

**FINAL REPORT OF THE  
VIRGINIA COMMISSION ON YOUTH**

**The Use of Federal, State, and  
Local Funds for Private  
Educational Placements of  
Students with Disabilities -  
Year Two  
(HJR 196, 2014)**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 14**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2015**





**COMMONWEALTH of VIRGINIA**  
*Commission on Youth*

Delegate Christopher K. Peace, *Chair*  
Senator Barbara A. Favola, *Vice Chair*

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November 23, 2015

TO: The Honorable Terry R. McAuliffe, Governor of Virginia

and

Members of the Virginia General Assembly

During the 2014 General Assembly Session, Delegate Les R. Adams introduced House Joint Resolution 196, directing the Commission on Youth to:

- i. examine the use of Comprehensive Services Act for At-Risk Youth and Families (CSA) and Medicaid funds for private day and private residential special education placements;
- ii. gather local and statewide data on the extent to which youth are placed in settings that are segregated from nondisabled students;
- iii. determine the feasibility and cost-effectiveness of more integrated alternatives to provide special education services to students including, but not limited to, those students with intellectual and developmental disabilities currently in segregated settings in the Commonwealth; and
- iv. consider any other matters as it deems appropriate to meet the objectives of this study.

The Commission on Youth will complete its meetings for the first year by November 30, 2014, and the second year by November 30, 2015. This report represents the work of the Commission for the second year of this study.

This report represents the work of many government and private agencies and individuals who provided input to the study. The Commission on Youth gratefully acknowledges their support to this effort.

Respectfully submitted,

A handwritten signature in black ink that reads "Christopher K. Peace".

Christopher K. Peace



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## MEMBERS OF THE VIRGINIA COMMISSION ON YOUTH

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### **House of Delegates**

The Honorable Christopher K. Peace, Chair  
The Honorable Richard L. Anderson  
The Honorable Mamy E. BaCote  
The Honorable Richard P. "Dickie" Bell  
The Honorable Peter F. Farrell  
The Honorable Mark Keam

### **Senate of Virginia**

The Honorable Barbara A. Favola, Vice Chair  
The Honorable David W. Marsden  
The Honorable Stephen H. Martin

### **Gubernatorial Appointments from the Commonwealth at Large**

Deirdre S. Goldsmith  
Frank S. Royal, Jr., M.D.  
Charles H. Slemper, III, Esq.

### **Commission Staff**

Amy M. Atkinson, Executive Director  
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*Appendix A. House Joint Resolution 196*

*Appendix B. Advisory Group Membership*

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## **I. Authority for Study**

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Section 30-174 of the Code of Virginia establishes the Commission on Youth and directs it to "...study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families." This section also directs the Commission to "...encourage the development of uniform policies and services to youth across the Commonwealth and provide a forum for continuing review and study of such services."

Section 30-175 of the Code of Virginia outlines the powers and duties of the Commission on Youth and directs it to "[u]ndertake studies and to gather information and data...and to formulate and report its recommendations to the General Assembly and the Governor."

During the 2014 General Assembly Session, Delegate Les R. Adams introduced House Joint Resolution 196, directing the Commission on Youth to:

- i. examine the use of Comprehensive Services Act for At-Risk Youth and Families (CSA) and Medicaid funds for private day and private residential special education placements;
- ii. gather local and statewide data on the extent to which youth are placed in settings that are segregated from nondisabled students;
- iii. determine the feasibility and cost-effectiveness of more integrated alternatives to provide special education services to students including, but not limited to, those students with intellectual and developmental disabilities currently in segregated settings in the Commonwealth; and
- iv. consider any other matters as it deems appropriate to meet the objectives of this study.

The legislation required the Commission on Youth to complete its meetings for the first year by November 30, 2014, and the second year by November 30, 2015. A copy of the legislation is included as Appendix A.

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## **II. Members Appointed to Serve**

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The Commission on Youth is a standing legislative commission of the Virginia General Assembly. It is comprised of twelve members: six Delegates, three Senators, and three citizens appointed by the Governor.

Members of the Virginia Commission on Youth are:

Delegate Christopher K. Peace, Mechanicsville, Chair

Delegate Richard L. Anderson, Prince William

Delegate Mamy E. BaCote, Newport News

Delegate Richard P. "Dickie" Bell, Staunton

Delegate Peter F. Farrell, Richmond

Delegate Mark Keam, Vienna

Senator Barbara A. Favola, Arlington, Vice Chair

Senator David W. Marsden, Burke

Senator Stephen H. Martin, Chesterfield

Deirdre S. Goldsmith, Abingdon

Frank S. Royal, Jr., M.D., Richmond

Charles H. Slemp, III, Esq., Norton

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### **III. Executive Summary**

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During the 2014 General Assembly Session, Delegate Les R. Adams introduced House Joint Resolution 196, directing the Commission on Youth to:

- i. examine the use of Comprehensive Services Act for At-Risk Youth and Families (CSA) and Medicaid funds for private day and private residential special education placements;
- ii. gather local and statewide data on the extent to which youth are placed in settings that are segregated from nondisabled students;
- iii. determine the feasibility and cost-effectiveness of more integrated alternatives to provide special education services to students including, but not limited to, those students with intellectual and developmental disabilities currently in segregated settings in the Commonwealth; and
- iv. consider any other matters as it deems appropriate to meet the objectives of this study.

The legislation required the Commission on Youth to complete its meetings for the first year by November 30, 2014, and the second year by November 30, 2015. The Chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the next Regular Session of the General Assembly for each year. A copy of the legislation is included as Appendix A.

During the first year of the study, an update on the study activities and identified issues were reported at the Commission's December 2, 2014 meeting. An update on the study activities and draft recommendations for the second year of the study was reported at the Commission's September 8 and October 20 meetings. At the October 20 meeting, the Commission on Youth approved the following recommendations:

**THERE ARE CHALLENGES WITH USING CHILDREN SERVICES ACT (CSA) WRAP-AROUND SERVICES TO MAINTAIN THE LEAST RESTRICTIVE ENVIRONMENT (LRE).<sup>1</sup>**

**Recommendation**

Request the State Executive Council (SEC) revisit existing policy restrictions and budgetary constraints with CSA state pool funds for wrap around services for students with disabilities. This review will include whether the community match rate could be utilized, existing parental co-payment policies for additional services not included in the individualized education program (IEP), and the prohibition on using funds for non-educational services provided by school employees, and make recommendations to improve both utilization and access to these funds to the Commission on Youth by the 2017 General Assembly Session.

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<sup>1</sup> The 2015 General Assembly enacted legislation (SB 850, Favola) to change the name of the Virginia Comprehensive Services Act for At-Risk Youth and Families to the Children's Services Act (CSA) to better reflect the goals of CSA.

**VIRGINIA'S EXISTING SPECIAL EDUCATION STATE FUNDING STRUCTURE DOES NOT ADEQUATELY MEET THE NEEDS AND INCREASING NUMBERS OF HARD-TO-SERVE, SPECIAL EDUCATION STUDENTS.**

**Recommendation**

1. Request the Virginia Department of Education (VDOE) include in its analysis of regional special education programs other states' funding formulas and policies identified during the course of their study that may be employed in the Commonwealth. VDOE shall also determine the efficacy of Virginia's regional special education programs and assess whether provisions are needed to revise these programs and if these programs should be expanded to other regions of the Commonwealth. VDOE shall report findings and recommendations to the Commission on Youth prior to the 2016 General Assembly Session.

**THE UTILIZATION AND COSTS OF PRIVATE PLACEMENTS FOR SPECIAL EDUCATION STUDENTS IN VIRGINIA HAVE INCREASED SIGNIFICANTLY.**

**Recommendations**

1. Introduce a budget amendment for VDOE to convene an interagency workgroup to assess the barriers to serving students with disabilities in their local public schools. The workgroup shall assess existing policies and funding formulas including school division's program requirements, localities' composite indices, local CSA match rate allocations, local CSA rate setting practices, the impact of caps on support positions, policies for transitioning students back to the public school, and funding for local educational programming based on models which are collaborative and create savings for both local and state government while providing youth an educational option within their communities. Membership shall include a balance of local and state representative, all impacted state agencies, local education agency (LEA) representatives, local CSA representatives, local government officials, local special education administrators, stakeholder organizations, parent representatives, the Arc of Virginia, the Coalition for Students with Disabilities, and members of the Virginia General Assembly. The workgroup shall make recommendations to the Virginia Commission on Youth prior to the 2017 General Assembly Session.
2. Request the Office of Children's Services (OCS) collaborate with VDOE and include a track in their annual conference on best practices and effective strategies for serving children with disabilities in the least restrictive environments and increase knowledge and understanding on working with students with disabilities, and their parents, as well as improving coordination between schools and CSA.
3. Request the OCS include in its annual training plan strategies best practices and effective strategies for serving children with disabilities in the least restrictive environment and increase knowledge and understanding on working with students with disabilities, and their parents, as well as improving coordination between schools and CSA.

