REPORT OF THE

JOINT SUBCOMMITTEE STUDYING THE

PLACEMENT OF HANDICAPPED CHILDREN

IN RESIDENTIAL FACILITIES

TO

THE GOVERNOR

AND

THE GENERAL ASSEMBLY OF VIRGINIA

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Report of the
Joint Subcommittee Studying the
Placement of Handicapped Children
in Residential Facilities
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
December, 1982

To: Honorable Charles S. Robb, Governor of Virginia
and
The General Assembly of Virginia

I. Origin of the Study

During the 1982 Session of the General Assembly, two identical resolutions, Senate Joint Resolution No. 43 and House Joint Resolution No. 74, focused on the problems in placing handicapped students in residential facilities, were introduced and passed. Prior to this time, the Education of the Handicapped study had been investigating special education issues including some of the problems noted in these two resolutions. Therefore, each of the resolutions contains a reference to the previous study, which indicates that the Joint Subcommittee appointed under their auspices should include the members of the Joint Subcommittee Studying Education of the Handicapped pursuant to House Joint Resolution No. 36 of 1980.

The Subcommittee was composed of ten members, two from Senate Education and Health, one from Senate Finance, one from Senate Rehabilitation and Social Services, three from House Education, two from House Health, Welfare and Institutions and one from House Appropriations. The Subcommittee members who were also on the Education of the Handicapped Subcommittee were: Senators Thomas J. Michie, Jr., Chairman, Adelard L. Brault, John H. Chichester and Clive L. DuVal, 2d; Delegates Alan A. Diamonstein, Dorothy S. McDiarmid and Arthur R. Giesen, Jr. The other members were: Delegates Mary Sue Terry, Vice-Chairman, Benjamin J. Lambert, III, and Mary A. Marshall.

II. Charges to and objectives of the Subcommittee

This subcommittee was charged in its enabling resolution with ascertaining:

1. The proper agency or agencies for:

   A. making residential placements of handicapped children;

   B. receiving the funds and paying for the placements;

   C. evaluating and monitoring the placements;

2. The proper means to:

   A. eliminate duplication of effort and provide for a cooperative, effective program;

   B. make use of state facilities and the child's home in providing an appropriate educational program for handicapped children; and

3. The responsibilities of the state and local governments under the applicable laws.

In order to accomplish these goals, the Subcommittee adopted the following objectives:

1. To develop and establish a permanent mechanism for providing uniform, cooperative management of services to handicapped children at the state and local level;

2. To examine the funding requirements and mechanisms currently established by law in order to determine their equity and cost-effectiveness;

3. To develop and establish a permanent, uniform mechanism for establishing rates for residential facilities at the state level;

4. To examine the roles of the local welfare and education agencies to determine a means to reduce conflict and duplication of efforts in the placement of handicapped children;

5. To establish a mechanism for reviewing, evaluating and approving all out-of-state placements of handicapped children in residential placements, which incorporates the procedures of the Interstate Compact; and

6. To establish an information system for all programs and services available to handicapped children in Virginia in order to facilitate in-state placement of handicapped children.

III. Background of the Study

The implementation of P. L. 94-142 in 1975 was preceded in Virginia by a state law requiring education for handicapped children in 1972. Passage of this law, prior to the federal mandate, put Virginia in the forefront of education of the handicapped.

The legal issues surrounding P. L. 94-142 and the state law are still being developed as a body of case law is compiled. Education of the handicapped at public expense is a relatively new concept and the extent of the required services and the consequent benefits to the individual and society are just beginning to be recognized and acknowledged.

Because of this state of evolution in education of the handicapped, certain issues arose in Virginia in the years before the 1982 Session which precipitated this study. The background facts for these issues are described here.

Currently, three state agencies are responsible for facilitating the placement of handicapped children in residential facilities: The Departments of Corrections, Education and Social Services (Welfare). Practice and tradition have led to the Department of Social Services setting the rates for residential, nonschool, nonspecial education facilities and the Department of Education setting the rates for the residential, special education facilities. The Department of Corrections has cooperated with the other two departments and has customarily accepted their rates.

Social Services and Corrections place children for "noneducational" reasons, whereas the local school divisions provide placements only for children who are handicapped and for whom there is no "appropriate" program in the local system as mandated by P.L 94-142 and § 22.1-214 of the Code of Virginia

Under the Code of Virginia , § 22.1-218, the State pays 60% of the cost of the residential placements facilitated by the local school divisions. This 60% is not an "actual" percentage in all cases, but 60% of the rate as set by the Board of Education. The school divisions are required to pay the remaining 40% or more, depending on the cost of the facility.

The Board of Education and the Department of Social Services set a rate for each facility each year and provide for a "predetermined maximum increase," which is a flat percentage increase of the rates, on a yearly basis. The "predetermined maximum increase" for 1981-1982 was 8.4% and for 1982-1983 was set at 5% and then increased to 7.7%.

In those cases in which the local department of social services (welfare) has placed a handicapped child in a residential facility for "noneducational" reasons, the local school division is required, by Superintendent's memo and Board regulation, to pay the educational costs of the placement. The local school divisions frequently do not have a part in this placement; however, in many areas of the State, collaborative procedures, as stipulated by the two state departments, have been developed and are working well.

The local school divisions feel that requiring them to pay for the educational costs for those children placed for "noneducational" reasons is unfair. The local school divisions are sometimes reluctant to be involved in the placement of children for "noneducational" reasons. They do not want to pay for residential or across jurisdictional lines placements for children for whom there is an "appropriate" program locally available. If they are not part of the placement process, they tend

to feel more justified in refusing to pay the educational costs of the placement.

They also see the rate-setting process as inflationary because they view Social Services' rates as being more generous than the Department of Education's rates. They feel that having two agencies setting rates for facilities provides an opportunity for the facilities to place demands on the agency setting the lower rates.

The residential facilities located in the State assert that they have always recognized and honored the rates as set by the two departments. The residential facilities located without the State are not subject to intrastate pressures, however, and do not always honor the rates established by the two departments. The school divisions are not bound by the rates as set by the two departments and may, if they wish, pay the additional cost of placement in a facility which does not honor the established rates (See Appendix A for § 22.1-218.A).

The setting of the "predetermined maximum increase" is a procedure developed within the two state agencies and is not established by law or regulation. Although the methods for reaching this increase have fluctuated over the years, a formal procedure of negotiation with the private facilities was developed by the Department of Social Services in 1978 through the establishment of the Advisory Committee on Rate Setting for Children's Residential Facilities. The Advisory Committee consists of members from the relevant state departments and representatives of the providers. This system for rate setting is unique in the country and considered by many providers to be a valuable innovation.

Prior to 1978, a statutory cap was placed on the amount of the "tuition assistance grants" to the parents of handicapped children. This cap was set at 75% of the cost "in an amount not to exceed four thousand dollars" for handicapped children placed in special education residential facilities. The State reimbursed the locality 60% of this amount (See Appendix A for § 22-9.1:4 of the 1950 Code of Virginia , 1973 replacement volume). The tuition assistance grants were discontinued and the Board given the authority to establish "reasonable costs." (See Appendix A for § 22-10.8 of the 1950 Code of Virginia, 1979 Cumulative Supplement). These changes were brought about as a result of Kruse v. Campbell , 431 F.Supp. 180 (E.D. Va. 1977), vacated, 434 U.S. 808, 98 S.Ct. 38, 54 L.Ed. 2d 65 (1977). The state reimbursement rate was continued at 60%; however, the children are now entitled to a free appropriate education and no parental contributions to tuition costs may be required for placements facilitated by local school divisions.

The Advisory Committee on Rate Setting for Children's Residential Facilities recommended in 1980 that a single set of forms and procedures be established by the Departments of Social Services and Education. The departments agreed and, thereby, the "predetermined maximum increase" and cost-analysis procedures were informally adopted. In 1980, the Board of Education began setting the rates for special education facilities using the jointly developed forms. By 1981, the Departments of Social Services and Education had sorted out their roles and divided their efforts so that Education sets the rates for the special educational facilities (residential or day) and Social Services sets the rates for the other residential facilities (nonschool, nonspecial education). The Department of Education uses the accounting firm of Ernst and Whinney to perform the cost-analysis used as the basis for the rates. The Department of Social Services performs this function in-house. This year, the Department of Education announced without meeting with the Advisory Committee that the cap would be 5% for 1982-83.

This unilateral announcement, which appears to have been motivated by fiscal problems, was not well received by the private facilities, either in-state or out-of-state. The private providers directed their attorney to file suit if a solution could not be reached. The school divisions also expressed concern because some out-of-state private facilities began notifying them that the facility would not accept the rate as set and would not continue to serve their children unless the school divisions paid the additional costs. Some facilities in other states maintained that under their state law, they could not accept a lower tuition payment for out-of-state children than they accept for their home state children. Some school divisions expressed the fear that many out-of-state placements would have to be changed as a result of the cap and this might cause many due process hearings or even lawsuits because such changes precipitate "disputes as to program placements..." (See Appendix A § 22.1-214 of the Code of Virginia). Negotiations between the private providers and the Department of Education resulted in the cap being raised to 7.7%.

The Interstate Compact on the Placement of Children, Chapter 10.1 of Title 63.1 of the Code of

Virginia (See Appendix A), was designed to protect the member states and their children from the poor conditions which existed some years ago in some residential facilities. Under Article II, Definitions of § 63.1-219.2(b), "sending agency" is defined as virtually any entity "which sends, brings, or causes to be sent or brought any child to another party state." Paragraph (d) of this article defines the term "placement" to exclude "arrangements for care of a child" which are in "any institution primarily educational in character...." In Article VII, Compact Administrator , the designated officers are authorized to jointly "promulgate rules and regulations to carry out more effectively the terms and provisions of this compact." In Article VIII. Limitations , the sending or bringing of a child by immediate relatives to comparable relatives are excluded from the Compact.

In 1977, the Board of Welfare (now Board of Social Services) adopted a policy that all out-of-state placements were subject to the Interstate Compact. The legal authority of the Board to enforce such a policy is questionable as the Interstate Compact gives the authority to promulgate regulations to the designated Interstate Compact officers jointly . However, in April of 1982 at the meeting of the American Public Welfare Association, the Interstate Compact officers approved a regulation which defines "primarily educational institution" as, basically, a boarding school (See Appendix A for attachment entitled "Draft Regulation"). This action appears to be within their authority and enforceable under Virginia law. Because out-of-state facilities may be subject to loss of licences for acceptance of unauthorized children, they are frequently unwilling to accept children except through the Interstate Compact.

The local school divisions are required to complete a one-page form, ICPC 100A (See Appendix A) and submit a copy of the child's IEP and the parent's written consent to the Office of the Administrator of the Interstate Compact. Within 48 hours, these forms are forwarded to the receiving state's Interstate Compact Office. The school divisions are also required to report quarterly on the status of each out-of-state placement. Since the children are placed individually, these quarterly reports are required separately for each child.

The local school divisions argue that they are placing handicapped children in "institutions primarily educational in character" because the needs of the children are unique, related services are required under the law (P.L. 94-142) and it is not possible to educate such children with only classroom teachers and support services. The school divisions also argue that technically they are not the placing agency; the parents are.

The local school authorities sometimes object to the paperwork required by the Interstate Compact. Apparently, their objection stems from the requirement for quarterly reports on each child's status. The Department of Social Services has a sophisticated computer system which allows them to track the children easily. The local school divisions are not equipped with such systems in many areas and such reports must be handled manually. This is probably the reason Social Services has difficulty getting these reports from the school divisions.

The primary objection of the school divisions to going through the Interstate Compact is that the procedure creates a delay in the placement. This delay is of minimum duration, however, because the Interstate Compact administrators understand that the placements must be expedited, and they process all papers as quickly as possible.

The school divisions also object to the Compact because it provides, in their view, the Department of Social Services with authority over their actions. The Interstate Compact is perceived as requiring the approval of the Virginia Department of Social Services for the placements. In fact, the sending agency (the Virginia office) does not approve placements; however, the receiving agency (the other state office) can disapprove placements which are not considered appropriate.

In addition to these problems, it was brought to the Subcommittee's attention that the administration and financing of the educational programs in the facilities operated by the Department of Mental Health and Mental Retardation presented an issue of great concern to some parents and advocacy groups.

Two types of educational programs currently are operated in the Department of Mental Health and Mental Retardation facilities. Children in the Mental Health facilities are educated by the local school divisions under contracts with the Department of Education. Children in the Mental Retardation facilities are educated primarily in programs operated by and funded through the Department of Mental Health and Mental Retardation. A few children residing in these training

centers are mainstreamed into the local school divisions. In one instance, Northern Virginia, the Center contracts with the County of Fairfax to provide this education.

A study conducted by an advocacy group some years ago raised questions concerning the quality of the programs in the mental retardation centers and the appropriateness of the various administrative authorities in view of the provisions of P. L. 94-142 and state law. The local school divisions raised the issue of access to these programs as they complained they could not get children placed in the facilities.

IV. Scope of the Committee's Work

The Subcommittee focused its attention on four issues related to the background facts described in Section III and addressed them by using the following analysis.

A. Should a uniform mechanism for setting rates for the private residential facilities, both educational and noneducational, be established?

Discussion:

Presently, the rates for residential facilities which are not educational in purpose are set by the Department of Social Services. The rates for the residential, special education facilities are set by the Department of Education as approved by the Board of Education under the authority provided in § 22.1-218. The Department of Corrections places children in both types of facilities and has adopted a passive role in this situation, customarily accepting the rates set by the other two agencies.

