

Virginia Commission on Youth

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

5 East Conference Room
General Assembly Building
June 7, 2011
1:00 p.m.

MINUTES

Members Attending:

Delegate Robert Brink, Karen Addison, Lisa Bennett, Michelle Cowling, Lelia Baum Hopper, D. Patrick Lacy, Peyton McCoy, Christine Marra, Ellen Nau, Cate Newbanks, Patricia Popp, Wendell Roberts, Courtney Stewart, Mary Dunne Stewart, Rosemarie Stocky, Michelle Vucci, Anne Westcott

Participating Electronically:

Joy Myers and Ruth McCall Miller

Members Absent:

Senator Yvonne Miller, Delegate Anne Crockett-Stark, Kathy Dial, Bet Neale, Alberta Person, Adalay Wilson

Staff Attending:

Amy M. Atkinson, Leah Hamaker

Guests:

Beau Blevins, Jessica Eades, Lyndell Lewis, Carrie Nee, Michelle Parker, Sandra Peterson, Nicole Thompson Stock

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.

Ms. Atkinson briefed the members on the history of this study. Last year, the Commission on Youth conducted a study on *Barriers to Kinship Care*. Towards the end of the study, an issue arose regarding the challenges that informal kinship caregivers may face when enrolling their children in school. This was discussed during the November 3, 2010 *Barriers to Kinship Care* Advisory Group meeting. While the Advisory Group agreed that informal kinship caregivers should be able to enroll the children placed in their care into school, they did not want to create loopholes which could enable families to "handpick" a school for their children. Ms. Atkinson noted that, at the time this issue arose, it was too far along in the study year for the Advisory Group to formulate thoroughly-researched policy options. Accordingly, this issue was carried over to the 2011 study year.

At the Commission on Youth's November 19, 2010 meeting, three recommendations were adopted to address the school enrollment issue. The first recommendation requested the

various education associations, including the School Board Association and the Virginia Secondary Principals Association, address this issue via training. The second recommendation requested the Department of Education to detail this issue in a Superintendent's Memorandum. The third recommendation directed the Commission 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 during the 2011 study year. Ms. Atkinson stated that this was the first meeting of this Advisory Group for *School Enrollment Practices for Virginia's Kinship Caregivers*. This Advisory Group will meet during the summer and formulate draft recommendations to present to Commission on Youth prior to the 2012 General Assembly Session.

Ms. Cate Newbanks with Virginia's Foster, Adoption and Kinship Association (FACES) confronted a problem when she attempted to enroll her grandchildren in school. 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 ultimately sought and was awarded custody of her grandchildren.

Ms. Atkinson informed the Advisory Group that public school officials in many school divisions assume that children must live with their biological parents or a legal guardian in order to register them for school. She stated that this was in conflict with two Attorney General's Opinions. Both Opinions state that a school division may not refuse to provide a free education to a resident of the school division based solely on the categories the *Code of Virginia*. The Opinions concluded that there were situations in addition to those listed in the *Code* which may also entitle persons residing in a locality to free admission to public schools in that locality.

Ms. Atkinson referred the Advisory Group members to a report prepared by two graduate students at the University of Virginia. She noted that the research in this report may prove to be helpful to the Advisory Group. Ms. Atkinson asked Ms. Courtney Stewart from Albemarle County Public Schools to discuss how Albemarle County was handling this complex issue.

Local School Enrollment Practices

*Courtney Stewart, International and ESOL Coordinator
Albemarle County Public Schools, Charlottesville*

Ms. Stewart informed the Advisory Group that she worked in the English as a Second Language (ESOL) Office in Albemarle County. This office manages ESOL services for over 1,000 students and was a very busy office. She noted that the school division had previously been sending kinship caregivers to juvenile court to petition for custody for purposes of school enrollment. This required a great deal of follow-up and was not an effective process. In addition, many of their families were undocumented and afraid to become involved with the court. To address this issue, JustChildren helped Albemarle County develop a three-step process. JustChildren aided in the development of a Special Power of Attorney and accompanying instructions to assist in the school enrollment of these children. Albemarle County Schools send instructions and the related forms to the caregiver. Ms. Stewart indicated that she employs the interview protocol to assess whether the student is residing with the caregiver due to a legitimate reason versus a potentially illegitimate reason, e.g., the student is residing with the caregiver while on vacation. The caregiver can request assistance from Legal Aid. The sworn statement is completed by the resident caretaker. Then the student is registered for school.

The Advisory Group asked who is responsible for evaluating the sworn statement. Ms. Stewart stated that she was responsible for evaluating the statement but she also conferred with the

school division's attorney if she felt the need to do so. The Advisory Group discussed challenges regarding sharing records with caregivers who were not parents. The Family Educational Rights and Privacy Act (FERPA) was also discussed.