**VIRGINIA’S REGIONAL SPECIAL EDUCATION PROGRAMS ALLOW SELECT SCHOOL DIVISIONS TO SERVE STUDENTS IN AN ADDITIONAL OPTION IN THE CONTINUUM OF PLACEMENTS BUT THE EXISTING STRUCTURE NEEDS TO BE RE-EVALUATED.**

The Recommendation adopted for the Finding – *Virginia’s existing special education state funding structure does not adequately meet the needs and increasing numbers of hard-to-serve, special education students* – addressed the issues set forth in this Finding.

**THERE IS NO AVAILABLE DATA ABOUT THE EFFECTIVENESS OF CSA-FUNDED PRIVATE DAY AND RESIDENTIAL PROGRAMS.**

**Recommendations**

1. Request VDOE work with private providers including the Virginia Association of Independent Specialized Education Facilities, the Virginia Council for Private Education, the Virginia Association of Independent Schools, the Southern Association of Colleges and Schools, the Virginia Coalition of Private Provider Associations, the Virginia Association of Community Services Boards, local school divisions, stakeholder groups, and parent representatives to identify and define outcome measures to assess students’ progress such as assessment scores, attendance, graduation rates, transition statistics, and return to the students’ home schools.
2. Request VDOE establish a procedure requiring all assessment scores for private day students tagged as ‘Special Situation’ be included in the student’s “home” school scores.
3. Request OCS to report annually on Child and Adolescent Needs and Strengths (CANS) assessment tool and CANVaS (the online version of CANS) scores that measure educational outcomes by service placement name and type for all students being served in CSA-funded educational placements.

**VIRGINIA’S PARENT CONSENT PROVISIONS EXCEED FEDERAL REGULATIONS AND MAY HINDER SERVING STUDENTS WITH DISABILITIES IN THE LEAST RESTRICTIVE ENVIRONMENT.**

**Recommendations**

1. Request VDOE include in the development of the statewide model IEP, an ongoing planning process that facilitates returning students with disabilities served in private placements to the public school setting. The IEP will establish an ongoing process that should commence when a student with a disability is first placed in a private day or residential school. This process should involve the parents, home school officials, CSA officials, the child’s teachers, and other involved stakeholders. VDOE shall also include in its guidance to schools best practices for transitioning students from private residential and private day schools such as employing gradual transition strategies and utilization of available community-based programs. VDOE will investigate the feasibility of incorporating in the statewide model IEP Medicaid billing for services provided to eligible IEP students.

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## **IV. Study Goals and Objectives**

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### **A. YEAR ONE**

At the Commission's meeting on May 7, 2014, the Commission approved the Year One Study Plan for the *Study on the Use of Federal, State, and Local Funds for Private Educational Placements of Students with Disabilities*.

The following study goals were approved by the Commission:

- Conduct extensive background and literature reviews on other states' initiatives and policies
- Review federal statutes and regulation
  - Individuals with Disabilities in Education Act of 2004 (IDEA)
  - IDEA federal regulations
- Review Virginia laws and regulations
  - The Children Services Act for At-Risk Youth and Families (CSA)<sup>2</sup>
  - Virginia's Special Education Regulations
- Review Children Services Act (CSA) policies
  - Local match rate allocations
  - Utilization of Medicaid for special education services
  - CSA Reimbursement for Wraparound educational services
- Meet with state and local officials, as well as key stakeholders
  - Children Services Act for At-Risk Youth
  - Virginia Department of Education
  - Department of Behavioral Health and Developmental Services
  - Virginia Board for People with Disabilities
  - Local Education Agencies
  - Community Policy and Management Teams
  - Family Assessment and Planning Teams
  - Virginia Association of Independent Specialized Education Facilities
  - Virginia's Parent Resource Centers
  - Partnership for People with Disabilities
  - Clinicians and School Psychologists
  - Advocacy Organizations
- Collect data to review the use of special education placements funded by CSA
  - Number of children who are placed
  - Services recommended
  - Service gaps
- Compile a description of services provided in private day/residential facilities that are not available within local school divisions
- Determine the feasibility and cost-effectiveness of more integrated alternatives
- Present initial findings and recommendations for Year One to the Commission on Youth

### **B. YEAR TWO**

At the Commission's meeting on May 5, 2015, the Commission on Youth approved the Year Two Study Plan for the *Study on the Use of Federal, State, and Local Funds for*

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<sup>2</sup> The 2015 General Assembly enacted legislation (SB 850, Favola) to change the name of the Virginia Comprehensive Services Act for At-Risk Youth and Families to the Children's Services Act (CSA) to better reflect the goals of CSA.

*Private Educational Placements of Students with Disabilities.* The legislation required the Commission to complete its meetings for the second year by November 30, 2015.

Year Two goals and objectives focused on continuing the efforts of the first year, in addition to addressing any new issues identified. The specific goals and objectives for the second year of the study included the following activities:

- Convene Advisory Group to assist in study effort
  - Invite representatives from the impacted groups including:

Office of Children Services Act for At-Risk Youth and Families	State Executive Council
Virginia Department of Education	State and Local Advisory Team
Virginia Department of Behavioral Health and Developmental Services	Local Comprehensive Services Act Coordinators
Virginia Board for People with Disabilities	Community Policy and Management Teams
Virginia Department of Social Services	Family Assessment and Planning Teams
Local Education Agencies	Partnership for People with Disabilities
School Administrators	Clinicians and School Psychologists
Virginia Association of Independent Specialized Education Facilities	Advocacy Organizations
Private School Representatives	Special Education Administrators
DisABILITY Law Center	Special Education/General Education Educators
Virginia's Parent Resource Centers	Family Members/Youth

- Review other introduced CSA legislation
  - HB 221 (Bell, 2014) – Students; admission to certain children’s residential facilities. Requires each student admitted under a physician's order, due to medical necessity and not solely for school purposes, to a children's residential facility to immediately be enrolled in an education program that is comparable to that which is provided in the child's school division of residence. Left in Appropriations.
  - HB 229 (Cole, 2014) – Comprehensive Services for At-Risk Youth and Families; Special Education Programs. Expands eligibility for services to students who transfer from an approved private school special education program to a public school special education program. Left in Appropriations.
  - SB 153 (Stuart, 2014) – Comprehensive Services for At-Risk Youth and Families; Special Education Programs. Companion to HB 229. Left in Appropriations.
  - SB 369 (Favola, 2014) – Membership of the SEC. Would add a third private provider representative, a representative of a child advocacy group or organization, a representative of a mental health advocacy group with a specialization in children's mental health, and a representative of a public provider of children's mental health services. Left in Health, Welfare and Institutions.
  - HB 2238 (LaRock, 2015) – Parental Choice Education Savings Account. Would permit the parents of eligible students to apply to the Department of Education for a Parental Choice Education Savings Account, to consist of the student's state per pupil funds and certain special education funds, which would be transferred annually to the Savings Account to provide educational options for the eligible children. Eligible students would be Virginia students

with disabilities who attended public school for at least half the prior year.  
Defeated by the Senate.

- Review Virginia’s regional special education programs that provide special educational services and programs at dedicated locations throughout the Commonwealth
- Compile a description of services provided in private day/residential facilities
- Determine the feasibility and cost-effectiveness of more integrated alternatives
- Develop recommendations
  - Synthesize findings
  - Develop recommendations
- Solicit feedback to recommendations
- Refine findings and recommendations
- Present findings and recommendations to the Commission on Youth
- Prepare final report

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## **V. Methodology and Objectives**

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The findings of the 2014 and 2015 study years are based on several distinct research activities conducted by the Commission on Youth.

### **A. RESEARCH AND ANALYSIS**

Commission staff conducted a literature review of federal law and regulations dealing with special education services in both public and private school settings. Staff reviewed federal law, federal regulations, state regulations, and policy guidelines addressing the delivery of special education and related services. Staff reviewed the *Individuals with Disabilities Education (IDEA) Act of 2004* to understand federal requirements and procedures related to special education, particularly for publically placed students served in private placements. Commission staff also reviewed federal IDEA regulations as well as Virginia’s *Regulations Governing Special Education Programs for Children with Disabilities* (8 VAC 20-81). Staff analyzed sections of the *Code of Virginia* addressing private placements. Staff also reviewed Virginia-specific data, reports, statutes, and guidance documents on the use of private placements for students with disabilities. Data and reports published by the Virginia Department of Education, along with comparable reports from the U.S. Department of Education, were used to understand the provision of special education services. Research collected by other states and independent organizations helped present a broader understanding of special education services. The Education Commission of the States’ Policy Database and issue briefs were also reviewed. Finally, Commission staff reviewed materials from the Virginia Department of Education’s State Special Education Advisory Committee.