The present situation has resulted in some controversies generated by lack of consistency in procedures and in relationships between the private providers and the agencies. Neither the Commonwealth's handicapped children, the local school divisions or, for that matter, the fiscal health of the state or local governments will be served by allowing these controversies to continue because it is to everyone's advantage to foster the maintenance and development of the in-state private provider system. Without these schools and residential facilities, the state and local agencies would be forced to send many more children to more costly, more difficult to monitor out-of-state facilities.

Possible Alternatives:

1. The Status Quo. Because the budgets for the state agencies are calculated on the basis of the rates as set by the respective agencies, any change in the control of these rates will require some adjustments in the procedures used for analyzing the operating costs of the private providers, and eventually, in obtaining the figures to use in calculating the budget estimates.

2. A committee composed of representatives of the three state agencies and representatives from the localities (a school board chairman, superintendent or special education official and a welfare official or social worker). This committee would be charged with establishing uniform criteria for rate setting, establishing a process for settling disputes over the rates, negotiating the cap with representatives of the private providers, and publishing and disseminating all criteria and procedures as well as a comprehensive list of all approved educational and noneducational facilities, their rates and the types of programs they offer.

The state representatives on this committee might be given the authority to act as liaison to their respective boards, which would to some extent eliminate the erosion of the Boards' authority. This committee would be established by law or by regulations of the three agencies. The advantage of establishing such a committee by law is permanency, whereas regulations change as the political climate of the state changes.

3. A permanent method, established by law, for negotiating contracts, establishing the rates and settling disputes with the private providers. Such a mechanism would have to be established to apply to all three state agencies equally. Such a statute would have to be explicit in its requirements, establish clear criteria and describe the procedures for negotiating contracts and settling disputes concisely, but in detail, as decided by the Subcommittee.

4. Eliminate the rate-setting process and allow the forces of free enterprise to take their course. This alternative passes the duties, responsibilities and problems of bargaining with the providers

back to the localities. Some new mechanism for establishing the state share would have to be devised, e.g. 60% up to a set amount.

B. Should the responsibilities for the operation and funding of the educational programs in the Mental Health and Mental Retardation facilities be revised to establish uniform administrative and budgeting authority?

Discussion:

Presently, a dichotomy exists in the MHMR facilities' educational programs because the educational programs in the MH facilities are funded by the State as an appropriation to the Department of Education and operated by the local school divisions, whereas the educational programs in the MR facilities are funded by the State as an appropriation to the Department of Mental Health and Mental Retardation and operated by the educational directors in the mental retardation training centers. The one exception to this dichotomy is in the Northern Virginia Training Center where the County of Fairfax contracts pursuant to § 22.1-7 with MHMR to operate the educational programs and the program includes many services which may not be offered in the other facilities. The educational programs in the MH facilities have been described as generally "good." The educational programs in the MR facilities have been described as a "mixed bag." There is some feeling that the teachers in the MH facilities, as employees of the local school divisions and, therefore, independent of the authority of the administrators, act as ombudsmen or advocates for the children. When considering these programs, it should be kept in mind that the children in the MH facilities usually stay for a short period of time, while the children in the MR facilities usually remain residents for an extended period of time; that the local school divisions are required to contribute only the ADM money to the MH/MR facilities on a pro rata basis; and finally, that families are liable for the expenses for children in the MHMR facilities for up to 5 years (see § 37.1-105 of the Code of Virginia).

Inherent in this problem is the question of mainstreaming the children in the MR facilities. The children in the MH facilities do not seem to constitute a problem in this regard. The Department of Mental Health and Mental Retardation has identified a number of children in the MR facilities as eligible for mainstreaming. Many officials in Virginia education feel that institutionalized children, if placed appropriately, are "by definition" in the least restrictive environment and that it is not appropriate to consider mainstreaming such children in the public schools. Further, the money appropriated by the General Assembly for mainstreaming these children is not considered adequate to pay for the education of these children.

Possible Alternatives:

1. The Status Quo . It would appear that neither department has an overwhelming desire to assume control for the program operated by the other. In this instance, the Fairfax program will be continued on a contract basis and additional money will have to be requested during the 1983 Session for this program. One suggestion if the Subcommittee decides to recommend continuation of the status quo is that the Department of Mental Health and Mental Retardation be required to obtain an outside , objective evaluation of the programs in its facilities. This evaluation could be used to standardize the programs and to upgrade any programs which were evaluated as in need of improvement.

2. Place the responsibility for both programs on the Department of Mental Health and Mental Retardation. Public Law 94-142 places the responsibility for education of handicapped children squarely on the state and local education agencies; therefore, this option does not appear viable. Further, § 22.1-214 of the Code of Virginia authorizes the Board of Education to supervise educational programs for handicapped children which are conducted by other public agencies. In addition, placing the responsibility on MHMR does not appear appropriate in view of the fact that the expertise in this area is centered within the Department of Education.

3. Place the responsibility for both programs on the Department of Education. In light of the statements in #2 above this alternative would appear more logical and more appropriate. The logistics of such a change could be difficult.

4. Place the responsibility for the educational programs in the state institutions with one authority, for example, a regional school authority. A mechanism currently exists in the Board of Education regulations for voluntary establishment of regional school authorities to conduct

vocational-technical and special education programs. Such a mechanism has several advantages—it would hopefully provide economies-of-scale; the teachers could be local employees, thereby reducing the state payroll; and more importantly, the localities would have a vested interest in the quality and efficiency of the programs. This mechanism could dissipate the mainstreaming problems as the localities would be making the decisions. This mechanism would have to be established by law and would require additional analysis and input from the communities. Eventually, a regional school authority could assume the responsibility for all educational programs in the public state or regional facilities, i.e. Woodrow Wilson Rehabilitation Center, the Schools for the Deaf and Blind, etc.

C. How should the cost and responsibilities for the education of handicapped, foster care children be handled when the children are placed across jurisdictional lines?

Discussion:

When the local welfare department determines that no appropriate foster home exists in its locality and that a foster care child, who is handicapped, must be placed in another locality, the responsibility for educating the child then falls on the school division in which the child is placed. The local agencies have been directed to cooperate in these situations; however, in many cases, there is little communication. The state and federal money automatically follows the child to its foster care residence. The problem arises because, frequently, the school division educating the child has a higher local basic cost for educating the handicapped child than the school division of the child's legal residence. The school division educating the child then bills the school division of the child's legal residence for the "excess." Some school divisions have begun to refuse to pay these sums, saying that they have an appropriate program for the child and the child was placed for "noneducational" reasons; therefore, they have no obligation to pay any additional cost.

Possible Alternatives:

1. Status quo. If the Subcommittee decides that no changes should be recommended, it is suggested that some mechanism be established for enforcing the payment of the "excess" costs to the school division educating the child, and that the Department of Education be requested to develop guidelines for the "excess" cost assessments as each local school division presently uses its own method for analyzing these costs.

2. Place the cost and the responsibility for educating the children on the school division in which the child is residing regardless of the legal residence. This would solve many problems; however, it could cause new ones for some school divisions. Some school divisions have child placement agencies in their localities, which place only foster care, handicapped children. Such agencies attract the children and can cause great expense for the school divisions for educating children who are not legal residents of their localities and whose families do not contribute to the local economies.

3. Create another line item for foster care, handicapped children similar to the one already in the budget which pays for the education of foster care children from out-of-state. This would place the financial burden primarily on the State. Although this alternative would be attractive to the localities, it could serve as a magnet and attract many children, eventually becoming very expensive and unwieldy. Further, this mechanism could kill all initiative to monitor the progress of the children, and it may be desirable to maintain the interest of the localities in the fate of these children.

If the Subcommittee decides to recommend any solution other than the status quo, then § 22.1-101 of the Code of Virginia must be amended.

D. How should the cost and the responsibilities for the residential placement of handicapped children be allocated between the state agencies (Social Services, Education and Corrections) and the local agencies?

Discussion:

In order to analyze this issue, the Subcommittee must consider the following two sets of circumstances involving both in-state and out-of-state placements in residential facilities.

I. Three agencies place handicapped children in residential facilities - Corrections, the local welfare departments and the local school divisions. The placements made by Corrections and local

welfare departments are termed for "noneducational" reasons. This means that the child must be placed in a residential facility because neither a foster care home, group home nor correctional facility can meet his special needs. The placements facilitated by the local school divisions are always for "educational" reasons, i.e., that the local school division has no "appropriate" program for the child.

In those cases in which the local department of welfare or the Department of Corrections has placed a handicapped child in a residential facility for "noneducational" reasons, the local school divisions are required, by Superintendent's memo and Board regulation, to pay the educational costs of the placement. This is not the entire cost of the placement - only 40% of the "educational" costs.

The local school divisions resent this requirement for two reasons:

1. They frequently do not have any part in the placements; and

2. They frequently have programs which are deemed "appropriate" for the children in their school systems.

In some areas of the State, communication and cooperation between the local agencies are good; however, in other areas of the State, "turf" considerations and a lack of desire to be involved have created difficulties. A number of school divisions are refusing to pay the educational costs and are arguing that they have fulfilled their responsibilities to the children by providing appropriate programs in the jurisdictions of the children's legal residences. Some school divisions also feel that since they had no part in the placements, which were made for "noneducational" reasons, they have no obligation to pay for the education of the children. This situation exists for placements in both in-state and out-of-state facilities; however, it should be remembered that many more children are placed in-state than out-of-state by the local welfare agencies and that Corrections has no out-of-state placements at present.

The argument that the local school division has an appropriate program for the child and, therefore, has no further obligation has been countered by many people, because if the program is no longer accessible to the child, the program is no longer appropriate. In many instances, the child's circumstances have been drastically altered by some event in his life and, in reality, the program offered by the local school division, accessible or not, has become inappropriate.

II. The second set of circumstances centers on the out-of-state placements of handicapped children and involves the same problems between the local agencies that are set out in I above plus additional difficulties.

The Interstate Compact on the Placement of Children, Chapter 10.1 of Title 63.1 of the Code of Virginia , was designed to protect the children of the member states from the poor conditions which existed in some residential facilities a few years ago. Under Article II of Section 63.1-219.2(b), Definitions , "sending agency" is defined as virtually any entity "which sends, brings, or causes to be sent or brought any child to another party state." Paragraph (d) of Article II of the Compact defines the term "placement" as "the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character , and any hospital or other medical facility (Emphasis added)." Under Article VIII, Limitation , placements by a parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or guardian with any other relative of the same class or nonagency guardian are excluded . This is a very narrow exclusion and does not include the placement, even by a parent, of a child in a residential special education facility.

Through a regulation adopted by the Interstate Compact officers at the meeting of the American Public Welfare Association, a "primarily educational institution" was defined as, basically, a boarding school. Prior to this time, the Board of Welfare (now Social Services) had adopted a policy that all out-of-state placements were subject to the Interstate Compact. Because of these events, the local school divisions are required to submit out-of-state placements to the Office of the Interstate Compact in the Department of Social Services before sending or causing the child to be sent. The Designee of the Commissioner of Social Services forwards the papers to the receiving state, but does not approve or disapprove the placement . The Office of the Interstate Compact in the receiving state can disapprove the placement if the placement is not appropriate or in the best interests of

the child in their view. It would appear that this happens very infrequently and, when it does, the personnel in the Virginia Office of the Interstate Compact work diligently and expeditiously to assist the school division in placing the child.

The local school divisions do not like to have to go through the Department of Social Services to facilitate their placements and there is a common misconception that the Virginia Commissioner of Social Services must approve and can disapprove the placement. Perhaps the resentment would not be altered by the fact that it is the counterpart of the Virginia Commissioner who must approve and can disapprove the placement.

It must be remembered that the Interstate Compact is for the protection of the Commonwealth's interests and its children's welfare. It does not appear to be a viable option to solve this problem by reversing the policy requiring the school divisions to go through the Interstate Compact. In reviewing the out-of-state placements, it would appear that we still have too many and that a few might not be as appropriate as some other placement. In recent years, the in-state private provider system has developed and expanded; however, it is possible that many school division personnel are not aware of all of the in-state programs and do not always search as diligently for an in-state alternative as would be desirable. Further, it would appear that, since the State pays 60% of the cost of these placements (see Appendix A for § 22.1-218 of the Code of Virginia), the State needs to take a stronger role in the placement process. The local school divisions complain of lack of control of their placements and spiraling costs. In reality, some placements are not within their control; however, the State is paying thousands of dollars for placements over which it has exercised no control to date.

Possible Alternatives:

1. The Status Quo: If the Subcommittee decides to recommend no change, then it is suggested that the departments involved with the Interagency Task Force be encouraged or directed to continue their efforts to coordinate services in order to resolve disputes such as this in the future with a minimum of controversy. Perhaps this task force should be permanently established.

2. Direct the Department of Social services and the Department of Education to develop a uniform system for approving all out-of-state residential placements. The departments would have to design a single form, which would include an assurance that the agency, whether school division or local welfare department, had searched diligently for an appropriate program as close to the child's home as possible; that there was no appropriate day program available for this child and why; and finally, that all of the in-state residential facilities appropriate for the child had refused the placement or were more expensive or more distant than the out-of-state facility. All out-of-state placements by the local school divisions would then be submitted first to the Department of Education for approval or disapproval. The papers would then be forwarded immediately to the Office of the Interstate Compact. The Department of Social Services already receives all applications for out-of-state residential placement of children from the local welfare agencies. The Department of Social Services would obtain approval from the Department of Education for all special education out-of-state residential placements.

This mechanism for approval or disapproval, if administered carefully and toughly, could result in a reduction in the number of residential placements in out-of-state facilities.

3. Establish a local placement approval committee, which would consist of representatives of the local agencies and, perhaps, a citizen. This committee would be charged with approving or disapproving all residential placements and forwarding all out-of-state placements to the Office of the Interstate Compact.