Overview of Kinship Care and School Enrollment in Virginia

Advisory Group Discussion

Ms. Atkinson stated that Albemarle is currently addressing this issue administratively and the Advisory Group may wish consider this option while formulating recommendations. However, the Advisory Group may opt to recommend legislation to address this issue. It was noted that there is a section in the *Code* referring to school enrollment for foster care children. The Advisory Group discussed whether it would be suitable to amend this section of the *Code*. Because this section of the *Code* addresses school enrollment for children placed in foster care, the Advisory Group members noted that it may not be appropriate to amend this section. The Advisory Group then discussed amending the kinship care section in the *Code*. It was noted that the legal definition of kinship care in the *Code* applies only to relative caregivers. School enrollment issues may also impact caregivers who are not related to the child.

The members agreed that *bona fide* residency was the critical element. The Attorney General's Opinions address only what is in the statute. *Bona fide* residency is a rebuttal presumption and if child is *bona fide* resident of the school division, the child is entitled to be educated in that school division.

The Advisory Group asked Ms. Stewart whether she conducted home visits during the enrollment process. Ms. Stewart said this was done if it was deemed to be necessary. The Advisory Group noted that it is a criminal offense to lie about residency for school enrollment purposes. However, Advisory Group members were not aware of anyone who had ever been criminally prosecuted.

Representatives from the Department of Education noted that every summer the Department outlines student enrollment requirements in a Superintendent's Memorandum. The Department is planning on including the provisions set forth in the Attorney General's Opinions in a Superintendent's Memorandum which would be transmitted prior to the 2011-2012 school year.

The Advisory Group discussed the possibility of codifying the Attorney General's Opinions. The members agreed that there were two issues which needed to be addressed. The first is why some school divisions are declining to enroll these children and the second is what could be done to help school divisions better apply the provisions set out in the Opinions. The Advisory Group also noted that the parents' rights and status must be acknowledged. Some situations occur where custody of the child is given to the local department of social services. In other situations, parental rights are terminated or parents relinquish their rights via entrustment. Both of these situations would need to be addressed. If the child is in foster care, local departments of social services have the authority to enroll the child in school.

The Advisory Group discussed whether children in foster care were covered under the provisions set forth in the federal McKinney-Vento Homeless Assistance Act. This legislation addresses the education of youth experiencing homelessness. Dr. Popp noted that McKinney-Vento applied only when the child was waiting to be placed in foster care.

Ms. Newbanks noted that the school in her locality was encouraging her to fracture the relationship with her son by seeking custody of his children in order to enroll them in school. A signed Power of Attorney would not have helped her enroll the children into school. Different localities have different practices.

Legal Implications of School Enrollment

*Jessica Eades, Staff Attorney
Division of Legislative Services*

Ms. Eades offered the Advisory Group a legal analysis of this issue. She noted that the Attorney General's Opinions did not offer school boards very much substance for them to "hang their hat on." However, creating lists in the *Code* can also create problems. She noted one option would be to define who these students are and include information in a "shall be able to attend" section. Another option would be to amend § 22.1-3 of the *Code* to outline the findings from the Attorney General's Opinions. Language would specify *bona fide* residency to include residing in the locality with an informal caregiver. It was important that local school divisions offer feedback to the option the Advisory Group pursues and that provisions are included to ensure that the options does not promote "school shopping."

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. School divisions also may employ waivers to allow for these situations, but this varies among school divisions. Ms. Stewart informed the Advisory Group that, in Albemarle, each enrollment case is reviewed at the beginning of the school year. Ms. Stewart contacts her families to determine whether their situations have changed. There is also no requirement for the families to file for custody. Each school year, the families reapply and each case is then reconsidered.

It is important that there is a clear process for when a school division determines the child is not a *bona fide* resident. Many families do not have ready access to counsel. The process need not be elaborate but should identify the decision makers. The Advisory Group agreed that, while this issue may be resolved administratively, there would be little uniformity if legislation was not adopted. However, legislation must not create additional paperwork requirements for those school divisions complying with the Attorney General's Opinions.

Ms. Eades suggested adding a separate section near § 22.1-3 of the *Code* for purposes of determining *bona fide* residency for school enrollment. This would outline provisions solely for enrollment (not residency). The Advisory Group noted that residency was typically easy to prove. The Attorney General's Opinions are not well known and this option would help school divisions determine who is a *bona fide* resident for purposes of school enrollment. Residency requirements are applied to the parent/caregiver and the child's residency is deemed to be that of the parent(s).

Ms. Eades indicated she could draft language to attempt to accomplish this and then obtain feedback from the Advisory Group. She suggested modifying § 22.1-3.4., which addresses enrollment of certain children placed in foster care. The Advisory Group agreed with this approach as a starting point.

Next Steps and Adjournment

Ms. Atkinson informed the Advisory Group that draft language for legislation would be disseminated to the Advisory Group via email. She also informed the members that Commission staff may need to reconvene the Advisory Group, based on feedback received from the draft legislation. She thanked the members for their assistance and suggestions. The meeting adjourned.

This was an electronic meeting at the following locations:

Arlington

Office of Executive Director, Borromeo Housing
3304 Washington Boulevard

Portsmouth

Office of Foster Care and Adoption Supervisor
Norfolk Department of Human Services
5129 Greenbrook