### **B. SITE VISITS AND STAKEHOLDER INTERVIEWS**

Site visits and stakeholder interviews were conducted by Commission staff in order to receive input and information on the use of seclusion and restraint in schools. Site visits played an important role in the development of study findings and recommendations. Commission staff conducted site visits with representatives from the following programs:

Gladys H. Oberle School  
Fredericksburg, VA

Heather Empfield Day School and Transition Program  
Fredericksburg, VA

Alternative Paths Training School  
Fredericksburg, VA

Rivermont School  
Fredericksburg, VA

Stafford High Public Day Program  
Fredericksburg, VA

Stakeholders provided valuable information for the formulation of study findings and recommendations. Interviews were conducted with representatives from the following organizations:

- Virginia Bar Association Commission on the Needs of Children
- Virginia Department of Education
- Virginia Office of Children's Services
- Virginia ARC
- Local ARC Chapters
- Local Education Agency (LEA) Representatives
- Local Children Services Act Representatives
- Virginia Association of Independent Specialized Education Facilities
- Private Education Providers
- Special Education Teachers/Guidance Counselors
- Residential Facility Representatives
- Virginia Bar Association's Commission on the Needs of Children
- University of Richmond Educational Clinic Representatives
- Parent Representatives
- Virginia Coalition for Students with Disabilities
- Virginia Council of Administrators of Special Education
- Virginia Association of Independent Specialized Education Facilities

Staff also attended two conferences during the summer of 2015 to gain broader understanding about serving students with disabilities. Staff attended the annual conference of the Virginia Council of Administrators of Special Education to learn about instructional practices for students with disabilities. Staff also attended the Virginia ARC State Convention to learn about inclusion in educational programs and how best to include students with significant support needs in educational and recreational programs.

### **C. ADVISORY GROUP**

The Commission established an Advisory Group to help identify, refine, and prioritize goals and objectives of the study. The Advisory Group met twice in 2015: June 15 and September 8. A complete listing of the Advisory Group membership is provided as Appendix B.

The Advisory Group included representatives from the following agencies and organizations:

- Advocacy Organizations
- Center for Family Involvement @ VCU
- Children's Services Act Coordinators
- Commonwealth Autism
- Community Policy and Management Teams
- Family Assessment and Planning Teams
- Family Members

- JustChildren Program, Legal Aid Justice Center
- Local CSA Coordinators
- Local Education Agencies
- Local Government Officials
- Office of Children’s Services
- Parent Educational Advocacy Training Center
- Parent Representatives
- Partnership for People with Disabilities
- Private School Representatives
- Regional School Representative
- Special Advisor on Families, Children and Poverty
- Special Education/General Education Educators
- State Executive Council
- Virginia ARC
- Virginia Association of Counties
- Virginia Association of Independent Specialized Education Facilities
- Virginia Association of Elementary School Principals
- Virginia Association of School Superintendents
- Virginia Association of Secondary School Principals
- Virginia Board for People with Disabilities
- Virginia Council of Administrators of Special Education
- Virginia Commission on Youth Members
- Virginia Department of Behavioral Health and Developmental Services
- Virginia Department of Education
- Virginia Department of Social Services
- Virginia Education Association
- Virginia House of Delegates
- Virginia Municipal League
- Virginia School Boards Association

#### **D. FOCUS GROUP**

To satisfy the study mandate, Commission staff sought feedback from impacted stakeholders about the delivery of special education services in the Commonwealth and locality-specific experiences and examples of CSA’s role in serving youth eligible for CSA-funded special education services due to private special education placements. The Commission held a focus group at the 4th Annual CSA Conference, “An Informed System of Care” which was convened in Roanoke, Virginia on April 20, 2015. Focus group attendees included state CSA officials, local CSA administrators, CSA Family Assessment and Planning Team (FAPT) members, Community Policy and Management Team (CPMT) members, local social service officials, private day and residential facility representatives, educators, and juvenile justice officials.

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## **VI. Background**

This section summarizes the results of the research and analysis conducted by Commission staff.

### **A. DEFINITIONS**

For the purposes of this report:

“Special Education” is specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including: (1) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (2) instruction in physical education.<sup>3</sup>

“Individuals with Disabilities Education Act (IDEA) of 2004” is a federal law governing the education of students with disabilities. IDEA 2004 requires that families be informed of their special education rights, including how families and schools can resolve problems.<sup>4</sup>

“Free and Appropriate Education (FAPE)” is an individualized educational program designed to meet the child's unique needs and from which the child receives educational benefit, and prepares them for further education, employment, and independent living. In order to provide FAPE, the law requires schools to provide services that are individualized to meet the unique needs of each child.<sup>5</sup>

“Least Restrictive Environment (LRE)” dictates that, to the maximum extent appropriate children with disabilities are to be educated with children who are not disabled. Removal from the regular classroom may only occur when education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.<sup>6</sup>

“Individualized Education Plan (IEP)” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 1414(d) of this title. IEPs are written by the child’s IEP Team, which includes the parent(s). Parents have “consent rights,” which means they must approve certain actions before the school can act. Families must receive regular progress reports about their children’s progress toward reaching IEP goals.<sup>7</sup>

## **B. STUDY ISSUES**

Special education, pursuant to the Individuals with Disabilities Education Act (IDEA), is specially designed instruction provided at no cost to the parents in order to meet the unique needs of a child with a disability. IDEA guarantees a free appropriate public education (FAPE) to all eligible children with disabilities and includes the following services:

- identification and referral,
- evaluation,
- determination of eligibility,
- development of an individualized education program (IEP),
- determination of services, and
- re-evaluation.

IDEA requires that students with disabilities be provided special education services in the least restrictive environment (LRE) and these students not be unnecessarily segregated from nondisabled students. The federal and Virginia-specific requirements for the IEP are provided in the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*.<sup>8</sup> Pursuant to IDEA, removal from the regular education environment may occur only if

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<sup>3</sup> 20 U.S.C. § 1401(29).

<sup>4</sup> Virginia Bar Association Commission on the Needs of Children. (2015). *Basic Terms and Provisions of Special Education*. Retrieved from <http://prosforkids.org/basic-terms-and-provisions-of-special-education/>

<sup>5</sup> 20 U.S.C. § 1401(9); Wrightslaw. (2010). *FAPE – What Does It Mean? Caselaw*.

<sup>6</sup> 20 U.S.C. § 1412 (a)(5).

<sup>7</sup> 20 U.S.C. § 1401(14); Virginia Bar Association Commission on the Needs of Children.

<sup>8</sup> 8 VAC 20-81 et. seq. (*Regulations Governing Special Education Programs for Children with Disabilities in Virginia*).

the nature and severity of the disability is such that education in regular classes cannot be achieved satisfactorily using supplemental aids and services. Levels of service available to students typically follow a hierarchy from least to most restrictive. In Virginia, the continuum of placement options includes the following:<sup>9</sup>

- Regular class – 80% or more of the day;
- Regular class – greater than 40% and less than 80%;
- Regular class less than 40% of the day;
- Public separate school;
- Private special education day school;
- Public residential school;
- Private residential school;
- Hospital;
- Correctional facility; and
- Home-based.

For students with significant disabilities, a private day or residential program may be considered as an option for placement. All placement decisions are to be based upon the individual needs of the child. For some children, a private day or residential placement may be the least restrictive environment. If a private special education day school or private residential facility is determined to be the least restrictive environment in which the student can be served to receive FAPE, these services are authorized.<sup>10</sup>

In Virginia, an interagency funding pool known as the Children’s Services Act (CSA), formerly the Comprehensive Services Act, funds private special education placements.<sup>11</sup> CSA funds may also be utilized to fund non-residential services in the home and community for a student with an educational disability when the needs associated with his/her disability extend beyond the school setting and threaten the student’s ability to be maintained in the home, community, or school setting (i.e., wrap-around services for students with disabilities). The child’s IEP team is responsible for determining the specific services, which are necessary for a student’s educational program, and delineates these services in the IEP. However, local interagency teams under CSA are responsible for managing CSA funds for special education services provided for children placed in private day or residential programs for purposes of special education.

School divisions may also seek federal Medicaid reimbursement for certain students and services. Medicaid funds may be used to pay for health-related services provided under IDEA for Medicaid-eligible students with an IEP. Virginia school divisions enroll directly with the Department of Medical Assistance Services (DMAS) for the reimbursement of select health services for children with Medicaid or FAMIS coverage. DMAS-covered services for children in special education are provided by the school division according to the child’s IEP. School divisions use local and state funds to draw down the federal Medicaid share. School divisions can submit reimbursement claims to Medicaid for some services provided to students. Medicaid funds may also be utilized to support private residential placements, but only for those youth with mental health treatment needs that qualify for residential services.

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<sup>9</sup> Virginia Department of Education. (2015). *Special Education in Virginia. Presentation on June 15, 2015 to the Virginia Commission on Youth’s Advisory Group on Use of Federal, State, and Local Funds for Private Educational Placements of Students with Disabilities – Year Two.*

<sup>10</sup> Levels of service available to students typically follow a hierarchy from least to most restrictive, including general education classes, special classes, special schools, instruction in hospitals and institutions, and home instruction (8 VAC 20-81-130).

<sup>11</sup> Va. Code § 2.2-5211.