4. If none of the above is attractive, then it is suggested that the Committee consider requesting the two departments to conduct workshops on the local level to promote cooperation and understanding of the roles of the respective agencies, to define the purpose of the Interstate Compact and to develop methods by which delays and frustrations can be eliminated. It is further suggested that the departments be requested to compile one comprehensive list of the residential facilities which cites the costs and the general types of programs offered, and that the departments be requested to disseminate this list as quickly as possible to all relevant parties.

In addition to these primary issues, the Subcommittee considered the legislative recommendations

proposed by the State Advocacy Office for the Developmentally Disabled, received the reports of the Interagency Task Force on Delivery of Related Services, and heard testimony concerning the status of juveniles being held in adult jails without educational services and the problems surrounding the cost of educating children who have been privately placed in child-caring institutions. The recommendations of the State Advocacy Office (See Appendix B for a mock-up of these recommendations) were focused on due process considerations, the certification for admission to the training centers of the Department of Mental Health and Mental Retardation and the determination of liability for payment for the services in these centers. Several of the recommendations concerned providing impartial hearing officers, i.e., chosen by one not party to the dispute, and direct access to the federal courts concurrent with the administrative proceedings. The suggested change in the method of choosing the hearing officers was developed prior to the implementation of a recently adopted regulation of the Board of Education requiring rotation of the hearing officers, the Subcommittee noted. The recommendations concerning the training centers suggested mandating that school administrators initiate the certification proceedings and that the costs of the placements be borne by the local school divisions and the State as are the costs of educational placements in private facilities. These recommendations were discussed and evaluated at length during the November 23, 1982 meeting.

Presently, under §§ 37.1-65.1 and 37.1-105 of the Code of Virginia, parents are liable for up to five years of the costs of treatment in the Department of Mental Health and Mental Retardation facilities. The Advocacy Office Staff noted that the private residential special education facilities provide essentially the same services; however, if the school division places the child in a private facility, the school division and the State must bear the costs. The Average Daily Membership money from the State and the federal money, primarily through P. L. 89-313, do follow the child; however, no additional money is required of the localities for costs of placement in a Mental Health and Mental Retardation facility even if the school division has initiated the placement. During the discussion, it was acknowledged that according to an Attorney General's Opinion, the Mental Health and Mental Retardation facilities are "treatment" facilities and not "educational" facilities; therefore, the relatives can be held responsible for the costs of the care as there is no right to free treatment.

Mr. Robert Shepherd testified before the Committee at the August 24, 1982 meeting concerning the lack of educational services to children being detained in the local jails. Mr. Shepherd noted that Virginia is among the top three states in the nation in the number of juveniles incarcerated in adult jails and has had a very high number of children, an estimated average of over 4,000 per year, in these facilities for a number of years. Many of these children are handicapped and, therefore, entitled to a free, appropriate education. Mr. Shepherd noted that several courts in other states have held that these children are being unconstitutionally denied their due process rights and deprived of educational services. He stated that it was only a matter of time before Virginia has a lawsuit along these lines.

During several of the Committee's meetings, testimony was heard from private providers of child care. Mr. J. T. Tokarz, Attorney for the Henrico County School Board and Mr. Robinson B. James, Delegate from Henrico County, spoke concerning the problems surrounding the costs of educating children who have been privately placed in child-caring facilities. Henrico County has several homes for children which receive both public and private placements. The mechanism for payment of the educational costs for the publicly placed children, whether handicapped or not, is firmly in place (See § 22.1-101 in Appendix A); however, the education of privately placed children must be paid for by the party placing the child or the facility must absorb the costs. Until recently, school divisions were not charging for educating these children, although authorized to do so by the Code of Virginia (See § 22.1-5 in Appendix A). The present financial crisis has precipitated the demand for tuition payments, especially in the case of handicapped children who are very costly to educate.

The Subcommittee heard several reports on the progress of the Interagency Task Force on Delivery of Related Services. This task force has developed a set of goals for services to handicapped children and has conducted several model programs through small grants from the State Department of Education to promote interagency cooperation at the local level.

V. Conclusions and Recommendations

ISSUE A. Should a uniform mechanism for setting rates for the private residential facilities, both educational and noneducational, be established?

The Committee heard testimony from all of the relevant parties including the representatives of

the private special education providers, the private child-caring facilities, the regional programs for special education of the handicapped, school boards, the Department of Corrections, the Department of Education and the Department of Social Services. The Subcommittee decided to adopt the concept of the advisory committee, which was developed by the Department of Social Services some years ago. This mechanism, in the view of the Subcommittee, will maintain the status quo, improve the situation by mandating one system for all three departments and making this uniform mechanism permanent. The Subcommittee revised the duties of this group to include the supervision and dissemination of a comprehensive list of programs and their costs in both the private and public sectors. The Committee also decided to include a due process procedure in this proposal and provide a way to lock the providers into any agreed rates.

Much time was spent in refining this concept before a proposal which appears to satisfy most of the involved parties was developed. This proposal is included in Senate Bill No. 81 (See Appendix C), entitled Chapter 40, INTERDEPARTMENTAL AGENCIES. Subsection A of the bill establishes the Interdepartmental Committee on Rate-setting for Children's Facilities and specifically lays out its membership. Subsection B of this proposed bill provides for the term of office for the Committee and the election of a chairman on a yearly basis. Subsection C of this proposed bill describes the duties and authority of the Committee and requires interagency cooperation in adopting and publishing uniform rules. Subsection D of this proposed bill provides for a due process procedure with an informal step conducted by the Rate Review Appeals Panel, a formal administrative hearing before a hearing officer and finally, court review. The Subcommittee wished to make it quite clear that a de novo trial was not intended, but a review of the administrative proceedings to determine if the decision was supported by substantial evidence and to detect any decision which might be arbitrary, capricious or otherwise contrary to law. Subsection E provides that each department must sign term agreements with the appropriate approved providers. These contracts for a fixed period are perceived as including the approved rate for each facility and thereby providing the lock-in mechanism the Committee wanted. In other words, once a rate has been agreed to by a provider, then that rate must be adhered to in the subsequent contracts with the localities or other state agencies, including agencies which are not referenced in this proposed code section.

In addition to the proposed Interagency Committee on Rate-setting, the Committee will be proposing a resolution related to Issue A. Senate Joint Resolution No. 12 requests the Department of Education to revise its procedure for establishing rates for private special education facilities. The school division representatives testified that frequently the rates are not set until well after the budget period is over or sometimes even into the school year. Therefore, the Committee felt that estimated costs should be prospectively established in December in order to provide the Governor and the General Assembly with more accurate estimates of the amounts which will be needed for the residential placements. Presently, Item 172 of the 1982 Budget, which is the Education budget item containing the money for the residential placements, includes many other programs and the General Assembly has no clear idea of the estimated amount needed for the private placements of handicapped children. Therefore, the Committee requests that the final rates be established by March 31 of each year and that the Department of Education clarify its budget requests by noting under the item containing this money the amount which has been estimated as necessary for private placements.

The Committee made note of the delicate balance that must be achieved in implementing both of these pieces of legislation. It will be up to the various departments to cooperate fully in order for this legislation to be successful. The current situation could not be allowed to continue because of the threat of suit and the near crisis budgeting problems caused for some school boards. The Committee has attempted to establish a permanent workable solution without tampering with the status quo any more than necessary. The Committee wishes to express its belief that cooperation and interaction on the part of the Departments of Corrections, Education and Social Services, although good now, must become excellent. In the present fiscal climate, any other actions are costly and duplicative.

ISSUE B. Should the responsibilities for the operation and funding of the educational programs in the Mental Health and Mental Retardation facilities be revised to establish uniform administrative and budgetry authority?

The Subcommittee received a great deal of conflicting testimony on this issue. The Association for Retarded Citizens prepared a report on the five training centers several years ago, which was highly critical of the quality of these programs. Further, the Associated for Retarded Citizens and a number of other citizens have expressed their opinions that the administrative authority for these

programs should be with the Department of Education, perhaps through the method used for the Mental Health educational programs.

The findings of the Association for Retarded Citizens' report were contested by both the Department of Mental Health and Mental Retardation and the Department of Education. It was pointed out that the evaluation teams differed from center to center, that the questionnaires were not uniformly administered and that, most importantly, all of the programs are approved by the Board of Education and, therefore, must meet their standards. However, sufficient corraborating testimony was received for the ARC report to raise questions about the training center programs. Because of the budgetary and administrative authorities for the programs, which have existed for many years and, if changed would necessitate major revisions in operation of the programs, the Subcommittee also realized that any changes in these authorities should only be accomplished in a biennium budget year.

For these reasons, the Committee decided to leave this situation as it is, but to request that the Joint Legislative Audit and Review Commission evaluate all of the programs of education provided for children residing in the Department of Mental Health and Mental Retardation facilities. This evaluation will focus on the quality of instruction and materials, the uniformity of the offered services, the suitability of the environment in which the programs are conducted, the eligibiity of the students for mainstreaming, the appropriateness of the funding mechanism, the cost-effectiveness of the programs in relationship to the services provided, whether all school-age children in the facilities are receiving education or training as required by law and other appropriate matters (See Appendix C for Senate Joint Resolution No. 13). It is the sincere hope of the Committee that this evaluation will provide guidance to the General Assembly by establishing a valid, undisputed assessment of the programs.

ISSUE C. How should the cost and responsibilities for the education of handicapped, foster children be handled when the children are placed across jurisdictional lines?

ISSUE D. How should the cost and the responsibilities for the residential placement of handicapped children be allocated between the state agencies (Social Services, Education and Corrections) and the local agencies?

Issues C and D were treated together. The Department of Education proposed a funding pool similar to an insurance policy concept (See Appendix C for Senate Bill No. 85). The pool would consist of three parts - one part would be administered entirely by the Department of Education and would consist of the state add-on funds for special education. This part would be used to pay the school divisions directly for the cost of educating handicapped children who are not legal residents of the jurisdiction, who are in the custody of a state or local agency and who are residing in a foster care or group home or another type of child-caring facility. This pool would eliminate the controversies that have arisen concerning which jurisdiction is the proper legal residence and therefore is liable for the costs; the availability of appropriate programs in the sending jurisdictions and the reluctance to provide services to children whose families do not contribute to the tax bases of the localities.

The Department of Social Services will also establish a pool to pay for the maintenance cost of the residential placements by the local welfare agencies. The Department of Education will transfer to the Department of Social Services or pay directly the amount needed to pay for the educational programs. The Department of Corrections will establish a similar pool to which similar education payments will be made. No charges will be assessed the school divisions for any of these placements, that is, the cross-jurisdictional line placements or the residential placements by local welfare agencies or the court services units.

In order to implement this pool, it will be necessary to amend § 22.1-101, which provides for the payment of the educational costs and the manner in which the funding flows for foster care children. It will also be necessary to provide a definition of noneducational placement in order to prevent abuse of the system and make it clear to all exactly what kind of placement will be paid for through the pool concept (See Appendix C for Senate Bill No. 85). The definition of "noneducational placement" was introduced as a separate bill with the intention of attaching it to the appropriate line item in the budget bill and then killing the separate bill. However, since this pool will not be effective until 1984, the definition was incorporated in Senate Bill No. 85.

Issue D was divided into two parts, the second of which addressed the problems concerning the requirement that the school divisions go through the Interstate Compact before facilitating the

out-of-state placements. The Subcommittee realizes that the Interstate Compact was intended for the protection of all of the parties; however, the school divisions contend that they are making placements in institutions "primarily educational in character" and are, therefore, exempt for the Compact. Because this issue is contingent on the authority of the Office of the Interstate Compact to require the school divisions to do this, the Committee decided to request an Attorney General's opinion on this matter (See Appendix C).

The majority of the Subcommittee has come to believe that the present law and regulations do require the processing of out-of-state placements of handicapped children through the Interstate Compact and that this requirement is good public policy. Some members of the Committee expressed concern that an Attorney General's opinion, regardless of its conclusions, would not remedy this situation; therefore, the Subcommittee agreed to introduce Senate Bill No. 83, which sets forth this requirement (See Appendix C).

Additionally, the Subcommittee decided to propose establishing the Interagency Task Force on the Delivery of Related Services in law. Currently, the task force operates under the auspices of the various Cabinet secretaries' offices as established under the Dalton administration. This seems an uncertain mechanism subject to the whims of political change, and since the Committee has come to realize clearly that interagency cooperation on these matters is crucial, it was decided to propose that this task force be established in law to be sunsetted on June 31, 1987. The sunset provision will allow the next governor and the General Assembly to assess the work of this group and decide if it should be continued (See Appendix C).

The Subcommittee did not feel that it could adequately address the issue of the children being held in the adult jails, because this is a much broader issue than the enabling resolution on residential placement described. Therefore, the Subcommitee requested staff to prepare Senate Joint Resolution No. 14 asking for an interim study of this issue by a subcommittee composed of members of the appropriate standing committees (See Appendix C).

The Joint Subcommittee did not adopt the recommendations of the State Advocacy Office for the Developmentally Disabled. The recently adopted regulation of the Board of Education was considered to be providing a solution to the problems concerning the method of choosing the hearing officers. Although the other issues raised by the Advocacy Office were considered important, the solutions suggested were not considered workable at this time (See Appendix B for letter from the Commissioner of Mental Health and Mental Retardation).

Further, the Subcommittee did not believe that the issue of the private placements fell within its jurisdiction, because most of the children involved are not handicapped and because these children are placed by family members. The choice to place a child in a private child-caring facility cannot be made by the State or a locality unless the child is in custody. If the parent or relative makes this independent decision, the parent or relative should, in the opinion of the Subcommittee, be the responsible party. The Subcommittee did not believe it would be wise to establish any additional entitlement programs.

The Subcommittee wishes to express its appreciation to the many people who contributed time and data to its work.

