**Synopsis of State Law Governing the**

**Education of Limited English Proficient Students**

The following section contains information regarding the education of LEP students as outlined in the Constitution of Virginia and the Code of Virginia.

**What does the Constitution of Virginia require for educating school age students in the Commonwealth?**

The Constitution of Virginia states:

The General Assembly shall provide for a system of free public elementary and

secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained.

[Article VIII, Section 1]

The Constitution of Virginia can be found at <http://law.lis.virginia.gov/constitution>.

**What does the** [**Code of Virginia**](http://law.lis.virginia.gov/vacode/title22.1/chapter1/section22.1-5/) **require of local school boards for the education of ELLs?**

Local school boards shall also implement the following: identification of students with limited

English proficiency and enrollment of such students in appropriate instructional programs.

[COV § 22.1-253.13:1 D.11]

**Do students pay tuition to attend a Virginia public school?**

The *Code of Virginia* requires that:

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.

[COV, § 22.1-3. A]

**How does the Code of Virginia define school age?**

"Person of school age" means a person who will have reached his fifth birthday on or before

September 30 of the school year and who has not reached twenty years of age on or before

August 1 of the school year.

**Can ELL students over the age of 18 attend Virginia public schools?**

School boards may accept and provide programs for students for whom English is a second

language who entered school in Virginia for the first time after reaching their twelfth birthday, and who have not reached 22 years of age on or before August 1 of the school year. No tuition shall be charged such students, if state funding is provided for such programs. Further discussion of this allowance is found in section 3.

[COV, § 22.1-5. D]

**Can ELL students be taught in their native language in a Virginia public school?**

Pursuant to § 1-511, school boards shall have no obligation to teach the standard curriculum, except courses in foreign languages, in a language other than English. School boards shall endeavor to provide instruction in the English language which shall be designed to promote the education of students for whom English is a second language. [COV § 22.1-212.1]

**Does a family have to provide a Social Security Number to enroll in a Virginia Public** **School?**

The Code of Virginia states:

It shall be unlawful for any agency to require an individual to disclose or furnish his social

security account number not previously disclosed or furnished, for any purpose in connection with any activity, or to refuse any service, privilege or right to an individual wholly or partly because the individual does not disclose or furnish such number, unless the disclosure or furnishing of such number is specifically required by federal or state law.

[COV, §2.2-3808. A.]

**Further information**

**Virginia Attorney General’s Opinion on undocumented children attending school**

In 1982, the Supreme Court of the United States established in [*Plyler v. Doe*](https://www.law.cornell.edu/supremecourt/text/457/202)1 that children who are illegal aliens2 may not be presumptively excluded from free public schooling. A 1979 opinion of the Attorney General concludes that the citizen or visa status of an alien student does not affect his eligibility for tuition-free education.3  Whether such student is entitled to tuition-free education in a particular school division "turns on his residence."4

**And**

Accordingly, it is the Attorney General’s [my] opinion that a local school board is not permitted to inquire into a student applicant’s citizenship or his B, C, or D visa status, nor may it require documentation to verify such status, for the purpose of ascertaining whether such applicant is a resident of the school district.19

<http://ag.virginia.gov/files/Opinions/1999/apr992.pdf>

**What are the requirements for Parental Notification and High School Graduation of**

**ELLs?**

The *Code of Virginia* provides the following regarding parental notification and high school

graduation:

Each local school board shall provide notification of the right to a free public education for

students who have not reached 20 years of age on or before August 1 of the school year, pursuant to Chapter 1 (§ 22.1-1 et seq.) of this title, to the parent of students who fail to graduate or who have failed to achieve the number of verified units of credit required for graduation as provided in the standards for accreditation.

If such student who does not graduate or achieve such verified units of credit is a student for whom English is a second language, the local school board shall notify the parent of the student's opportunity for a free public education in accordance with § 22.1-5.

[COV, §22.1-253.13:4. Standard 4. C]

# In addition to the links provided in this document, the [VDOE Title III: Language Instruction for Limited English Proficient & Immigrant Students](http://doe.virginia.gov/federal_programs/esea/title3/index.shtml) webpage posts all resource documents relevant to State and Federal legal requirements at: <http://doe.virginia.gov/federal_programs/esea/title3/index.shtml>.