According to the Virginia Department of Education (VDOE), during the 2013-2014 school year, there were 161,189, which represented approximately 12.3% of the overall school population.<sup>12</sup> Of these students:

- 62.69% of students with an IEP were included in their regular classroom 80% or more of the day;
- 11.36% of students were included in their regular classroom less than 40% of the day; and
- 3.96% of students were educated in a separate public or private school, residential, home-based, or hospital facility.<sup>13</sup>

However, between 2009 and 2013, while the total number of students identified in need of special education services declined 3.5%, the number of students with the most extensive needs (children diagnosed with autism or other health impairment) increased by 23 percent to 46,865 students.<sup>14 15</sup> This number increased to 48,576 students during the 2014-2015 school year.

Special education expenditures vary by placement type and locality. In 2014, the annual CSA expenditure per child for all CSA special education placements was over \$40,000 with the average CSA expenditure per child for private day placements being \$37,821.<sup>16 17</sup> In contrast, the Commonwealth's average per-pupil expenditure was \$13,497.<sup>18 19</sup> This amount is an average and fluctuates by locality. Virginia also has 11 regional special education programs that deliver services to students either in the students' home school, in a neighboring division's school, or in separate schools managed by the program.<sup>20</sup> In Fiscal Year 2014, the average per pupil cost of regional special education programs was \$29,097.<sup>21</sup>

### C. FEDERAL GUIDANCE

The federal law dictating the provision of educational services to students with disabilities is the *Individuals with Disabilities Education Act of 2004* (IDEA). According to IDEA, every child with a disability has the right to "free appropriate public education," or FAPE.<sup>22</sup> Pursuant to IDEA, FAPE must include the following:

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<sup>12</sup> Virginia Department of Education. (2015). Special Education in Virginia. *Presentation on June 15, 2015 to the Virginia Commission on Youth's Advisory Group on Use of Federal, State, and Local Funds for Private Educational Placements of Students with Disabilities – Year Two*. During the 2014-2014 school year, the child count was 162,960 (see Chart 1).

<sup>13</sup> Virginia Department of Education. (2015). *Special Education Performance Report*. Retrieved from [http://www.doe.virginia.gov/special\\_ed/reports\\_plans\\_stats/special\\_ed\\_performance/state/2013-2014.pdf](http://www.doe.virginia.gov/special_ed/reports_plans_stats/special_ed_performance/state/2013-2014.pdf).

<sup>14</sup> Virginia Department of Education. (2014). *2014 Annual Report on the Condition and Needs of Public Schools in Virginia*. Retrieved from [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD4072014/\\$file/RD407.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD4072014/$file/RD407.pdf).

<sup>15</sup> According to IDEA, "other health impairment" means having limited strength, vitality or alertness. This includes a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment and which adversely affects a child's educational performance.

<sup>16</sup> Office of Children's Services. (2014). *Special Education Services Under the CSA*. Retrieved from [http://www.csa.virginia.gov/html/manual\\_pubs/Reports/2014/GA-FY14-REPORT%20ON%20SPECIAL%20EDUCATION%20SERVICES%20UNDER%20THE%20CSA.pdf](http://www.csa.virginia.gov/html/manual_pubs/Reports/2014/GA-FY14-REPORT%20ON%20SPECIAL%20EDUCATION%20SERVICES%20UNDER%20THE%20CSA.pdf).

<sup>17</sup> CSA funds cover private day school placements as well as residential placements that are Medicaid and non-Medicaid.

<sup>18</sup> Virginia Department of Education. (2015). Special Education in Virginia. *Presentation on June 15, 2015 to the Virginia Commission on Youth's Advisory Group on Use of Federal, State, and Local Funds for Private Educational Placements of Students with Disabilities – Year Two*.

<sup>19</sup> This includes state, local, and federal funds.

<sup>20</sup> Virginia Joint Legislative Audit and Review Commission. (2012). *Encouraging Local Collaboration Through State Incentives*. Retrieved from <http://jlarc.virginia.gov/Meetings/December12/Rpt433.pdf>.

<sup>21</sup> Virginia Department of Education. (2015). Special Education in Virginia. *Presentation on June 15, 2015 to the Virginia Commission on Youth's Advisory Group on Use of Federal, State, and Local Funds for Private Educational Placements of Students with Disabilities – Year Two*.

<sup>22</sup> 20 U.S.C. § 1400(d)(1)(A).

- Education services designed to meet the individual education needs of students with disabilities as adequately as the needs of nondisabled students;
- Education of students with a disability with nondisabled students, to the maximum extent appropriate to the needs of the student with a disability;
- Evaluation and placement procedures established to guard against misclassification or inappropriate placement of students, and a periodic reevaluation of students who have been provided special education or related services; and
- Establishment of due process procedures that enable parents and guardians to:
  - receive required notices;
  - review their child’s records; and
  - challenge identification, evaluation and placement decisions.<sup>23</sup>

IDEA also stipulates that this education must be provided in the “least restrictive environment,” or LRE. The law states generally that:

*To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.<sup>24</sup>*

The services provided to a student through IDEA are specified in the child’s IEP. The IEP is a very important document for students with disabilities and for those who are involved in educating them. Each student’s IEP describes the educational program that has been designed to meet his or her unique needs. State and federal regulations provide information on what must be included in the IEP. An IEP must be in effect:

- at the beginning of each school year;
- before special education and related services are provided for a student; and
- as soon as possible after a parent consents to the IEP.<sup>25</sup>

Another requirement established by IDEA is that local education agencies (i.e. school divisions) are to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.<sup>26</sup> This provision recognizes that the regular classroom may not meet the unique educational needs of every student with a disability. The continuum must:

- include the alternative placements listed in the definition of special education (e.g., instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions);<sup>27</sup> and
- make provisions for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.<sup>28</sup>

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<sup>23</sup> U.S. Department of Education, Office for Civil Rights. (2010). *Free Appropriate Public Education for Students With Disabilities: Requirements Under Section 504 of the Rehabilitation Act of 1973*. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html>.

<sup>24</sup> 20 U.S.C. § 1412(a)(5)(A).

<sup>25</sup> Virginia Department of Education. (2014). *Special Education IEP & Instruction*. Retrieved from [http://www.doe.virginia.gov/special\\_ed/iep\\_instruct\\_svcs/](http://www.doe.virginia.gov/special_ed/iep_instruct_svcs/).

<sup>26</sup> 34 C.F.R. § 300.115.

<sup>27</sup> These placements are listed in 34 C.F.R. § 300.38.

<sup>28</sup> 34 C.F.R. § 300.115.

All placement decisions are made by the IEP team with parent input, are based on the IEP, and are to be reviewed at least annually.<sup>29</sup> Figure 1 depicts Virginia's continuum of services from the least restrictive to the most restrictive service settings.

**Figure 1**  
**Continuum of Alternative Placements**



Source: Virginia Department of Education. (2011). *Guidance Document on Standards-Based Individualized Education Program (IEP)*. Revised by the Virginia Commission on Youth.

Another requirement set forth in IDEA is that parents and school staff meet with each other to create an individualized education program, or IEP, for each student with special needs. The IEP must include:

1. A description of the student's present level of academic achievement;
2. Annual academic and functional goals for the student; and
3. A statement of what special services the school will use in order to help the student achieve those goals.

According to the federal regulations, these services must be supported by "peer-reviewed research to the extent practicable."<sup>30</sup>

There is also an extensive body of case law which addresses FAPE and LRE. One Fourth Circuit case, *DeVries v. Fairfax County School Board*, held that integration in the school setting is a requirement of IDEA, but not always possible in certain cases.<sup>31</sup> The Court gave a test for considering whether the environment is the least restrictive one: if a local education agency places a student in a segregated facility or classroom, it should be determined whether, "the services which make that placement superior could be feasibly provided in a non-segregated setting."<sup>32</sup>

Another significant special education case is the *Board of Education of Hendrick Hudson Central School District v. Rowley*.<sup>33</sup> This case is the first decision in a special education case by the United States Supreme Court and established a definition for FAPE.<sup>34</sup> The Supreme Court opined that students with disabilities have access to a "meaningful educational program...a program designed to deliver educational benefit to that student." Rowley was an important case because it established a broad standard to measure whether the IEP provides an appropriate education. Under the Rowley decision, an IEP must provide "some educational benefit." In

<sup>29</sup> 34 C.F.R. § 300.116(a).

<sup>30</sup> 34 C.F.R. § 300.320.

<sup>31</sup> *DeVries v. Fairfax County School Board*, 882 F.2d 876, 78 (4th Cir. 1989).

<sup>32</sup> *Ibid.*, p. 879. (quoting *Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir. 1983).

<sup>33</sup> *Board of Ed. of Hendrick Hudson Central School Dist. v. Rowley*, 58 U.S. 176, (1982).