Respectfully submitted,
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APPENDIX A

SENATE JOINT RESOLUTION NO. 43

Requesting the Senate Committees on Education and Health, Rehabilitation and Social Services, and Finance and the House Committees on Education, Health, Welfare and Institutions and Appropriations to establish a joint subcommitee to study the placement of handicapped children in residential facilities.

Agreed to by the Senate, March 8, 1982
Agreed to by the House of Delegates, March 4, 1982

WHEREAS, through its regulations, the Board of Education requires the local school divisions to pay educational costs when a child identified as handicapped is placed in a residential facility, even though handicapped children are frequently placed in residential facilities by public agencies other than local school divisions for noneducational reasons; and

WHEREAS, under an interstate compact, school divisions are required to obtain approval of the Department of Social Services before making an educational placement of handicapped students in out-of-state residential facilities; and

WHEREAS, The Education of All Handicapped Children Act of 1975, (P.L. 94-142), and Article 2 of Chapter 13 of Title 22.1 of the Code of Virginia mandate a "free and appropriate" education for children identified as handicapped and place the responsibility for this education firmly on the educational agencies; and

WHEREAS, there appears to be incongruity between the state laws and regulations, the interstate compact requirements, and federal laws and regulations; and

WHEREAS, the present cumbersome process of placing handicapped children causes duplication of effort at both the state and local level in many activities including approval of facilities and rate setting; and

WHEREAS, in the present economic climate, duplication of effort is unconscionable as it dissipates the Commonwealth's limited resources; and

WHEREAS, the involved agencies do not appear to have arrived at a cooperative and efficient means of allocating the responsibilities for placement of handicapped children in residential facilities at either the state or local level; and

WHEREAS, a cost effective and efficient program for the placement of handicapped children in residential facilities would be in the best interests of the Commonwealth and its citizens; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Senate Education and Health Committee, the Senate Rehabiliation and Social Services Committee, the Senate Finance Committee, the House Education Committee, the House Health, Welfare and Institutions Committee, and the House Appropriations Committee are requested to appoint a joint subcommittee to study the responsibilities of the State Departments of Education, Social Services, and Mental Health and Mental Retardation, the local school divisions, the local community services boards, and the local welfare departments in the placement of children identified as handicapped in residential facilities.

In conducting this study, the joint subcommittee shall examine the issues to ascertain:

1. The agency or agencies properly charged with making residential placements of handicapped children;

2. The agency or agencies most appropriate for receiving the funds to pay for the placements;

3. The agency or agencies most appropriately charged with the responsibility for evaluating and monitoring the placements;

4. The proper means to eliminate duplication of effort and provide for a cooperative, effective program;

5. The use of state facilities and the child's home in providing an appropriate educational program for handicapped children.

6. The responsibilities of the state and local governments in complying with the provisions of the federal Education for all Handicapped Children Act of 1975, P.O. 94-142; and

7. Any other issues that are significant to this study in the opinion of the subcommittee.

The Departments of Education and Social Services and the task force on delivery of related services to handicapped children are hereby requested to provide direct technical assistance to the subcommittee as required.

The joint subcommittee shall consist of ten members, two to be appointed by the chairman of the Senate Education and Health Committee from the membership thereof, one to be appointed by the chairman of the Senate Finance Committee from the membership thereof, one to be appointed by the chairman of the Senate Rehabilitation and Social Services Committee from the membership thereof, three to be appointed by the

chairman of the House Education Committee from the membership thereof, two to be appointed by the chairman of the House Health, Welfare and Institutions Committee from the membership thereof, and one to be appointed by the chairman of the House Appropriations Committee from the membership thereof. Insofar as it is possible, appointments to this joint subcommittee shall include members of the Joint Subcommittee Studying Education of the Handicapped as constituted pursuant to House Joint Resolution No. 36 of 1980.

The joint subcommittee is requested to complete its work in time to submit recommendations to the 1983 Session of the General Assembly.

The cost of the study shall not exceed $7,700.

§ 22.1-5. Regulations concerning admission of certain persons to schools; tuition charges. A. 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:

1. Persons who reside within the school division but who are not of school age.

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

3. Persons of school age who are attending school in the school division pursuant to a foreign student exchange program approved by the school board.

4. Persons of school age who reside beyond the boundaries of the Commonwealth but near thereto in a state or the District of Columbia which grants the same privileges to residents of the Commonwealth if the school division admitting such persons borders such state or District of Columbia.

5. Persons of school age who reside on a military or naval reservation located wholly or partly within the geographical boundaries of the school division and who are not domiciled residents of the Commonwealth of Virginia; provided, however, that no person of school age residing on a military or naval reservation located wholly or partly within the geographical boundaries of the school division may be charged tuition if federal funds provided under P. L. 874 of 1950, commonly known as Impact Aid, shall fund such students at not less than fifty percent of the total per capita cost of education, exclusive of capital outlay and debt service, for elementary or secondary pupils, as the case may be, of such school division.

B. Persons of school age who are not residents of the Commonwealth but are living temporarily with persons residing within a school division may, in the discretion of the school board and pursuant to regulations adopted by it, be admitted to the public schools of the school division. Tuition shall be charged such persons.

C. No tuition charge authorized or required in this section shall exceed the total per capita cost of education, exclusive of capital outlay and debt service, for elementary or secondary pupils, as the case may be, of such school division and the actual, additional costs of any special education or gifted and talented program provided the pupil, except that if the tuition charge is payable by the school board of the school division of the pupil's residence pursuant to a contract entered into between the two school boards, the tuition charge shall be that fixed by such contract.

§ 22.1-7. Responsibility of each State board, agency and institution having children in residence or in custody. Each State board, agency and institution having children in residence or in custody shall provide education and training to such children which is at least comparable to that which would be provided to such children in the public school system. Such board, agency or institution may provide such education and training either directly with its own facilities and personnel in cooperation with the Board of Education or under contract with a school division or any other public or private nonsectarian school, agency or institution. The Board of Education shall prescribe standards and regulations for such education and training provided directly by a board, agency or institution. Each board, agency or institution providing such education and training shall submit annually its program therefor to the Board of Education for approval in accordance with regulations of the Board. If any child in the custody of any State board, agency or institution is a handicapped child as defined in § 22.1-213 and such board, agency or institution must contract with a private nonsectarian school to provide special education as defined in § 22.1-213 for such child, the board, agency or institution may proceed as a guardian pursuant to the provisions of § 22.1-218 A.

§ 22.1-101. Increase of funds when certain nonresident pupils attend schools; how increase computed and paid. A. Any school division in which any child not a resident of such school division is enrolled in its public schools, when such child has been placed in foster or other such care within the geographical boundaries of the school division by any State or local agency authorized so to do under the laws of Virginia or has been placed in an orphanage or children's home which exercises legal guardianship rights, shall be reimbursed for the cost of enrollment on the part of such child (i) by deducting the amount of such cost from the amount of State school funds distributable the succeeding year to the school division of residence of such child or (ii) if the child

was not a resident of this Commonwealth and the circumstances were such that there was no obligation as to education of such child upon any school division in this Commonwealth at the time of placement, out of the general State funds appropriated for public education and distributable to the school divisions. The State Board is authorized to determine finally which method of reimbursement shall be applied in any case in which any question is raised. No such school division shall charge tuition to any such child.

B. The school division in which any such child so placed attends public school shall keep an accurate record of, and shall certify by July first following the end of the school year to the State Board: (i) the number of days which such child was enrolled in its public schools, (ii) the amount per child, exclusive of the children herein referred to, spent from local funds in educating children, (iii) the school division of residence of such child if a resident of the Commonwealth at time of placement or that the child was not a resident of the Commonwealth at time of placement if such was the case, (iv) the school division from which such child was sent and (v) the official, agency or person by whom or which the child was so placed.

§ 22.1-213. Definitions. As used in this article:

1. "Handicapped children" means those persons (i) who are aged two to twenty-one, inclusive, having reached the age of two by the date specified in § 22.1-254, (ii) who are mentally retarded, physically handicapped, seriously emotionally disturbed, speech impaired, hearing impaired, visually impaired, multiple handicapped or who have a specific learning disability or who are otherwise handicapped as defined by the Board of Education and (iii) who because of such impairments need special education.

2. "Special education" means classroom, home, hospital, institutional or other instruction, including physical education and vocational education, to meet the reasonable educational needs of handicapped children, transportation, and related services required or appropriate to assist handicapped children in taking advantage of, or responding to, educational programs and opportunities commensurate with their abilities. The Board of Education shall determine by regulation standards for determining which instruction and services must be provided pursuant to an individualized education program.

3. "Specific learning disability" means a disorder in understanding or using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. The term does not include children who have learning problems which are primarily the result of visual, hearing or motor handicaps, of mental retardation, or of environmental, cultural or economic disadvantage.

§ 22.1-214. Board to prepare special education program for handicapped children. A. The Board of Education shall prepare and supervise the implementation by each school division of a program of special education designed to educate and train handicapped children between the ages defined in § 22.1-213 and may prepare and place in operation such program for such individuals of other ages. The program developed by the Board of Education shall be designed to ensure that all handicapped children have available to them a free and appropriate education, including special education designed to meet the reasonable educational needs of such children. The program shall require (i) that the hearing of each handicapped child be tested prior to placement in a special education program and (ii) that a complete audiological assessment, including tests which will assess inner and middle ear functioning, be performed on each child who is hearing impaired or who fails the test required in (i) hereof. The school boards of the several school divisions, the Commission for the Visually Handicapped, the Virginia Council for the Deaf, Department of Health and other state and local agencies which can or may be able to assist in providing educational and related services shall assist and cooperate with the Board of Education in the development of such program.

B. The Board of Education shall prescribe procedures to afford due process to handicapped children and their parents or guardians and to school divisions in resolving disputes as to program placements, individualized education programs, tuition eligibility and other matters as defined in state or federal statutes or regulations.

C. The Board of Education may provide for final decisions to be made by a hearing officer. The parents and the school division shall have the right to be represented by legal counsel or other representative before such hearing officer without being in violation of the provisions of § 54-44 of

the Code of Virginia.

D. Any party aggrieved by the findings and decision made pursuant to the procedures prescribed pursuant to subsections B and C of this section may bring a civil action in the circuit court for the jurisdiction in which the school division is located. In any such action the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.

E. Whenever the Board of Education, in its discretion, determines that a school division fails to establish and maintain programs of free and appropriate public education which comply with regulations established by the Board, the Board may withhold all special education moneys from the school division and may use the payments which would have been available to such school division to provide special education, directly or by contract, to eligible handicapped children in such manner as the Board considers appropriate.

F. The Board of Education is authorized to supervise educational programs for handicapped children by other public agencies and to assure that placements of handicapped children by other public agencies are in an appropriate program consistent with the individualized education program.

§ 22.1-214.1. Issuance of subpoenas by hearing officers. Any hearing officer appointed pursuant to the procedures provided for in subsection B and C of § 22.1-214 shall have the power to issue subpoenas requiring testimony or the production of books, papers, and physical or other evidence. Any person so subpoenaed who objects may, if the hearing officer does not quash or modify the subpoena at a timely request as illegally or improvidently granted, immediately procure by a petition a decision on the validity thereof in the circuit court of the jurisdiction in which the hearing is to be held. In any case of refusal or neglect to comply with the hearing officer's subpoena, the hearing officer may procure an order of enforcement from such court.

§ 22.1-215. School divisions to provide special education; plan to be submitted to Board. Each school division shall provide free and appropriate education, including special education, for the handicapped children residing within its jurisdiction in accordance with regulations of the Board of Education. Each school division shall submit annually to the Board of Education by such date as the Board shall specify a plan acceptable to the Board for such education for the year following and a report indicating the extent to which the plan required by law for the preceding year has been implemented.

§ 22.1-216. Use of public or private facilities and personnel under contract for special education. A school board may provide special education for handicapped children either directly with its own facilities and personnel or under contract with another school division or divisions or any other public or private nonsectarian school, agency or institution approved by the Board of Education.

§ 22.1-217. Visually impaired children. A. Special education for visually impaired children provided by a school division shall be established, maintained and operated jointly by the school board and the Virginia Commission for the Visually Handicapped subject to the regulations of the Board of Education.

B. The Virginia Commission for the Visually Handicapped shall prepare and place in operation a program of special education services in addition to the special education provided in the public school system designed to meet the educational needs of visually impaired children between the ages of birth and twenty-one and may prepare and place in operation such programs for such individuals of other ages. In the development of such a program, the Virginia Commission for the Visually Handicapped shall cooperate with the Board of Education and the school boards of the several school divisions.

C. As used in this section:

1. "Visually impaired" shall be defined by the Board of Education and the Virginia Commission for the Visually Handicapped.

2. "Program" means a modified program which provides special materials or services and may include the employment of itinerant teachers or resource room teachers for the visually impaired.

§ 22.1-218. Reimbursement of parents or guardian of handicapped children in private schools; reimbursement of school boards from State funds. A. If a school division is unable to provide a free appropriate public education to a handicapped child and it is not appropriately available in a State facility, it shall offer to place the child in a nonsectarian private school for the handicapped approved by the Board of Education or such other licensing agency as may be designated by State law. The school board of such division shall pay to, or on behalf of, the parent or guardian of such child the reasonable tuition cost and other reasonable charges as may be determined by the Board of Education. The school board, from its own funds, is authorized to pay such additional tuition or charges as it may deem appropriate. Of the total payment approved by the Board of Education, the school board shall be reimbursed sixty per centum from such State funds as are appropriated for this purpose.

B. Where a school board enters into an agreement with another school division or divisions or a public or private nonsectarian school to pay the tuition cost of special education for handicapped children within its jurisdiction, the Board of Education is authorized to reimburse the school board sixty per centum of its reasonable costs as determined by the Board of Education.

