires each local school division to develop their own process in determining residency for purposes of school enrollment. This option arose during the Work Group meeting when the Work Group determined that a process for enrollment was lacking. Ms. Atkinson then referenced the other recommendation offered by the Drafting Work Group, that the Department of Education develop model procedures. Ms. Atkinson noted this was a separate option identified by the Drafting Work Group. The Advisory Group recommended tabling the draft legislation

developed by Ms. Eades. The recommendation to develop model procedures was discussed by the Advisory Group. The Advisory Group offered no recommendation on the development of model procedures.

The Advisory Group then discussed how changes to the process would affect the school's ability to authorize medical care, field trip permission procedures, and disciplinary actions. This Advisory Group noted that this issue encompassed the transfer of educational rights. The Advisory Group discussed requiring both the caregiver and the parent to sign an affidavit of educational rights. The affidavit form could be included in the legislation draft. Discussion ensued about how this could be verified and how out-of-state cases would be handled. Questions also arose as to whether the document would be notarized and be filed with the court or the clerk's office. The members agreed that the school would be the most appropriate place to file the affidavit. The members then discussed whether both parents would need to sign the affidavit. It was agreed that it would be binding if one parent signed.

The Advisory Group members concurred that the draft submitted by Ms. Marra, which was modified by the Drafting Work Group, be further modified. Section A.4.iii would be revised striking the text following "§ 63.2-100." Language could be incorporated to require a signed affidavit by both the kinship caregiver and the parent. Ms. Eades stated that she would work on these changes. She stated that she would also include an affidavit form in the legislative draft.

Ms. Atkinson asked Ms. Vucci to brief the Advisory Group about the Department of Education's activities pertaining to school enrollment. In 2010, the Commission requested the Department to issue a Superintendent's Memorandum outlining the Attorney Generals' Opinions on school enrollment and *bona fide* residency. Ms. Vucci informed the Advisory Group members that the Department of Education made changes to the annual Superintendent's Memorandum transmitted to school divisions which discussed school enrollment.

Senator Miller and Delegate Brink thanked the Advisory Group members for their candid comments about this issue. Ms. Atkinson stated that Commission staff would work with Ms. Eades on the legislative draft and convene another Advisory Group meeting so that everyone could discuss next steps prior to the full Commission on Youth meeting. Ms. Atkinson informed the members that the Commission on Youth would be voting on recommendations at their November 9, 2011 meeting. All recommendations and public comments would be presented at this meeting.

The Advisory Group convened at approximately 11:45 a.m.