<sup>34</sup> *Wrightslaw*. (2015). *Special Education Caselaw*. Retrieved from <http://www.wrightslaw.com/caselaw.htm>.

determining “some educational benefit” for this particular case, the Court held that the student’s IEP included services that contributed to her success in the general education classroom. Moreover, the Court held that the school district was not required to provide the “best” possible educational services.<sup>35</sup>

#### D. VIRGINIA GUIDANCE

The *Constitution of Virginia* requires the Virginia Board of Education to prescribe standards for public schools of Virginia. These standards, found in the *Code of Virginia* §§ 22.1-253.13:1 through 22.1-253.13:10, are known as the Standards of Quality (SOQ) and encompass the requirements that must be met by all Virginia public schools and divisions for the provision of special education services.<sup>36</sup> All local school divisions are expected to meet the division and school student-teacher ratios specified in the SOQ, which are based on ratios of students in average daily memberships (ADM) to full-time equivalent teaching positions. The special education staffing requirements are prescribed in Virginia’s *Regulations Governing Special Education Programs for Children with Disabilities*.<sup>37</sup> The service level, Level I or II, is based on the amount of time the student receives special education. Students who receive less than 50 percent of their instruction from a special educator are considered to receive Level I services. Students receiving 50 percent or more of their instruction from a special educator are considered to receive Level II support according to state standards.<sup>38</sup> No more than 14 children are to be assigned to a single class period if there are similar achievement levels and one subject area and level are taught. No more than 10 students are to be assigned to a single class period when there are varying achievement levels.<sup>39</sup>

As noted previously, for students with significant disabilities, a private day or residential program may be considered the least restrictive environment. In compliance with the *Code of Virginia*, the Board of Education has authorized the Superintendent of Public Instruction to issue licenses to operate schools for students with disabilities.<sup>40</sup> This includes:

- residential schools for children with disabilities in the Commonwealth;<sup>41</sup> and
- private schools for children with disabilities.<sup>42</sup>

The statute states that no person shall open, operate or conduct any school for students with disabilities in Virginia without a license to operate such school issued by the Board of Education.<sup>43</sup> The Virginia Department of Education conducts unannounced reviews of each school at least once every three years. Licenses may be issued for periods of up to three successive years.<sup>44</sup> During the 2015-2016 school year, there were 124 licensed private day and residential programs in the Commonwealth of Virginia.<sup>45</sup>

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<sup>35</sup> Nelson, T. (n.d.). *Understanding Special Education Law: 7 Important Cases*. Retrieved from <http://www.specialedlaw.us/education/important-cases.php>.

<sup>36</sup> Virginia Department of Education. (2014). *2014 Annual Report on the Condition and Needs of Public Schools in Virginia*. Retrieved from [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD4072014/\\$file/RD407.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD4072014/$file/RD407.pdf)

<sup>37</sup> 8 VAC 20-81-340.

<sup>38</sup> Virginia Department of Education. (2010). *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. Retrieved from [http://www.doe.virginia.gov/special\\_ed/regulations/state/regs\\_speced\\_disability\\_va.pdf](http://www.doe.virginia.gov/special_ed/regulations/state/regs_speced_disability_va.pdf).

<sup>39</sup> Ibid.

<sup>40</sup> Va. Code § 22.1-321.

<sup>41</sup> Residential placements are also known as “congregate care” or “congregate placements.”

<sup>42</sup> Va. Code § 22.1-323.

<sup>43</sup> Ibid.

<sup>44</sup> Virginia Department of Education. (2012). *Special Education Private Day and Residential Schools*. Retrieved from [http://www.doe.virginia.gov/special\\_ed/day\\_residential\\_schools/index.shtml](http://www.doe.virginia.gov/special_ed/day_residential_schools/index.shtml).

<sup>45</sup> Virginia Department of Education. (2015). *Licensed Private Schools for Students with Disabilities 2014-2015*. Retrieved from [http://www.doe.virginia.gov/special\\_ed/day\\_residential\\_schools/directory.pdf](http://www.doe.virginia.gov/special_ed/day_residential_schools/directory.pdf).

Virginia has also enacted regulations for private day and residential programs that provide standards for quality specialized education and services for students enrolled in private schools.<sup>46</sup> The regulations provide clarity to provisions for the management and conduct of schools and standards for programs offered by the schools to include policies and procedures to ensure safe learning environments and the protection of children in their care. The regulations also require a standard school day and school year consistent with that of the public school and an instructional program offering the core subjects.

## **E. FINANCING SPECIAL EDUCATION IN VIRGINIA**

When looking at the use of federal, state, and local funds for private placements for special education, it is important to examine the various funding streams for special education. As discussed previously, the delivery of special education and related services to students found eligible for special education is guided by federal law, state regulation, and state policy. The funding sources established by these mandates will be discussed in the sections that follow.

### **Federal Funds**

Federal funds are available both for preschool and school-age special education programs.<sup>47</sup> However, federal special education funds can only be used to pay the excess costs of providing special education and must be used to supplement, not supplant, state and local funds.<sup>48</sup> Excess costs refer to costs that are in excess of the average annual per student expenditure in a school division during the preceding school year, which is computed after the appropriate deductions are made.

IDEA also requires school divisions to generally spend the same amount of money, or more, on special education from year to year. This is called "maintenance of effort." There are a few exceptions—for example, if a highly paid staff member leaves and is replaced with someone who does not earn as much, or if a student, who required expensive services is no longer enrolled.<sup>49</sup> Other than in those few circumstances, special education spending should remain the same or increase compared to the previous year.

The amounts received by each school division are determined by a formula that considers historical federal funding, total school enrollment, and poverty level.<sup>50</sup> In years when the increase in the federal IDEA appropriation to the state exceeds the rate of inflation, the state must award a "sliver" of the overall grant to localities for capacity building. The Virginia Department of Education may award these sliver grants on a targeted basis, competitively, or by formula. In any given year, the U.S. Department of Education, at its discretion, may offer other federal grant opportunities designed for statewide program improvement. School divisions must apply annually for any federal funds, and cannot co-mingle federal special education funds with other funds. Upon approval from the Virginia Department of Education, the school division spends the money and then is reimbursed for approved expenditures.

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<sup>46</sup> 8 VAC 20-671 et seq. (*Regulations Governing the Operation of Private Day Schools for Students with Disabilities and Educational Programs Offered in Group Homes and Residential Facilities in the Commonwealth*).

<sup>47</sup> Part B of IDEA addresses education of all children with disabilities and Part C oversees services for infants and toddlers with disabilities. This study focuses on Part B of IDEA.

<sup>48</sup> 34 C.F.R. § 300.203; Virginia Council of Special Education Administrators. (2013). *Presentation at VCASE October 9, 2013 Conference – Annual Plans, Maintenance of Effort (MOE) and Coordinated Early Intervening Services (CEIS)*.

<sup>49</sup> Ibid.

<sup>50</sup> Virginia Department of Education. (n.d.). *How Special Education Programs are Funded in Virginia's Schools*. Retrieved from [http://www.doe.virginia.gov/special\\_ed/grants\\_funding/how\\_speced\\_funded.pdf](http://www.doe.virginia.gov/special_ed/grants_funding/how_speced_funded.pdf).

## **Medicaid Reimbursement**

School divisions may also seek federal Medicaid reimbursement for certain students. While school divisions are financially responsible for educational services, Medicaid may cover allowable medical services delivered at school and reimburse part of the costs of the services identified in the student's IEP, if the student is Medicaid-eligible and the services are covered under Virginia's State Medicaid Plan.<sup>51</sup> Virginia school divisions enroll directly with the Virginia Department of Medical Assistance Services (DMAS) for the reimbursement of select health services for children with Medicaid or Family Assistance to Medical Insurance Security (FAMIS) coverage.<sup>52 53</sup> Medicaid funds may be used to pay for health-related services provided under IDEA for students with an IEP. Medicaid-eligible services include:

- physical therapy;
- occupational therapy;
- speech-language therapy;
- audiology;
- psychiatric, psychology, and mental health evaluations;
- nursing services;
- personal care;
- medical evaluations; and
- specialized transportation for students to receive direct medical services.<sup>54</sup>

In order for school divisions to receive Medicaid reimbursement for health related services, the services must be specified in the child's IEP.<sup>55</sup> The IEP team must consist of qualified Medicaid providers to make the medical necessity determination in accordance with their scope of practice. In addition, parent/guardian consent is required. Providers must comply with appropriate service provider qualifications. Medical and transportation claims are submitted and paid throughout the year and claims must also be cost settled annually. In Fiscal Year 2015, DMAS reimbursed school divisions approximately \$24 million for special education services and \$3.9 million for administrative claims.<sup>56</sup>

## **State Funds**

In Virginia, state funds for special education services include state general funds appropriated to school divisions, regional special education tuition, and CSA funds for students placed in private day or residential programs. These funding sources will be discussed in the paragraphs which follow.

### ➤ **State General Funds**

School divisions in Virginia have access to state funds to assist in the cost of meeting required standards to educate students with disabilities. Under the Constitution of Virginia, the state and localities share primary responsibility for funding K-12 education. The largest source of state funding for K-12 education is provided under the Standards of Quality

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<sup>51</sup> Virginia Department of Medicaid Assistance Services. (2014). *Local Education Agency Provider Manual*.