C. The Board of Education is further authorized to reimburse each school board operating a preschool special education program for handicapped children aged two through four, sixty per centum of its costs.

§ 22.1-219. Use of federal, State or local funds not restricted. Nothing in this article shall be construed to restrict or prohibit the use of any federal, State or local funds made available under any federal, State or local appropriation or grant.

§ 22.1-220. Power of counties, cities and towns to appropriate and expend funds for education of handicapped children. The governing body of any county, city or town is hereby authorized and empowered to appropriate and expend funds of the county, city or town in furtherance of the education of handicapped children residing in such county, city or town who attend private, nonsectarian schools, whether within or without the county, city or town and whether within or without the Commonwealth.

§ 22.1-221. Transportation of handicapped children attending public or private special education programs. Each handicapped child enrolled in and attending a special education program provided by the school division pursuant to any of the provisions of § 22.1-216 or § 22.1-218 shall be entitled to transportation to and from such school or class at no cost if such transportation is necessary to enable such child to obtain the benefit of educational programs and opportunities. A school board may, in lieu of providing transportation, allot funds to pay the reasonable cost of transportation. The Board of Education shall reimburse the school board sixty per centum of such cost if funds therefor are available.

§ 22.1-222. Overall Advisory Council on Needs of Handicapped Persons. The Overall Advisory Council on Needs of Handicapped Children and Adults previously created is continued in existence as the Overall Advisory Council on the Needs of Handicapped Persons. The Council shall be composed of twenty-six members, as follows: the head, or a person designated by the head, of the Department of Education, the Department of Health, the Department of Mental Health and Mental Retardation, the Department for the Visually Handicapped, the Department of Social Services, the Department of Rehabilitative Services, the Virginia Council for the Deaf, the Department of Corrections, the Virginia Employment Commission, the Division for Children, the Department for the Aging, the Department of Highways and Transportation, the Department of Housing and Community Development, the Commission on Outdoor Recreation, the Division of Volunteerism, the Department of Planning and Budget, and the Department of General Services; one member from one of the state medical schools, to be appointed by the Governor; and eight members, at large, to be appointed by the Governor, of whom at least five shall be handicapped. The at-large members of the Council in office on July 1, 1980, shall serve the remainder of the term for which they were appointed. The terms of the remaining members of the Council shall terminate on that date.

Each member appointed by the Governor shall be appointed for a four-year term but shall be subject to removal at the pleasure of the Governor. Any vacancy other than by expiration of a term shall be filled for the unexpired term. No person appointed by the Governor shall serve for more than two successive terms.

The Governor shall appoint the chairman, who shall serve in that capacity at the pleasure of the Governor.

The Council shall meet and report at least quarterly to the Secretary of Human Resources. The Council shall continuously study the problems of and the various phases of programs for handicapped persons and make such recommendations to the several agencies represented on the Council as the Council deems appropriate and proper. The Council shall also make and submit to the Governor from time to time such reports and recommendations as it deems necessary and expedient.

Members of the Council shall receive no compensation for their services, but at-large members shall be paid their necessary traveling expenses incurred in the performance of their duties.

§ 63.1-219.1. Definitions. A. "Appropriate public authorities" as used in this State, the State Department of Welfare.

B. "Appropriate authority in the receiving state" as used in paragraph (a) of article V of the compact means, with reference to this State, the Commissioner of Public Welfare.

§ 63.1-219.2. Governor to execute; form of compact. The Governor of Virginia is hereby authorized and requested to execute, on behalf of the Commonwealth of Virginia, with any other state or states legally joining therein, a compact which shall be in form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. Definitions

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding

home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V. Retention of Jurisdiction

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such cases by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have the power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. Limitations

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof.

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

§ 63.1-219.3. Discharging financial responsibilities imposed by compact or agreement. Financial responsibility for any child placed pursuant to the provisions of this chapter shall be determined in accordance with the provision of article V of the compact. In the event of partial or complete default of performance thereunder, the provisions of chapters 13 (§ 63.1-249 et seq.) and 14 (§ 63.1-275 et seq.) of this title may also be invoked.

§ 63.1-219.4. Supplementary agreements. The officers and agencies of this State and its subdivisions having authority to place children are hereby empowered to enter into supplementary agreements with appropriate officers or agencies in other party states pursuant to subsection (b), article V of the compact. Any such agreement which contains a financial commitment or imposes a financial obligation on this State or on a subdivision or agency thereof is subject to the written approval of the State Comptroller and of the chief fiscal officer of the subdivision involved.

§ 63.1-219.5. Fulfilling requirements for visitation, inspection or supervision. Requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state set forth in chapter 10 (§ 63.1-195 et seq.) of Title 63.1 shall be deemed to be fulfilled if performed by an authorized public or private agency in the receiving state pursuant to an agreement entered into by appropriate officers or agencies of this State or of a subdivision thereof as provided in subsection (b), article V of the compact.

§22-9.1:4 of the 1950 Code of Virginia, Volume 5, 1973 Replacement.

§ 22-9.1:4. Reimbursement of parents for education of handicapped children in private schools; reimbursement of local board from State funds. — In any county, city or town, if the town be a separate school district approved for operation, which does not provide special classes or special instruction for the education of handicapped children as defined in §§ 22-9 and 22-9.1:01 and such instruction is not available in State schools or institutions, and the parents of such children pay for their attendance at a private nonsectarian school for the handicapped approved by the Board of Education, the school board of such county, city or town operating as a separate town school district, shall reimburse the parent or guardian of such child or children for each school year three fourths of the tuition cost in an amount not to exceed one thousand dollars when enrolled in a special nonresidential school for handicapped children and three fourths of the tuition cost in an amount not to exceed four thousand dollars when enrolled in a special residential school for handicapped children. Of the total reimbursement, the local school board shall be reimbursed sixty percent from State funds as are appropriated for this purpose; provided, however, that local school board is not required to provide such aid if matching State funds are not available; provided further that in the event State funds are not available as defined above, local school boards shall reimburse the parents for tuition costs of such children in an amount equal to the actual per pupil cost of operation in average daily membership or average daily attendance in accordance with the unit applied for the disbursement of the basic school aid fund for the school year immediately preceding, and such school board shall be entitled to count such pupils and receive reimbursement from the basic school aid fund in the same manner as if the child were attending the public schools.

Where a county, city or town, if the town be a separate school district approved for operation, enters into an agreement with another school district or any combination thereof to pay tuition cost for the purpose of providing an educational program for handicapped children as defined in § 22-9.1:01, the Board of Education is authorized to reimburse a local school board sixty percent of the tuition cost in an amount not to exceed six hundred dollars per pupil.

The Board of Education is further authorized to reimburse local school boards operating a preschool special education program for handicapped children, ages two through four, sixty percent of tuition cost but not to exceed six hundred dollars per pupil from State funds as are appropriated for this purpose. (1968, c. 546; 1970, c. 615; 1972, c. 603.)

The 1972 amendment rewrote this section, which formerly applied only to hearing-impaired children.

§22-10.8 of the 1950 Code of Virginia, Volume 5, Cumulative Supplement for the 1973 Replacement.

§ 22-10.8. Reimbursement of parents or guardian of handicapped children in private schools; reimbursement of local boards from State funds. — (a) If a school division is unable to provide a free appropriate public education to a handicapped child and it is not appropriately available in a State facility, it shall offer to place the child in a nonsectarian private school for the handicapped approved by the Board of Education or such other licensing agency as may be designated by State law. The school board of such division shall pay to or on behalf of the parent or guardian of such child the reasonable tuition cost and other reasonable charges as may be determined by the Board of Education. The school board, from its own funds, is authorized to pay such additional tuition or charges as it may deem appropriate. Of the total payment approved by the Board of Education, the local school board shall be reimbursed sixty per centum from such State funds as are appropriated for this purpose.

(b) Where a local school board enters into an agreement with another school division or divisions or a public or private nonsectarian school to pay the tuition cost of special education for handicapped children within its jurisdiction, the Board of Education is authorized to reimburse a local school board sixty per centum of its reasonable costs as determined by the Board of Education.

(c) The Board of Education is further authorized to reimburse each local school board operating a preschool special education program for handicapped children aged two through four, sixty per centum of its costs. (1974, c. 480; 1978, c. 386.)

The 1978 amendment, effective Sept. 1, 1978, rewrote subsection (a), substituted "reasonable costs as determined by the Board of Education" for "costs in an amount not to exceed seven hundred fifty dollars per pupil for a handicapped child in a nonresidential public or private school and three thousand dollars for a handicapped child in a residential school" at the end of subsection (b) and deleted "but not to exceed one thousand dollars per pupil from such State funds as are appropriated for this purpose" at the end of subsection (c).

Law Review. — For survey of Virginia law on administrative law for the year 1973-1974, see 60 Va. L. Rev. 1446 (1974).

Constitutionality of section. — The federal district court held this section as it existed prior to the 1978 amendment violative of the equal protection guarantees under the Fourteenth Amendment by virtue of its exclusion from a publicly supported and appropriate education of the class of poor handicapped children whose parents are unable to pay the proportional costs of an appropriate private educational placement not covered by the tuition assistance grants, because of a lack of financial resources, while providing the same for those handicapped children whose parents are affluent enough to take advantage of the tuition grants. The United States Supreme Court remanded for a decision based on § 504 of the Federal Rehabilitation Act of 1973. Kruse v. Campbell, 431 F. Supp. 180 (E.D. Va. 1977), vacated, 434 U.S. 808, 98 S. Ct. 38, 54 L.Ed.2d 65 (1977).

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF WELFARE

INTERSTATE COMPACT APPLICATION
CHILD PLACEMENT REQUEST

ICPC — 100A

(NAME AND ADDRESS OF COMPACT ADMINISTRATOR FOR RECEIVING STATE)

TO:

FROM: (NAME AND ADDRESS OF COMPACT ADMINISTRATOR FOR SENDING STATE)

SECTION I-IDENTIFYING DATA

APPROVAL IS REQUESTED FOR THE PLACEMENT OF: CHILD'S NAME | BIRTHDATE

MOTHER'S NAME | FATHER'S NAME

NAME OF AGENCY OR PERSON RESPONSIBLE FOR PLANNING FOR CHILD	NAME OF AGENCY OR PERSON FINANCIALLY RESPONSIBLE FOR CHILD
ADDRESS	ADDRESS
CITY, STATE, ZIP	CITY,STATE,ZIP
TELEPHONE NUMBER	TELEPHONE NUMBER

SECTION II-PLACEMENT

NAME OF PERSON CHILD IS TO BE PLACED WITH

ADDRESS

CITY,STATE,ZIP

TELEPHONE NUMBER

TYPE OF CARE

- ☐ FOSTER FAMILY CARE
- ☐ GROUP HOME CARE
- ☐ RESIDENTIAL TREATMENT CENTER
- ☐ INSTITUTIONAL CARE
- ☐ ADOPTION
- ☐ INDEPENDENT LIVING PLACEMENT
- ☐ PLACEMENT WITH RELATIVE: SPECIFY RELATIONSHIP:

ADOPTION TO BE COMPLETED IN

☐ SENDING STATE ☐ RECEIVING STATE

SECTION III-SUPERVISION

- ☐ SENDING AGENCY REQUESTS RECEIVING AGENCY TO ARRANGE SUPERVISION
- ☐ SENDING AGENCY TO SUPERVISE
- ☐ AGENCY IN RECEIVING STATE HAS AGREED TO SUPERVISE

NAME AND ADDRESS OF SUPERVISING AGENCY IN RECEIVING STATE

REPORTS REQUESTED

☐ QUARTERLY ☐ SEMI-ANNUALLY ☐ UPON REQUEST ☐ OTHER (SPECIFY):

ENCLOSED

- ☐ SUMMARY FOR CHILD AS SUGGESTED IN COMPACT PROCEDURES
- ☐ SUMMARY OF HOME STUDY AS SUGGESTED IN COMPACT PROCEDURES
- ☐ OTHER ENCLOSURES (SPECIFY):

SIGNATURE OF SENDING AGENCY	TITLE	DATE SIGNED
SIGNATURE OF SENDING STATE COMPACT ADMINISTRATOR OR ALTERNATE		DATE SIGNED

SECTION IV ACTION BY RECEIVING STATE

☐ APPROVAL GRANTED ☐ APPROVAL DENIED

SIGNATURE OF RECEIVING STATE COMPACT ADMINISTRATOR OR ALTERNATE	DATE SIGNED

REMARKS

032-02-042

Action Completed: Sending State Compact Administrator Copy.

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

The Interstate Compact on the Placement of Children is uniform legislation in the 46 states that have enacted it thus far. As a Compact, it has the force of statutory law in each of these states as it is enacted by the legislature in each such jurisdiction. Further, it is a legally binding contract among the party states which is protected by the Contract Clause of the United States Constitution. As law, it legally mandates compliance and observance of the Interstate Compact on the Placement of Children by the state governments and their instrumentalities, their courts and private individuals in each of those states. Although frequently interpreted as a "policy" of the state agency designated by the legislature to administer it, it is in reality a law (Chapter 10.1 of the Code of Virginia), which is intended to insure that the necessary protection, services and jurisdictional agreements are in effect prior to a child's placement into another party state.

The Interstate Compact provides a number of safeguards, both to children and to the sending and receiving states:

> Allows the prospective receiving state to ensure that all its applicable child placement laws and policies are followed before it approves an interstate placement.
>
> Gives the prospective receiving state the opportunity to consent to or deny a placement before it is made.
>
> Provides an opportunity to obtain supervision and regular reports on each interstate placement.
>
> Guarantees the child legal and financial protection by fixing these responsibilities with the sending agency or individual.
>
> Ensures that the sending agency or individual does not lose legal jurisdiction over the child once he is moved to the receiving state.

