

EDUCATION: SYSTEM OF PUBLIC SCHOOLS; GENERAL PROVISIONS.

CONSTITUTION OF VIRGINIA: EDUCATION.

Falls Church must provide free public schooling to student who resides in house in Fairfax County that is located on residential lot partially within city, whether or not another structure exists on city residential tract. In determining residency for purposes of providing tuition-free schooling, school board may consider student's age and custody of student.

The Honorable Robert D. Hull

Member, House of Delegates

April 17, 1996

You ask whether the City of Falls Church school division is required to provide free public schooling to a student who resides in a house that is physically located in the Fairfax County school division, but the residential lot is partially located within the city.¹ If so, you ask whether there are any other factors the Falls Church School Board should consider in determining whether it must admit a student on a tuition-free basis. You also ask whether Falls Church is required to provide free public schooling to a student who resides in a house located in Fairfax County, but is on a lot with other structures, such as a garage, that are located within the city.

Section 22.13 of the *Code of Virginia* delineates those students who must be provided free public schooling.² Section 22.15(A) delineates those students who the school board in a school division may, in its discretion, admit to the public schools.³

Prior opinions of the Attorney General consistently conclude that, when a residential tract is bisected by school division boundaries, parents residing on the tract may elect to send their children to the schools of either school division.⁴ Where parents own different tracts located in different school divisions, however, their children are entitled to tuition-free schooling only in the school division of the parents' actual residence, rather than the division wherein the parents may own property but do not reside.⁵

Consistent with prior opinions of the Attorney General, therefore, it is my opinion that Falls Church is required to provide free public schooling to a student who resides in a house located outside the city but on a lot partially within the city. In my opinion, this conclusion is not altered by the fact that a portion of the residential tract located in the city is either vacant or has an outbuilding located on it.⁶

Other factors the Falls Church School Board may consider in determining the extent of its obligations to provide free public schooling to a student who claims residence in the city's school division are set forth in § 22.13. For example, depending on the facts of a particular case, inquiry may be appropriate concerning the age of the student or the nature of the custody of the student.⁷ These same factors would apply when the house in which the student resides and the lot are located entirely within the city.

¹The boundaries of school divisions are established by the Board of Education. See VA. CONST. art. VIII, § 5(a) (1971); VA. CODE ANN. § 22.125.

²Section 22.13 provides: "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 when he or she is living with a natural parent, a parent by legal adoption, or when the parents of such person are dead, a person in loco parentis, who actually resides within the school division, or 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 (i) resides in the school division and (ii) is the court-appointed guardian, or has legal custody, of the person, or when the person is living in the school division not solely for school purposes, as an emancipated minor."

³Section 22.15(A) provides, in part:

"The following persons may, in the discretion of the school board of a school division and pursuant to regulations adopted by the school board, be admitted into the public schools of the division and may, in the discretion of the school board, be charged tuition:

"2. Persons of school age who are residents of the Commonwealth but who do not reside within the school division."

⁴See Op. Va. Att'y Gen.: 1965-1966 at 253; 1955-1956 at 213, 21415; see also *Lee Gardens v. Arlington County Board*, 250 Va. 534, 540, 463 S.E.2d 646, 649 (1995) (General Assembly is presumed to acquiesce in Attorney General's published interpretation of statute where no corrective amendment is legislatively made).

⁵See 1955-1956 Op. Va. Att'y Gen. 192.

⁶The General Assembly may alter this result by amendatory legislation, but to date, it has not done so.

⁷See Op. Va. Att'y Gen.: 1993 at 144, 14546 (school board is not required to provide free schooling to children below school age); 1987-1988 at 342 (school board inquiry is appropriate concerning juvenile court custody order); *id.* at 374 (court inquiry is appropriate concerning