<sup>52</sup> Virginia Department of Medical Assistance Services. (n.d.). *Virginia Medicaid and School Health Services. School Services Overview*.

<sup>53</sup> FAMIS (Family Access to Medical Insurance Security Plan) is Virginia's health insurance program for children under the age of 19, living in families that earn too much to qualify for Medicaid.

<sup>54</sup> Virginia Department of Medical Assistance Services. (n.d.). *Virginia Medicaid and School Health Services. School Services Overview*.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

(SOQ), which set forth the minimum educational program school divisions must provide.<sup>57</sup> Funding for state SOQ costs is benchmarked every two years using the SOQ formula, which is often modified through the Appropriations Act. In addition to SOQ funds, the state annually provides grant funds to support specific educational programs and student populations. In Fiscal Year 2014, the Commonwealth provided \$366,989,724 to meet the state's share of special education SOQ costs, which accounted for 7 percent of the total state's share.<sup>58</sup>

For each student counted in the school division's average daily membership (ADM), an amount is paid to the school division to meet the special education requirements. This per-child amount is referred to the special education add-on.<sup>59</sup> Each student in ADM also generates a per-child amount for basic aid as well as several other add-on amounts. The per-child special education add-on amount is determined by calculating the theoretical number of teachers and aides necessary to meet the special education program standards in each school (based on information supplied on the December 1 Count of Children Receiving Special Education and Related Services), and then determining the state's share of the theoretical cost of those teachers and aides.<sup>60</sup> The state's share of this cost is determined according to the locality's composite index of local ability to pay. Thus, every child - with or without a disability - enrolled in school, generates an amount that comprises the state's assistance for special education; and the per-pupil amount generated is unique to the school division.<sup>61</sup> Payment of these funds is made into the general fund of each local school board.

➤ Virginia's Regional Special Education Tuition

Under certain conditions, children with disabilities may be served in formally constituted public regional special education programs. Virginia's regional special education programs were created in the 1970s to reduce the Commonwealth's and local special education costs and improve the availability of specialized services for a small segment of children with disabilities in Virginia public schools.<sup>62</sup> Regional special education programs deliver services to students either in the students' home school, in a neighboring division's school, or in separate schools managed by the program.<sup>63</sup> There are 11 regional special education programs in operation throughout Virginia. Over half (76) of the Commonwealth's 132 school divisions participate in at least one regional program, 14 school divisions participate in two programs, and one school division participates in three regional programs.<sup>64</sup> Regional programs can provide participating localities another option for serving students with

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<sup>57</sup> Virginia Joint Legislative Audit and Review Commission. (2015). *Efficiency and Effectiveness of K-12 Spending*. Retrieved from <http://jlarc.virginia.gov/pdfs/reports/Rpt472.pdf>.

<sup>58</sup> Virginia Joint Legislative Audit and Review Commission. (2015). *Spreadsheet on State Standard of Quality Spending* from FY 2005 to FY 2014.

<sup>59</sup> Virginia Department of Education. (n.d.). *How Special Education Programs are Funded in Virginia's Schools*. Retrieved from [http://www.doe.virginia.gov/special\\_ed/grants\\_funding/how\\_speded\\_funded.pdf](http://www.doe.virginia.gov/special_ed/grants_funding/how_speded_funded.pdf).

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Virginia Department of Education. (2015). *Special Education in Virginia. Presentation on June 15, 2015 to the Virginia Commission on Youth's Advisory Group on Use of Federal, State, and Local Funds for Private Educational Placements of Students with Disabilities – Year Two*.

<sup>63</sup> Virginia Joint Legislative Audit and Review Commission. (2012). *Encouraging Local Collaboration Through State Incentives*. Retrieved from <http://jlarc.virginia.gov/Meetings/December12/Rpt433.pdf>.

<sup>64</sup> This information was gathered from data provided by the Virginia Department of Education.

disabilities and are not considered out-of-school placements, as regional programs are public schools.<sup>65</sup>

The Virginia Department of Education sets the tuition rates that these locally operated programs may charge to the participating school divisions. At the end of each semester, school divisions may claim reimbursement for the state share of the tuition paid to the fiscal agent of the regional program. The composite index is applied to the tuition paid (not to exceed the approved rate) to determine the state share. School divisions are not allowed to count these students in ADM.<sup>66</sup> The Commonwealth's direct aid to public education includes funding designated for these programs. In the 2015 Appropriations Act, the appropriation for these programs was \$79,503,166 in Fiscal Year 2015 and \$84,204,352 in Fiscal Year 2016. In Fiscal Year 2014, 4,464 students were served in a regional special education program with an average per pupil cost of \$29,097.<sup>67</sup>

➤ Children Services Act (CSA) Pool Funds

The Children Services Act for At-Risk Youth and Families (CSA) is a law which was enacted in 1993. The mission of CSA is to provide high quality, child centered, family focused, cost effective, community-based services to high-risk youth and their families.<sup>68</sup> CSA was based upon the system of care model for children and their families. The system of care model was created by the federal Substance Abuse and Mental Health Services Administration (SAMHSA) to promote a coordinated, community-based approach to care for children and adolescents.<sup>69</sup> CSA established a single state pool of funds to purchase services for at-risk youth and their families. Funds formerly allocated and distributed to the Department of Education, Department of Behavioral Health and Developmental Services, Department of Juvenile Justice, and Department of Social Services comprise the CSA state pool.

Children served under CSA are either "mandated" or "non-mandated". Mandated children are those children where the Commonwealth has custody (foster care) or where service needs are established pursuant to IDEA and included in the youth's IEP. Under CSA, mandated children are required to be served pursuant to the law, and each locality is "mandated" under state and federal law to provide sum sufficient funding to meet the needs of these children.<sup>70</sup> Accordingly, funds are available under CSA to support the costs of special education and related services for children whose IEPs specify private day or private residential placement. Local interagency teams are responsible for managing CSA funds and also plan and oversee services to youth. CSA operates within the laws, regulations, and policies of child serving agencies and policies and procedures may not interfere/impede the delivery of services in accordance with IDEA. Accordingly, CSA cannot charge parental co-pay for IEP services. Payment is in the form of percentage reimbursement (based on a

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<sup>65</sup> Virginia Department of Education. (2015). Special Education in Virginia. *Presentation on June 15, 2015 to the Virginia Commission on Youth's Advisory Group on Use of Federal, State, and Local Funds for Private Educational Placements of Students with Disabilities – Year Two*.

<sup>66</sup> Virginia Department of Education. (n.d.). *How Special Education Programs are Funded in Virginia's Schools*. Retrieved [http://www.doe.virginia.gov/special\\_ed/grants\\_funding/how\\_speced\\_funded.pdf](http://www.doe.virginia.gov/special_ed/grants_funding/how_speced_funded.pdf).

<sup>67</sup> Virginia Department of Education. (2015). Special Education in Virginia. *Presentation on June 15, 2015 to the Virginia Commission on Youth's Advisory Group on Use of Federal, State, and Local Funds for Private Educational Placements of Students with Disabilities – Year Two*.

<sup>68</sup> Virginia Department of Education. (n.d.). *Comprehensive Services Act for At-Risk Youth and Families*. Retrieved from [http://www.doe.virginia.gov/support/comprehensive\\_services\\_act/](http://www.doe.virginia.gov/support/comprehensive_services_act/).

<sup>69</sup> Substance Abuse & Mental Health Services Administration (SAMHSA). (2009). *Coordinating Care for Children with Serious Mental Health Challenges*. Retrieved from [http://www.samhsa.gov/samhsanewsletter/Volume\\_17\\_Number\\_4/CoordinatingCare.aspx](http://www.samhsa.gov/samhsanewsletter/Volume_17_Number_4/CoordinatingCare.aspx).