In making a placement, the sending agency is required to retain planning and financial responsibility for the child until the termination of the interstate placement. This may occur in a number of ways: by the sending agency's termination of placement; by the child's reaching majority; or by the child's returning to the send-state upon the request or direction of the sending agency.

INSTRUCTIONS FOR OUT OF STATE PLACEMENT REQUESTS

I. Completion of the ICPC 100-A

A. Address Section - To be completed by the Virginia Interstate Compact Unit.

B. Section I - Name and address of LEA arranging the placement should be given as "agency responsible for planning for child" and as "agency financially responsible for child".

C. Section II - Name and address of facility where child will be placed. Check box beside "Residential Treatment Center".

D. Section III - Boxes indicating supervisory arrangements are not applicable. For "Reports Requested", check the box which reflects arrangements with the facility for receipt of progress reports. Check box beside "Other Enclosures" and indicate that the IEP and copy of parental consent to release the IEP are enclosed.

E. "Signature of Sending Agency" - The ICPC 100-A should be signed by the parent or legal guardian of the child.

F. Back copy, marked "Preliminary Sending Agency Copy", should be retained by the LEA.

II. Accompanying Information

A. Two copies of the most current IEP and parental consent to release the IEP are to accompany the ICPC 100-A.

B. Completed ICPC 100-A and accompanying information should be sent to:
Interstate Placement Unit
State Dept. of Welfare
Blair Building
8007 Discovery Dr.
Richmond, VA 23288

III. Approval process

The Virginia Interstate Unit will forward the completed ICPC 100-A and accompanying information to the receiving state (the state in which the program is located) for review and approval. Placement should not be finalized until the LEA has received an ICPC 100-A signed by the receiving state.

IV. Placement Reviews

A. Quarterly reviews - The Virginia Interstate Unit will initiate requests as to the status of each placement on a quarterly basis. Upon receipt of the request, the LEA will need only to indicate whether the placement continues in effect and any plans to terminate the placement during the current quarter.

B. Annual Reviews - Following each Annual Educational Review for Program Placement, the LEA will forward the revised IEP to the Virginia Interstate Unit.

C. The LEA should notify the Virginia Interstate Unit immediately when any out-of-state placement is terminated.

Policy on Out-of-State Placement of Children

On MOTION duly made and seconded the State Board adopted the following revisions to the proposed recommendations which were approved at the April meeting. The following changes were adopted to meet the legal requirements of House Bills 518 and 1789, and Senate Bill 867:

A. As a means of establishing uniformity for Virginia agencies in the out-of-state placement of children, the State Board shall repeal existing rules and regulations pertaining to the out-of-state placement of children and shall adopt regulations contained in Article III of the Interstate Compact on the Placement of Children which shall have the effect where applicable of broadening the use of Interstate Compact procedures to all out-of-state placements of children as follows:

1. Conditions for Placement

a. No sending agency shall send, bring or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

b. Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) the name, date and place of birth of the child;
(2) the identity and address or address of the parents or legal guardian;
(3) the name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child;
(4) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

c. Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency or any other appropriate officer or agency of or in the sending agency's state and shall be entitled to receive therefrome such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

d. The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

B. In addition, the State Board shall extend its Rules and Regulations regarding placements outside of Virginia to group homes, treatment facilities, child caring institutions, boarding schools, hospitals legally maintained as such and independent living situations in addition to adoptive and foster family home placements. Whereas only foster family, adoptive placements and limited institutional placements have previously required the Commissioner's approval, the adoption of Article III procedures for all out-of-state placements has the effect of requiring the same documentation regardless of whether the receiving state is a Compact member or not and as to the type of institutional placement.

DRAFT REGULATION

The Compact Administrators of the Interstate Compact on the Placement of Children, by joint action taken pursuant to Article VII of the Compact, hereby adopt the following Regulation.

Regulation No. 4

1. In determining whether the sending or bringing of a child to another state is exempt from the provisions of the Interstate Compact on the Placement of Children by reason of the exemption for various classes of institutions in Article II(d), the following concepts and terms shall have the following meanings:

   A. "Primarily educational institution" means an institution which operates one or more programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of accepting children is to meet their educational needs; and which: (1) does not accept responsibility for children during the entire year; (2) does not provide or hold itself out as providing child care constituting nurture sufficient to substitute for parental supervision and control or foster care; (3) does not provide any other services to children, except for those customarily regarded as extracurricular or cocurricular school activities, pupil

support services, and those services necessary to make it possible for the children to be maintained on a residential basis in the aforementioned school program or programs.

B. "Hospital" means an institution for the acutely ill which discharges its patients when they are no longer acutely ill, which does not provide or hold itself out as providing child care in substitution for parental care or foster care, and in which a child is placed for the primary purpose of treating an acute medical problem.

C. "Institution for the mentally ill or mentally defective" means an institution which provides medical care and treatment; psychiatric care and treatment, corrective, therapeutic or rehabilitative treatment for mentally ill or mentally defective or retarded persons. Such an institution is not altered in its character as an institution for the mentally ill or mentally defective merely because it provides child care services to these patients as part of a comprehensive regime of treatment.

2. This regulation and the provision of Article II(d) to which it relates apply only to residential institutions. In cases where children attend school or other educational programs, but are not housed or cared for on a 24-hour a day basis by the school or educational program, and where a placement within the meaning of the Compact occurs, the placement shall be deemed to be made with the person, family, agency

or institution which provides the 24-hour a day housing and care during the period of school or other educational attendance. In the case of a hospital or an institution for the mentally ill. defective, or retarded, application hereof is not to instances of outpatient care.

3. A residential institution may be exempt with respect to some children and not exempt with respect to others. The test is whether, in a particular case, the institution provides child caring or other services which, if provided by a family or individual other than the child's parents, would constitute foster care (with or without payment).

4. The type of license, if any, held by an institution is evidence of its character, but whether an institution is either generally exempt from the need to comply with the Interstate Compact on the Placement of Children or exempt in a particular instance is to be determined by the services it actually provides or offers to provide. In making any such determinations, the criteria set forth in this regulation shall be applied.

Licensure status is not conclusive in ICPC determination. Must be licensed under exempt category to be exempt, but licensure status does not grant automatic exemption decision must be made on case by case basis.

April 1982

APPENDIX B

Mock-up of the Recommendations of the State Advocacy Office for the Developmentally Disabled and a letter from Commissioner of Mental Health and Mental Retardation.

§ 22.1-214. Board to prepare special education program for handicapped children. A. The Board of Education shall prepare and supervise the implementation by each school division of a program of special education designed to educate and train handicapped children between the ages defined in § 22.1-213 and may prepare and place in operation such program for such individuals of other ages. The program developed by the Board of Education shall be designed to ensure that all handicapped children have available to them a free and appropriate education, including special education designed to meet the reasonable educational needs of such children *in accordance with their individualized education programs* . The program shall require (i) that the hearing of each handicapped child be tested prior to placement in a special education program and (ii) that a complete audiological assessment, including tests which will assess inner and middle ear functioning, be performed on each child who is hearing impaired or who fails the test required in (i) hereof. The school boards of the several school divisions, the Commission for the Visually Handicapped, the Virginia Council for the Deaf, Department of Health and other state and local agencies which can or may be able to assist in providing educational and related services shall assist and cooperate with the Board of Education in the development of such program.

B. The Board of Education shall prescribe procedures to afford due process to handicapped children and their parents or guardians and to school divisions in resolving disputes as to program placements, individualized education programs, tuition eligibility and other matters as defined in state or federal statutes or regulations.

C. The Board of Education may provide for final decisions to be made by ~~a~~ *an impartial* hearing officer. *Hearing and review officers shall not be selected by any party to administrative proceedings prescribed pursuant to subsection B and this subsection.* The parents and the school division shall have the right to be represented by legal counsel or other representative before such hearing officer without being in violation of the provisions of § 54-44 of the Code of Virginia.

D. Any party aggrieved by the findings and decision made pursuant to the procedures prescribed pursuant to subsections B and C of this section may bring a civil action in the circuit court for the jurisdiction in which the school division is located. In any such action the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate. *The right prescribed in this subsection is not intended to be exclusive but is concurrent with the right to bring a civil action in the appropriate federal district court.*

E. Whenever the Board of Education, in its discretion, determines that a school division fails to establish and maintain programs of free and appropriate public education which comply with regulations established by the Board, the Board ~~may~~ *shall* withhold all special education moneys from the school division and may use the payments which would have been available to such school division to provide special education, directly or by contract, to eligible handicapped children in such manner as the Board considers appropriate.

F. The Board of Education is authorized to supervise educational programs for handicapped children by other public agencies and to assure that placements of handicapped children by other public agencies are in an appropriate program consistent with the individualized education program.

§ 22.1-216. Use of public or private facilities and personnel under contract for special education. A school board may provide special education for handicapped children either directly with its own facilities and personnel or under contract with another school division or divisions or any other public or private nonsectarian school, agency or institution approved by the Board of Education. *A school board shall provide special education under contract with another school division or divisions or any other approved public or private nonsectarian school, agency, or institution, whenever it is unable to provide a free appropriate public education directly with its own facilities and personnel.*

§ 22.1-218. Reimbursement of parents or guardian of handicapped children in private schools; reimbursement of school boards from State funds. A. If a school division is unable to provide a free appropriate public education to a handicapped child and it is not appropriately available in a State facility, it shall offer to place the child in a nonsectarian private school for the handicapped approved by the Board of Education or such other licensing agency as may be designated by State law. *If a school division is unable to provide a free appropriate public education to a handicapped child and it is considered by the school division to be appropriately available in a state facility,*

then notwithstanding §§ 37.1-65.1 and 37.1-105, a placement in a state facility under this subsection shall be deemed a placement by the school division for the purpose of providing a free appropriate public education and the school board of such division shall pay to or on behalf of the parent or guardian of such child the charges fixed by the State facility, excluding charges for medical service not for diagnostic or evaluation purposes and charges for laundry. The school board of such division shall pay to, or on behalf of, the parent or guardian of such child the reasonable tuition cost and other reasonable charges as may be determined by the Board of Education. The school board, from its own funds, is authorized to pay such additional tuition or charges as it may deem appropriate. Of the total payment approved by the Board of Education, the school board shall be reimbursed sixty per centum from such State funds as are appropriated for this purpose.

B. Where a school board enters into an agreement with another school division or divisions or a public or private nonsectarian school to pay the tuition cost of special education for handicapped children within its jurisdiction, the Board of Education is authorized to reimburse the school board sixty per centum of its reasonable costs as determined by the Board of Education.

C. The Board of Education is further authorized to reimburse each school board operating a preschool special education program for handicapped children aged two through four, sixty per centum of its costs.

§ 37.1-65.1. Judicial certification of eligibility for admission of mentally retarded persons. A. Whenever a person alleged to be mentally retarded is not capable of requesting his or her admission to a facility for the training and treatment of the mentally retarded as a voluntary patient pursuant to § 37.1-65 of the Code, a parent or guardian of such person or other responsible person may initiate a proceeding to certify such person's eligibility for admission as hereinafter set forth.

If such person is between the ages defined in § 22.1-213 and resides within the jurisdiction of a school division which is unable to provide such person a free, appropriate public education directly or through contract with another school division pursuant to Article 2 of Title 22.1, and such school division considers a free, appropriate public education consistent with the individualized education program to be appropriately available in a State facility, or has failed to place such person in another school division or in an approved nonsectarian private school pursuant to §§ 22.1-216 or 22.1-218, the division superintendent shall initiate the proceeding described herein to certify such person's eligibility for admission.

B. Prior to initiating any such proceeding, the parent or guardian or other responsible person seeking the person's admission shall first obtain (i) a prescreening report from the community services board or community mental health clinic which serves the political subdivision of which the person who is alleged to be mentally retarded is a resident which report recommends admission to a facility for the mentally retarded and (ii) the approval of the facility to which it is proposed that the person be admitted. The Board shall promulgate rules and regulations establishing the procedure and standards for the issuance of such approval, which rules and regulations may include provision for the observation and evaluation of the person in a facility for a period not to exceed forty-eight hours. No person alleged to be mentally retarded who is the subject of a proceeding under this section shall be detained on that account pending the hearing except for observation and evaluation pursuant to the provisions of this subsection.

C. Upon the filing of a petition in any city or county alleging that any such person is mentally retarded, in need of institutional training or treatment and has been approved for admission pursuant to subsection B of this section, a proceeding to certify such person's eligibility for admission to the facility may be commenced. Such petition shall be filed with any judge as defined in § 37.1-1. A copy of the petition shall be personally served on the person named in the petition, his attorney, and his guardian or committee. Prior to any hearing under this section, the judge shall appoint an attorney-at-law to represent the individual. However, such person shall not be precluded from employing counsel of his choosing and at his expense.

C1. The person who is the subject of the hearing shall be allowed sufficient opportunity to prepare his defense, obtain independent evaluations and expert opinion at his own expense, and summons other witnesses. He shall be present at any hearing held under this section unless his attorney waives his right to be present and the judge is satisfied by a clear showing and after personal observation that such person's attendance would subject him to substantial risk of physical or emotional injury or would be so disruptive as to prevent the hearing from taking place.

C2. Notwithstanding the above, the judge shall summons one physician or clinical psychologist who is licensed in Virginia and who is qualified in the diagnosis of mental retardation. Such physician or clinical psychologist may be one who examined the individual pursuant to subsection B of this section. The judge shall also summons other witnesses when so requested by the person or his attorney. The physician or clinical psychologist shall certify that he has personally examined the individual and has probable cause to believe that he is or is not mentally retarded, is or is not capable of requesting his own admission, and is or is not in need of institutional training and treatment. The judge, in his discretion, may accept written certification of a finding of a physician or clinical psychologist provided such examination has been personally made within the preceding thirty days and there is no objection to the acceptance of such written certification by the person or his attorney.

