



EDUCATION LAW NOTES

Federal and Virginia Developments in School Law

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VIRGINIA SCHOOLS MAY NOT REQUIRE BIRTH CERTIFICATES AND PROOF OF RESIDENCY IN HOMESCHOOL NOTIFICATIONS

Virginia Code Section 22.1-254.1(B) says that "[a]ny parent who elects to provide home instruction in lieu of school attendance shall annually notify the division superintendent in August of his intention to instruct the child and provide a description of the curriculum, limited to a list of subjects to be studied during the coming year, and evidence of having met one of the criteria for providing home instruction as required by subsection A."¹ On June 11, 2020, the Virginia Supreme Court held that a school division may ask for no more – notably, it may not ask for the subject child's birth certificate or proof of residency.

The case, styled *Kirk Sosebee v. Franklin County School Board*, involved a dispute between the parents of student K.L.S. and another child, both of whom were homeschooled, and the Franklin County School Board. On July 10, 2017, the School Board amended its Home Instruction Policy to require parents who notify the Board of their intent to homeschool to also "provide a certified copy of the students' birth certificate and proof of residence" for "students who have not previously been enrolled in the school division." In May 2018, the Sosebees

filed a complaint in the Circuit Court of Franklin County alleging that the Policy was contrary to the notice provision of Virginia's Homeschool Statute and seeking to enjoin the School Board from enforcing it.

Specifically, the Sosebees alleged that in June 2017 they completed a Notice of Intent to Provide Home Instruction for the 2017-18 school year. The Franklin County Public Schools Superintendent received the Notice before the Board amended its Policy to include the birth certificate and residence confirmation documentation requirements. In August 2017, they received a letter from the Superintendent requesting that information for K.L.S. "because of a policy change."

the Homeschool Statute does not require submission of a birth certificate and proof of residence.

Counsel for the Board and the family exchanged a series of letters about the Notice over the ensuing months. The Sosebees argued the Homeschool Statute does not require submission of a birth certificate and proof of residence. The Board reiterated the requirement for the additional documentation and informed them that their "home school application is denied ... [u]ntil FCPS [received] those documents." The Sosebees

¹ Subsection A authorizes any parent to elect to provide home instruction if he (i) holds a high school diploma; (ii) is a teacher of qualifications prescribed by the Board of Education; (iii) provides the child with a program of study or curriculum which may be delivered through a correspondence course or distance learning program or in any other manner; or (iv) provides evidence that he is able to provide an adequate education for the child.

responded that the Homeschool Statute does not authorize superintendents to “approve” notices, only to receive them and the Superintendent received their notice prior to August 15, 2017. Finally, the Board acknowledged that it “can’t approve or deny homeschooling” but reiterated its request for the students’ birth certificates and proof of residence, stating that without those items FCPS lacked sufficient information to acknowledge the requests. It advised further that the Sosebees “will be subject to Compulsory Attendance where Court intervention may be warranted.”²

The Circuit Court, following a hearing in which it received the Sosebee's Notice into evidence without objection, denied the relief sought by the family. It found the Policy did not contradict the provisions of the Homeschool Statute. It also cited the School Board's general authority to create policy granted to it by Virginia Code Section 22.1-78. The Court held further that the Policy addressed the "valid public policy of ensuring the children monitored by the Board are between the ages of five (5) and eighteen (18) and are residents of Franklin County."

On appeal, the Virginia Supreme Court reversed. It included the entire text of Virginia Code Section 22.1-254.1 in its opinion. It then applied well-recognized principles of statutory interpretation. "When the language of a statute is unambiguous, we are bound by the plain meaning of the language" and "we must give effect to the legislatures' intention as expressed by the language used unless a literal interpretation of the language would result in a manifest absurdity." Applying these principles to the notice provision of the Homeschool Statute, the Court wrote: "if a parent satisfies the notice requirement and meets the two

evidentiary requirements, then she is statutorily authorized to homeschool her child. There is no statutory requirement that a parent provide a child's birth certificate or proof of residency." Therefore, it held the Policy's requirement for such documentation to be inconsistent with the Homeschool Statute.

The Supreme Court acknowledged that a school board has authority to establish policy pursuant to Virginia Code Section 22.1-78 for the government and management of its official business and for the supervision of its schools. However, "it is clear that a school board's authority to adopt regulations 'for the supervision of schools' means for the supervision of public schools, not home instruction."

Interestingly, the Homeschool Statute requires further that: "Any parent *who moves into a school division* or begins home instruction after the school year has begun shall notify the division superintendent of his intention to provide home instruction as soon as practicable and shall thereafter comply with the requirements of this section within 30 days of such notice. The division superintendent shall notify the Superintendent of Public Instruction of the number of students *in the school division* receiving home instruction." The Supreme Court's opinion does not reconcile these specific requirements in the Homeschool Statute regarding residency with its "plain language" interpretation of the parent's notification responsibility.

Although homeschool notices are to be provided directly to the division superintendent, in practice school principals often receive them. Principals should not request any information not expressly authorized by the Homeschool Statute.

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²Because the Sosebees filed their Notice before the Policy revision, the Board explained that it would not apply the new requirements for the 2017-18 school year but would for the 2018-19 school year – the Sosebees planned to homeschool the students that year also.