<sup>70</sup> Virginia Joint Legislative Audit Review Commission. (2007). *Evaluation of Children's Residential Services Delivered Through the Comprehensive Services Act*. Retrieved from <http://larc.virginia.gov/reports/RPT346.PDF>.

locality's ability to pay) for actual costs incurred for services purchased. School divisions are not allowed to count these students in ADM. Therefore, as long as a student is served in a private facility, the school division receives no state SOQ money.<sup>71</sup> While CSA pool funds cover the Commonwealth's share of private day or residential placements, local school divisions are responsible for payment of transportation expenses associated with implementing the child's IEP. In Fiscal Year 2014, the annual average CSA expenditure per child for special education services was \$40,152.<sup>72</sup>

Pursuant to CSA policy, the following categories represent services which meet the special education needs of students with disabilities.<sup>73</sup>

*Special Education Private Day Placement:* These are services for children receiving special education services in approved private day schools. These children are living at home, in the home of extended family, in a regular foster family home, in a specialized or therapeutic foster care home or in an independent living arrangement.<sup>74</sup> In Fiscal Year 2014, net CSA expenditures for private day placements were \$92,737,763.00.<sup>75</sup>

*Congregate Educational Services for Medicaid-funded Placements:* There are educational services provided to children who are living in a congregate care program (e.g., group home or residential facility). These are educational services, when provided in addition to congregate/residential care, designed to meet the needs of children who have special educational needs and/or behavioral disorders, who are unable to function adaptively in the public school system, and who are not able to live at home, with extended family, in a regular foster family home, in a specialized or therapeutic foster care home, or in an independent living arrangement. The child is Medicaid-eligible and placed in a Medicaid facility, but Medicaid funds cannot be used to pay for the educational services.<sup>76</sup> In Fiscal Year 2014, net CSA expenditures for Medicaid congregate educational services were \$7,487,249.00.<sup>77</sup>

*Congregate Educational Services for Non-Medicaid-funded Placements:* These are educational services provided to children who are living in a congregate care program (e.g., group home or residential facility). Educational services, when provided in addition to congregate/residential care, designed to meet the needs of children who have special educational needs and/or behavioral disorders, who are unable to function adaptively in the public school system, and who are not able to live at home, with extended family, in a regular foster family home, in a specialized or therapeutic foster care home, or in an

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<sup>71</sup> Virginia Department of Education. (n.d.). *How Special Education Programs are Funded in Virginia's Schools*. Retrieved [http://www.doe.virginia.gov/special\\_ed/grants\\_funding/how\\_speced\\_funded.pdf](http://www.doe.virginia.gov/special_ed/grants_funding/how_speced_funded.pdf).

<sup>72</sup> Virginia Office of Children's Services. (2014). *Special Education Services Under the CSA*. Retrieved from [http://csa.virginia.gov/html/manual\\_pubs/Reports/2014/GA-FY14-REPORT%20ON%20SPECIAL%20EDUCATION%20SERVICES%20UNDER%20THE%20CSA.pdf](http://csa.virginia.gov/html/manual_pubs/Reports/2014/GA-FY14-REPORT%20ON%20SPECIAL%20EDUCATION%20SERVICES%20UNDER%20THE%20CSA.pdf).

<sup>73</sup> Virginia Office of Comprehensive Services. (2011). *Annual Report to the General Assembly Services to Students with Disabilities Funded Under the Comprehensive Services Act*. Retrieved from <http://csa.virginia.gov/html/GA-FY11-Report-Services%20for%20SWD-scc.pdf>.

<sup>74</sup> Ibid.

<sup>75</sup> Virginia Office of Children's Services. (2014). *Special Education Services Under the CSA*. Retrieved from [http://csa.virginia.gov/html/manual\\_pubs/Reports/2014/GA-FY14-REPORT%20ON%20SPECIAL%20EDUCATION%20SERVICES%20UNDER%20THE%20CSA.pdf](http://csa.virginia.gov/html/manual_pubs/Reports/2014/GA-FY14-REPORT%20ON%20SPECIAL%20EDUCATION%20SERVICES%20UNDER%20THE%20CSA.pdf).

<sup>76</sup> Virginia Office of Comprehensive Services. (2011). *Annual Report to the General Assembly Services to Students with Disabilities Funded Under the Comprehensive Services Act*. Retrieved from <http://csa.virginia.gov/html/GA-FY11-Report-Services%20for%20SWD-scc.pdf>.

<sup>77</sup> Virginia Office of Children's Services. (2014). *Special Education Services Under the CSA*. Retrieved from [http://csa.virginia.gov/html/manual\\_pubs/Reports/2014/GA-FY14-REPORT%20ON%20SPECIAL%20EDUCATION%20SERVICES%20UNDER%20THE%20CSA.pdf](http://csa.virginia.gov/html/manual_pubs/Reports/2014/GA-FY14-REPORT%20ON%20SPECIAL%20EDUCATION%20SERVICES%20UNDER%20THE%20CSA.pdf).

independent living arrangement. The child is not eligible for Medicaid or is not placed in a Medicaid funded placement because appropriate Medicaid programs are not available to meet the child's needs. In Fiscal Year 2014, net CSA expenditures for non-Medicaid congregate educational services were \$6,538,126.00.<sup>78</sup>

*Wrap-around Services for Students with Disabilities:* The special education mandate cited in §2.2-5211 (B)(1) of the *Code of Virginia* may be utilized to fund non-residential services in the home and community for students with an educational disability when the needs associated with his/her disability extend beyond the school setting and threaten the student's ability to be maintained in the home, community, or school setting.<sup>79</sup> However, these CSA state pool funds for wrap-around services for students with disabilities may not be used to fund services in the school setting or for services provided by school employees. The term "school setting" means an environment in which school services are being provided. Thus, wrap-around services can only be provided by private providers outside of the school setting. State general funds appropriated for CSA wrap-around services are \$2,200,000.<sup>80</sup>

### **Local Education Funding**

School divisions in Virginia rely primarily on local and state funds for instructional and non-instructional operations.<sup>81</sup> Under the *Constitution of Virginia*, the state and localities share primary responsibility for funding K-12 education.<sup>82</sup> The largest source of state funding for K-12 education is provided under the SOQ, which set forth the minimum educational program school divisions must provide. In 2014, localities provided a majority of total SOQ funding while the Commonwealth provided 38 percent.<sup>83</sup> In Fiscal Year 2014, localities provided \$3.3 billion to meet the minimum required local effort for SOQ costs. Localities contributed an additional \$3.6 billion in funding beyond the minimum SOQ funding required.

At the local level, school boards determine how much local funding to request from the governing body (City Council or Board of Supervisors) by costing out all of its programs, and then subtracting out the anticipated revenues from state, federal, and other sources.

## **F. Special Education in Virginia**

The Virginia Department of Education reports on a number of specific special education categories. Data collected from Virginia's 132 local school divisions in Virginia are reported annually. The following information will be highlighted below.

Chart 1 depicts Virginia's special education child count for the 2014-2015 academic year.<sup>84</sup>

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<sup>78</sup> Virginia Office of Children's Services. (2014). *Special Education Services Under the CSA*. Retrieved from [http://csa.virginia.gov/html/manual\\_pubs/Reports/2014/GA-FY14-REPORT%20ON%20SPECIAL%20EDUCATION%20SERVICES%20UNDER%20THE%20CSA.pdf](http://csa.virginia.gov/html/manual_pubs/Reports/2014/GA-FY14-REPORT%20ON%20SPECIAL%20EDUCATION%20SERVICES%20UNDER%20THE%20CSA.pdf).

<sup>79</sup> Virginia Office of Children's Services. (2013). *Report to the General Assembly from the Office of Comprehensive Services on behalf of the Secretary of Health and Human Resources Wrap-around Services for Students with Disabilities*. Retrieved from [http://csa.virginia.gov/html/GA-FY12-Wrap\\_Services.pdf](http://csa.virginia.gov/html/GA-FY12-Wrap_Services.pdf).

<sup>80</sup> 2015 Virginia Appropriation Act, Item 279 M.

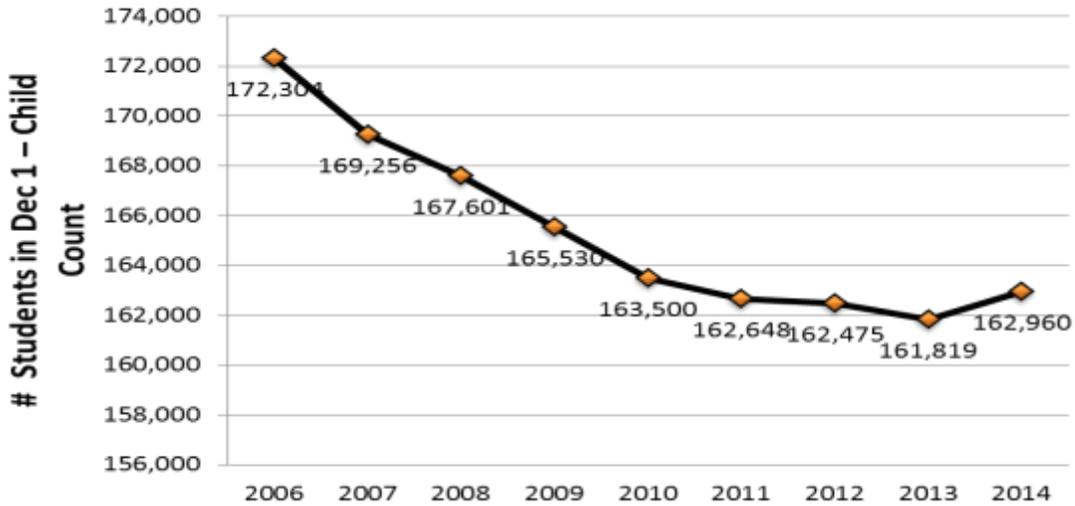
<sup>81</sup> Virginia Joint Legislative Audit and Review Commission. (2015). *Efficiency and Effectiveness of K-12 Spending*. Retrieved from <http://jlarc.virginia.gov/pdfs/reports/Rpt472.pdf>.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