C3. If the judge having observed the person and having obtained the necessary positive certification and other relevant evidence, specifically finds (i) that such person is not capable of requesting his own admission, (ii) that the facility has approved the proposed admission pursuant to subsection B of this section, (iii) that there is no less restrictive alternative to institutional confinement, consistent with the best interests of the person who is the subject of the proceeding, and (iv) that such person is mentally retarded and in need of institutional training or treatment, the judge shall by written order certify that the person is eligible for admission to a facility for the training and treatment of the mentally retarded.

C4. In the case of a person between the ages defined in § 22.1-213, in addition to the findings required in subsection C3, the Judge shall find that such person resides within the jurisdiction of a school division which is unable to provide a free, appropriate public education directly or through contract with another school division or divisions, and is in need of institutional training or treatment in order to receive a free, appropriate public education consistent with such person's individualized education program provided no such person for whom there is or may be less restrictive alternative to institutional confinement for the provision of a free, appropriate public education shall be certified eligible for admission to a facility for the training and treatment of mentally retarded persons.

D. Certification of eligibility for admission hereunder shall not be construed as a judicial commitment of such person but shall empower the parent or guardian or other responsible person to admit such person to a facility for the training and treatment of the mentally retarded and shall empower the facility to accept the person as a patient.

COMMONWEALTH of VIRGINIA

JOSEPH J. BEVILACQUA, Ph. D.
COMMISSIONER

Department of
Mental Health and Mental Retardation

MAILING ADDRESS
P. O. BOX 1797
RICHMOND, VA. 23214

December 15, 1982

Ms. Norma E. Szakal
Staff Attorney
Department of Legislative Services
P. O. Box 3-AG
Richmond, VA 23208

Dear Ms. Szakal: Norma

I would like to briefly comment on several issues involving the Department of Mental Health and Mental Retardation which appeared in a letter from Carolyn White Shenton, Director, State Advocacy Office for the Developmentally Disabled, that was discussed at the Michie Subcommittee meeting on November 23, 1982.

The first issue deals with an amendment proposal found on page two, section 6, of Ms. Shenton's letter.

On May 25, 1978, the Department of Mental Health and Mental Retardation and the Department of Education received an opinion from the Attorney General stating that the local school divisions are not responsible for payment of institutional costs when unable to provide an appropriate education unless "the school division contracts to place the child in a state facility for the purpose of providing special education". The Department approves of this procedure since Medicaid regulations allow state training centers to collect Medicaid dollars on school age residents, since the child's income can now be considered separately from his/her family. The ability to collect federal Medicaid dollars on these children would be jeopardized by requiring school divisions to pay local and state dollars for room and board charges fixed by state facilities.

The second issue involving the Department appears in the letter on page 3, section 7. At the present time the Department has guidelines which allow a school superintendent, or any party interested in a child's welfare, to request, through local Chapter X Community Services Boards, that the child be prescreened for possible placement in a state facility. These guidelines were adopted in

part because of the efforts of the Bagley Commission and its study of the Department in 1980. Additional guidelines specifying a school superintendent initiating eligibility proceedings appear to be unnecessary.

I appreciate the opportunity to comment on these issues. Please feel free to contact me or members of my staff if you have any additional questions.

Sincerely,

Joseph J. Bevilacqua, Ph.D.
Commissioner

JJB/MMF/m

cc: The Honorable Thomas J. Michie
Senator
Room 388 - General Assembly Building

Dr. S. John Davis
Superintendent of Public Instruction
Monroe Building

Carolyn W. Shenton
Director
State Protection and Advocacy Office

APPENDIX C

SENATE BILL NO. 81

Offered January 14, 1983

A BILL to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 40, consisting of a section numbered 2.1-599, relating to rate-setting for children's facilities.

Patrons--Michie, Brault, DuVal, and Chichester; Delegates: Diamonstein, Marshall, McDiarmid, Lambert, and Giesen

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Referred to the Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 40, consisting of a section numbered 2.1-599 as follows:

CHAPTER 40.

INTERDEPARTMENTAL AGENCIES.

§ 2.1-599. Interdepartmental Committee on Rate-setting for Children's Facilities.--A. There is hereby established the Interdepartmental Committee on Rate-setting for Children's Facilities. The Committee shall consist of nine members as follows: one representative of the Department of Education, who shall be appointed by the Superintendent of Public Instruction; one representative of local school divisions, who shall be appointed by the Governor; one representative of the Department of Social Services, who shall be appointed by the Commissioner of Social Services; one representative of local departments of social services or welfare, who shall be appointed by the Governor; one representative of the Department of Corrections, who shall be appointed by the Director of Corrections; three representatives of the providers, two private and one public, one of whom shall represent residential special education providers, one of whom shall represent day-school special education providers and one of whom shall be represent providers of child care, and one citizen, all to be appointed by the Governor. The appointees of the Governor shall be subject to confirmation by the General Assembly at its next regular session.

B. Every appointment to the Committee shall be for a term of two years, except that appointments to fill vacancies other than by expiration of term shall be for the unexpired term. The first members of the Committee shall serve a term commencing on July 1, 1983, and ending on June 30, 1985. All appointments thereafter, including those to fill vacancies, shall expire at the end of the second fiscal year following appointment. The Committee shall elect one of its members as chairman at the first meeting of each fiscal year, which shall be held no later than July 30.

C. The Committee shall: (i) establish uniform policies and procedures for reviewing the costs of the services; (ii) establish uniform rules for allowable costs consistent with relevant laws and regulations; (iii) establish uniform guidelines for calculating, granting waivers of and granting exceptions to the maximum percentage increase, including the use of advisory review panels; and (iv) supervise the formulation and dissemination of a comprehensive list of all relevant institutions and facilities in the private sector and the public sector and the programs available and costs in each.

All providers, whether day or residential special education schools for the handicapped,

residential providers of child care or regional public special education programs for the handicapped for which a unit cost for publicly paid participant fees must be established, shall be subject to these rules and policies. The rules and policies shall be developed by the Committee and shall be controlling after being adopted by the Board of Education, the Board of Social Services and the Board of Corrections.

The rules shall be published as the "Rules of the Interdepartmental Committee on Rate-setting: The Joint Regulations on Rate-setting for Children's Facilities of the Board of Education, the Board of Social Services and the Board of Corrections." These rules shall be subject to the Administrative Process Act, and all public hearings on such rules shall be conducted as a joint effort of the Board of Education, the Board of Social Services and the Board of Corrections. The Department of Education, the Department of Social Services and the Department of Corrections shall set rates and establish guidelines for calculating, granting waivers of and exceptions to maximum percentage increases using procedures consistent with these rules and policies.

D. The Committee shall appoint three persons, who shall not be members of the Committee, to serve as the Rate Review Appeals Panel. The Rate Review Appeals Panel shall hear all disputes or complaints regarding the recommendations of the three departments concerning the rates allowable, costs and denial of waivers of or exceptions to the maximum percentage increase. The Rate Review Appeals Panel shall not review the maximum percentage increases established by the Department of Education, Social Services and Corrections or the amount of the appropriation allocated for these purposes by the General Assembly.

Any party aggrieved by the decision of the Rate Review Appeals Panel may obtain a final decision from a hearing officer, who shall be appointed from a rotating list maintained by the Office of the Attorney General. The hearing officers shall receive training in the relevant law, regulations and procedures from the Attorney General's Office prior to being placed on the list. The expenses of the hearing officer and transcript shall be borne equally by the parties.

Any party aggrieved by the decision of the hearing officer shall have a right to review in the circuit court for the jurisdiction in which the provider facility is located. In any such action, the court shall receive the records of the prior proceedings, may request that the record be augmented or supplemented or permit any allowable and necessary proofs. The court shall review the decision of the hearing officer to determine that it is supported by substantial evidence and is not arbitrary, capricious or otherwise contrary to law.

E. The Department of Education, the Department of Social Services or the Department of Corrections shall execute term agreements with the appropriate providers. Any provider who executes a term agreement shall be bound by this agreement and the rates stated therein whenever contracting with the school divisions, local social services or welfare agencies or other state or local agencies. All such contracts or purchase orders shall reference the appropriate term agreement.

SENATE BILL NO. 83

Offered Janaury 14, 1983

A BILL to amend the Code of Virginia by adding a section numbered 22.1-218.1, relating to out-of-state placements of handicapped children.

Patrons–Michie and Chichester; Delegates: Diamonstein, Lambert, Marshall, and Giesen

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Referred to the Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 22.1-218.1 as follows:

§ 22.1-218.1. Duty to process placements through the Interstate Compact on the Placement of Children.–In order to protect the interests of the Commonwealth and local governments and provide for the safety and welfare of handicapped children, all placements of handicapped children facilitated by a school division in an out-of-state special education facility shall be processed through the Interstate Compact on the Placement of Children as provided in Chapter 10.1 of Title 63.1 of the Code of Virginia.

SENATE BILL NO. 85

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health on

February 3, 1983)

(Patron Prior to Substitute–Senator Michie)

A BILL to amend and reenact § 22.1-101 of the Code of Virginia and to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 40, consisting of sections numbered 2.1-599 and 2.1-600, relating to an Interagency Assistance Fund for Noneducational Placements of Handicapped Children.

Be it enacted by the General Assembly of Virginia:

1. That § 22.1-101 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 40, consisting of sections numbered 2.1-599 and 2.1-600 as follows:

CHAPTER 40.

INTERDEPARTMENTAL AGENCIES.

1. § 2.1-599. Interagency Assistance Fund for Noneducational Placements of Handicapped Children.–A. There shall be established in the Department of Education, Department of Corrections, and Department of Social Services an Interagency Assistance Fund for Noneducational Placements of Handicapped Children. This Fund shall be for the purpose of providing payment of tuition, required related services, and living expenses for handicapped children placed by the local social services or welfare agencies or the Department of Corrections in private residential, special education facilities or across jurisdictional lines in public schools while living in foster homes or child-caring facilities.

B. The portion of this Fund for foster-care handicapped children shall be administered by the Department of Social Services, which shall provide for such payments from local departments of welfare or social services using funds appropriated for such purpose. The portion of this Fund for children who are in custody of the Department of Corrections shall be administered by that Department, which shall contribute the costs of maintaining such handicapped children. The Department of Education shall maintain and administer the portion of the Fund for the payment of educational costs for such handicapped children. This part of the Fund shall be established as an allocation for special education in the appropriations act each year. The local school boards shall not be required to pay any costs for educating handicapped children who are placed by another public agency.

C. The Board of Education, Board of Corrections, and Board of Social Services shall jointly adopt such regulations as are necessary to implement this Fund.

§ 2.1-600. Noneducational placements of handicapped children.–A. For purposes of the Interagency Assistance Fund for cross-jurisdictional and residential special education placements of handicapped children by a public agency other than a local school division, a "noneducational" placement of a handicapped child shall be defined as a placement made by a public agency having custody of the child. Such a placement may be in a private, residential, special education facility, if there is no less restrictive appropriate program available, or in a private home or a private or public child-caring facility which is located in another jurisdiction in whose school system the child will be enrolled. Public education funds shall be used only for placements in nonsectarian educational institutions approved by the Board of Education.

B. In no case shall any local official or employee suggest or imply that relinquishing custody of a handicapped child could or would result in a placement more acceptable to the parent. Custody shall not be accepted for the purpose of placing a child in any private special education facility or special education program.

§ 22.1-101. Increase of funds when certain nonresident pupils attend schools; how increase computed and paid.—A. Any school division in which any child *, except a handicapped child,* not a resident of such school division is enrolled in its public schools, when such child has been placed in foster or other such *custodial* care within the geographical boundaries of the school division by any ~~State~~ *state* or local agency authorized so to do under the laws of Virginia or has been placed in an orphanage or children's home which exercises legal guardianship rights, shall be reimbursed for the cost of enrollment on the part of such child (i) by deducting the amount of such cost from the amount of ~~State~~ *state* school funds distributable the succeeding year to the school division of residence of such child *,* or (ii) if the child was not a resident of this Commonwealth and the circumstances were such that there was no obligation as to education of such child upon any school division in this Commonwealth at the time of placement, out of the general ~~State~~ *state* funds appropriated for public education and distributable to the school divisions. The State Board is authorized to determine finally which method of reimbursement shall be applied in any case in which any question is raised. No such school division shall charge tuition to any such child.

B. The school division in which any such child so placed attends public school shall keep an accurate record of, and shall certify by July ~~first~~ *1* following the end of the school year to the State Board: (i) the number of days which such child was enrolled in its public schools, (ii) the amount per child, exclusive of the children herein referred to, spent from local funds in educating children, (iii) the school division of residence of such child if a resident of the Commonwealth at time of placement or that the child was not a resident of the Commonwealth at time of placement if such was the case, (iv) the school division from which such child was sent and (v) the official, agency or person by whom or which the child was so placed.

C. Any school division in which any handicapped child not a resident of such school division is enrolled in its public schools, when such child has been placed in foster care or other such custodial care within the geographical boundaries of the school division by any state or local agency authorized so to do under the laws of Virginia or has been placed in an orphanage or children's home which exercises legal guardianship rights, shall be reimbursed according to the regulations of the Board of Education for the cost of enrollment on the part of such handicapped child by the Department of Education through funds designated for noneducational placements of handicapped children across jurisdictional lines to the extent such funds are appropriated by the General Assembly.

2. That this act shall become effective on July 1, 1984.

SENATE BILL NO. 86

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health on

February 3, 1983)

(Patron Prior to Substitute–Senator Michie)

A BILL to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 40, consisting of a section numbered 2.1-599, relating to Interagency Coordinating Committee on Delivery of Related Services to Handicapped Children.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 40, consisting of a section numbered 2.1-599 as follows:

CHAPTER 40.

INTERDEPARTMENTAL AGENCIES.

§ 2.1-599. Interagency Coordinating Committee on Delivery of Related Services to Handicapped Children.–There shall be an Interagency Coordinating Committee on Delivery of Related Services to Handicapped Children, which shall consist of one representative to be appointed by the agency executives from each of the following: Department of Education, Department of Social Services, Department of Corrections, Department of Health, Rehabilitative School Authority, Department of Rehabilitative Services, Department of the Visually Handicapped, Division for Children, Department of Mental Health and Mental Retardation and the State Advocacy Office for the Developmentally Disabled. The Coordinating Committee shall annually elect a chairman. Each agency shall contribute a pro rata share of the required support services. Additional members may be appointed by the agency executives as required.

The Interagency Coordinating Committee shall be responsible for (i) coordination of service delivery to handicapped children, birth through 21 years of age; (ii) developing and implementing an interagency state plan for the provision of such services; (iii) initiating cooperative arrangements at the local level; (iv) receiving comments and recommendations from the local public service agencies, private providers and citizens concerning problems in service delivery to handicapped children; (v) designing strategies to mediate such problems; and (vi) monitoring the changes in programs and delivery of services in order to provide services that are needed and to prevent duplicative or unnecessary services. The Coordinating Committee shall make and submit to the various agency executives a report and recommendations annually, and at such other times as it deems necessary and expedient.

2. That this act shall expire on June 30, 1987.

SENATE JOINT RESOLUTION NO. 12
AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health on

February 3, 1983)

(Patron Prior to Substitute–Senator Michie)

Requesting the Department of Education to revise its procedure for establishing rates for private special education facilities.

WHEREAS, Senate Joint Resolution No. 43 of 1982 and House Joint Resolution No. 74 of 1982 established the Joint Subcommittee Studying the Residential Placement of Handicapped Children; and

WHEREAS, the Joint Subcommittee has diligently examined the issues related to residential placement of handicapped children, among which is the need for uniformity in procedures for setting rates for private residential children's facilities; and

WHEREAS, the Joint Subcommittee has heard much testimony that the present system for establishing rates for private special education facilities is not timely or effective in the opinion of many local school division officials because the rates are frequently not established until near or after the beginning of the school year; and

WHEREAS, the Board of Education is hampered in establishing the rates because the budget estimates must be submitted to the Governor and the General Assembly before the annual rates for the private providers of special education are set; and

WHEREAS, in order to provide credible budget estimates at both the state and the local levels, the rates for private providers of special education must be set prospectively; and

WHEREAS, Item 172 of the 1982 Appropriations Act includes the funds provided by the Commonwealth for residential placements of handicapped children under the authority of § 22.1-218 of the Code of Virginia; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Department of Education is requested to obtain reasonable cost estimates from the private providers and certain regional programs of special education by December 1 of each year in order to provide the Governor and the General Assembly with an analysis of the cost of residential and day school placements of handicapped children; and, be it

RESOLVED FURTHER, That the Department of Education is requested to obtain detailed cost data from the private providers by no later than February 1 of each year, and to review this data and make recommendations on the rates to the Board of Education by March 31 of each year; and, be it

RESOLVED FINALLY, That the Department of Education is requested to make note under Item 172 of the Appropriations Act of the amount requested under the authority of § 22.1-218 for residential and day school placements of handicapped children for the coming year.

SENATE JOINT RESOLUTION NO. 13

Offered January 14, 1983

Directing the Joint Legislative Audit and Review Commission to evaluate the educational programs provided for children residing in the facilities of the Department of Mental Health and Mental Retardation.

Patrons--Michie, Brault, DuVal, and Chichester; Delegates: Terry, Diamonstein, Marshall, McDiarmid, Lambert, and Giesen

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Referred to the Committee on Rules

WHEREAS, the educational programs in the Mental Health facilities are funded as an appropriation to the Department of Education and operated by the local school divisions; and

WHEREAS, the educational programs in Mental Retardation facilities are funded as an appropriation to the Department of Mental Health and Mental Retardation and operated by the employees of this department; and

WHEREAS, the one exception to this system is in the Northern Virginia Training Center, where the County of Fairfax contracts pursuant to § 22.1-7 with the Department of Mental Health and Mental Retardation to operate the educational programs and mainstreams the largest number of institutional residents in the Commonwealth;

WHEREAS, the educational programs in these facilities have been criticized as to quality, administrative responsibility, uniformity of services and suitability of the environment; and

WHEREAS, providing the educational programs for handicapped children in the least restrictive environment is a policy which appears in the best interest of the children and the Commonwealth because institutionalization is costly; and

WHEREAS, the Joint Legislative Subcommittee Studying the Residential Placement of Handicapped Children has examined issues concerned with the operation, funding and quality of the educational programs and related services in the Department of Mental Health and Mental Retardation facilities and has come to believe that an accurate evaluation of these programs is essential; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Legislative Audit and Review Commission is directed to evaluate the programs of education or training for handicapped children provided by the facilities of the Department of Mental Health and Mental Retardation with special attention to: (1) the quality of instruction and materials; (2) the uniformity of the offered services; (3) the suitability of the environment in which the programs are conducted; (4) the eligibility of the students for mainstreaming; (5) the appropriateness of the administrative authority; (6) the appropriateness of the funding mechanism; (7) the cost-effectiveness of the programs in relationship to the services provided; (8) whether all such school age children are receiving education or training as required by law; and (9) such other matters as may be deemed appropriate; and, be it

RESOLVED FINALLY, That for purposes of coordinating this study with the appropriate standing committees, an eight member liaison committee shall be appointed as follows: two members of the Senate Committee on Finance, one member of the Senate Committee on Rehabilitation and Social Services, and one member of the Senate Committee on Education and Health, all to be appointed by

the Senate Committee on Privileges and Elections and two members of the House Committeee on Appropriations, one member of the House Committee on Health, Welfare and Institutions and one member of the House Committee on Education, all to be appointed by the respective chairmen.

The cost of this study for the coordinating legislative members shall not exceed $6,400.

SENATE JOINT RESOLUTION NO. 14

Offered January 14, 1983

Requesting the Senate Committee on Rehabilitation and Social Services and the House Committee on Health, Welfare and Institutions to establish a joint subcommittee to study the practice of detaining children in adult jails.

Patrons--Michie, Brault, DuVal, and Chichester; Delegates: Diamonstein, Marshall, McDiarmid, Lambert, and Giesen

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Referred to the Committee on Rules

WHEREAS, the practice of holding children in adult jails has recently attracted much controversy throughout the nation; and

WHEREAS, many courts in states other than Virginia have concluded that holding juveniles in adult facilities is unconstitutional; and

WHEREAS, it is estimated that 4,000 children are annually held in the Commonwealth's local jails, placing Virginia among the top three states holding juveniles in adult facilities; and

WHEREAS, a substantial number of these children are handicapped, and, therefore entitled to special education services under state and federal law; and

WHEREAS, there has been little development of any educational programs in the local jails of Virginia; and

WHEREAS, the status of these children has not received appropriate state attention; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Senate Committee on Rehabilitation and Social Services and the House Committee on Health, Welfare and Institutions establish a joint subcommittee to study the practice of detaining children in adult jails with particular focus on:

1. the consitutionality of detaining children in adult facilities;

2. the feasibility and the means of relocating these children; and

3. the fiscal impact on the state and local governments of relocating these children.

The joint subcommittee shall consist of five members, two to be appointed from the membership of the Senate Committee on Rehabilitation and Social Services by the Senate Privileges and Elections Committee and three to be appointed from the membership of the House Committee on Health, Welfare and Institutions by the Chairman of that Committee.

The joint subcommitee is requested to complete its work in time to submit recommendations to the 1984 Session of the General Assembly.

The cost of this study shall not exceed $6,400.

COMMONWEALTH OF VIRGINIA

THOMAS J. MICHIE, JR.
25TH SENATORIAL DISTRICT
ALBEMARLE, FLUVANNA, GREENE,
NELSON AND ORANGE COUNTIES;
CITY OF CHARLOTTESVILLE
2008 GREENBRIER DRIVE
CHARLOTTESVILLE, VIRGINIA 22901

SENATE

COMMITTEE ASSIGNMENTS
EDUCATION AND HEALTH
GENERAL LAWS
REHABILITATION AND SOCIAL SERVICES

January 25, 1983

The Honorable Gerald L. Baliles
Attorney General for the State of Virginia
101 North Eighth Street
Richmond, Virginia 23219

Dear Mr. Baliles:

During the course of the work of the Joint Legislative Subcommittee Studying the Residential Placement of Handicapped Children, pursuant to Senate Joint Resolution No. 43, which I chair, we have heard much testimony concerning the requirements of the Interstate Compact on the Placement of Children. The Interstate Compact on the Placement of Children is contained in Chapter 10.1 of Title 63.1 of the Code of Virginia and was designed to protect the member states and their children from certain poor conditions which existed in some residential facilities in other states a few years ago.

Under Article II of §63.1-219.1(b), Definitions, "sending agency" is defined as virtually any entity "which sends, brings, or causes to be sent or brought any child to another party state." Paragraph (d) of Article II defines the term "placement," as "the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution, but does not include any institution primarily educational in character, and any hospital or other medical facility." In Article VII, Compact Administrator, the designated officers are authorized to jointly "promulgate rules and regulations to carry out more effectively the terms and provisions of this compact." Under Article VIII, Limitations, placements by a parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or guardian with any other relative of the same class or nonagency guardian are excluded from the Compact.

In 1977, the Board of Welfare adopted a policy that all out-of-state placements were subject to the Interstate Compact. In April of 1982 at the meeting of the American Public Welfare Association, the Interstate Compact Officers approved a regulation which defines "primarily educational institution", as, basically, a boarding school (see attachments). Special education facilities are required by P.L. 94-142 and state law to provide many related services to handicapped children. Because of this combination of circumstances, and the advice of the Attorney General's Office, the Department of Education presently requires the school divisions to go through the Interstate Compact to facilitate placements of handicapped children in private residential special education facilities located in other states.

The local school divisions are required to complete a one-page form, ICPC 100A (see attachments), submit a copy of the child's Individualized Educational Program and a copy of the parent's written consent to the Office of the Administrator of the Interstate Compact. A quarterly status report is also required

for each child. The local school divisions contend that they are placing handicapped children in "institutions primarily educational in character" and are, therefore, exempt from the requirements of the Compact. Further, the school division authorities cite unnecessary delay of the placements because of the requirement to go through the Interstate Compact. They state that the placements must be expeditiously made and the Compact procedures unreasonably delay the process. It should be noted that the costs of the residential placements are borne by the State and the localities in a 60/40 ratio if the facility in which the child is placed recognizes the rate as set by the Board of Education. Some out-of-state facilities do not recognize the Board's rates; therefore, a local school divisions which chooses to place a child in these facilities must pay the difference between the 60% of the rate provided by the State and the actual cost of the facility.

In view of the above-described controversy, we would like to request an Attorney General's Opinion on the following issues:

1. Did the Interstate Compact Officers exceed their authority in promulgating a regulation defining an institution "primarily educational in character" as essentially a boarding school?

2. If the Interstate Compact Officers did not exceed their authority in promulgating this regulation, then does the term "primarily educational in character," as defined in this regulation, exclude the special education facilities, because of the many related services provided to handicapped children in these facilities?

3. Does the Board of Education have the authority to require the school divisions to process out-of-state placements of handicapped children through the Interstate Compact on Placement of Children, if "primarily educational in character" does exclude special education facilities?

4. Are the school divisions required under present law to process out-of state placements of handicapped children in private residential facilities through the Interstate Compact on the Placement of Children?

We wish to express our appreciation to you in advance for your assistance in this matter.

Sincerely,

Thomas J. Michie, Jr.

TJM:asc
Enclosures

ISSUES OR QUESTIONS NOT YET ADDRESSED:

1. Lack of educational services to handicapped children held in local jails or other local adult detention centers.

Staff recommendation: Suggest that the Subcommittee on Corrections be requested to examine this issue with the recommendation that if at all possible the children be removed from adult facilities (in view of numerous recent cases citing the deprivation of rights to these children as unconstitutional).

2. Need for permanent establishment of an interagency task force on related services to handicapped children.

Staff recommendation: This mechanism could serve as the forum for addressing problems as they develop and alleviate many problems before they become severe. This still needs additional examination and discussion.

3. Examination of the various ways in which the special education money "flows through" to the programs.

Staff recommendation: Might be valuable for future study, but would need more time than available.

4. Feasibility of establishing one or more state facilities for the handicapped.

Staff recommendation: Under present economic conditions, this question would not appear to be worthy of extended study at this time.

5. Incentives for development of regional programs for low incidence/high cost handicapping conditions.

Staff recommendation: The regional programs appear to be the best solution to many of the cost problems in the education of special needs children. This question deserves consideration, but might take more time than available.

6. Establish a state policy on the implementation of P.L. 94-142 and Article 2 of Chapter 13 of the Code of Virginia.

Staff recommendation: This would be a worthwhile undertaking, especially in view of the uncertainty in federal policy, but would require more time than we have available.

7. Evaluation of pilot programs utilizing cooperative relationships between the parents/home and the schools.

Staff recommendation: These programs appear promising and are noted in the enabling resolution. More time would probably be needed to examine these pilot activities.

8. Training of hearing officers required by the due process procedure.

Staff recommendations: In view of some expressions of concern, the training of the hearing officers is an issue which should be examined. Might not have time.