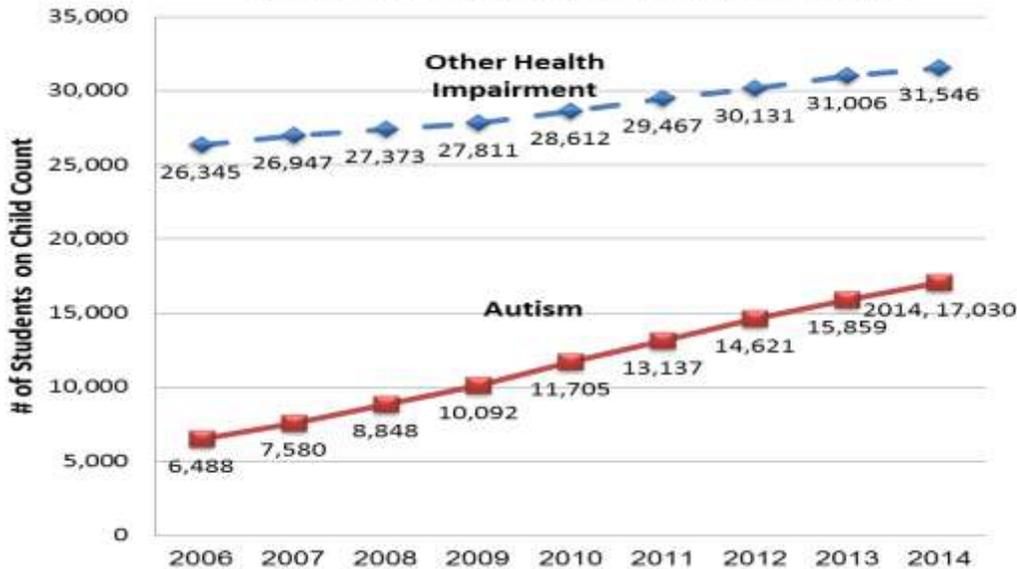
<sup>84</sup> Virginia Department of Education. (2015). *Special Education in Virginia. Presentation on June 15, 2015 to the Virginia Commission on Youth's Advisory Group on Use of Federal, State, and Local Funds for Private Educational Placements of Students with Disabilities – Year Two*.

**Chart 1**  
**Special Education Child Count for Commonwealth of Virginia for 2014-2015**



While the number of students identified in need of special education services has declined over 3.3 percent during the last five years, the number of students that can be the most expensive and challenging to serve, such as students diagnosed with autism or students with other health impairment, have increased by 28 percent to 48,576 students.<sup>85</sup> Chart 2 illustrates this trend.

**Chart 2**  
**Fastest Rising Disability Populations in Virginia**



The Virginia Office of Children Services reports on children and youth with disabilities placed in approved private educational programs for purposes of special education. The following

<sup>85</sup> According to IDEA, "other health impairment" means having limited strength, vitality or alertness. This includes a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment and which adversely affects a child's educational performance.

information will be highlighted below. Chart 3 depicts the number of youth who required private day or residential placements funded by CSA, in accordance with their IEP, between Fiscal Years 2011 and 2014.<sup>86</sup>

**Chart 3**  
**Number of Youth Served by Placement Type – Special Education Services by Fiscal Year**

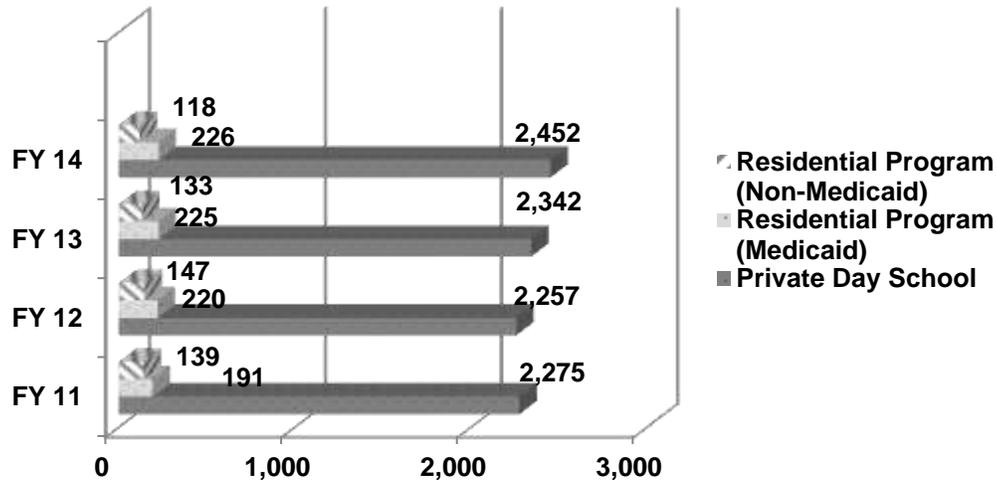
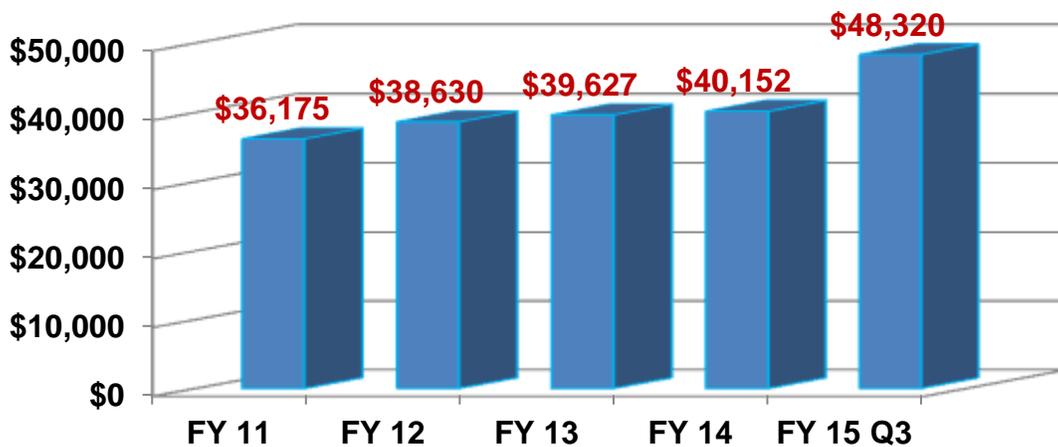


Chart 4 outlines the CSA annual average expenditure per child for all special education service types and Chart 5 highlights the CSA average cost per child by placement type. Both trends are shown by Fiscal Year.<sup>87</sup>

**Chart 4**  
**Annual Average Expenditure Per Child – Special Education Services by Fiscal Year (All Service Types)**



<sup>86</sup> Office of Comprehensive Services. (2014). *Special Education Services under the CSA, Annual Report to the General Assembly*.

<sup>87</sup> Office of Comprehensive Services. (2014). *Special Education Services under the CSA, Annual Report to the General Assembly*. CSA Dataset for Q3 for FY 15 (The reporting period for FY 15 did not end until 10/15/15).

**Chart 5**  
**Average Cost Per Child by Placement Type By Fiscal Year**

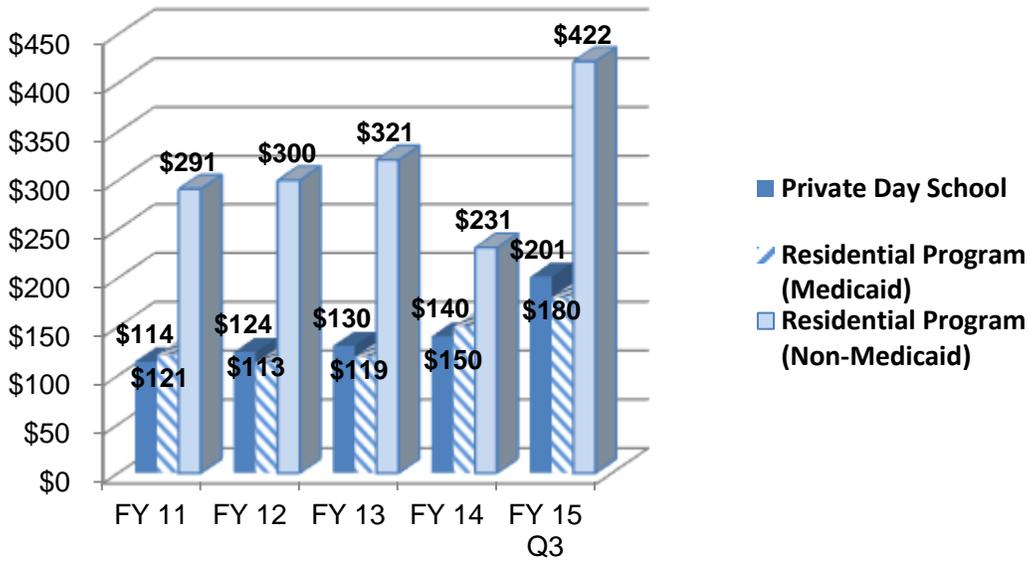
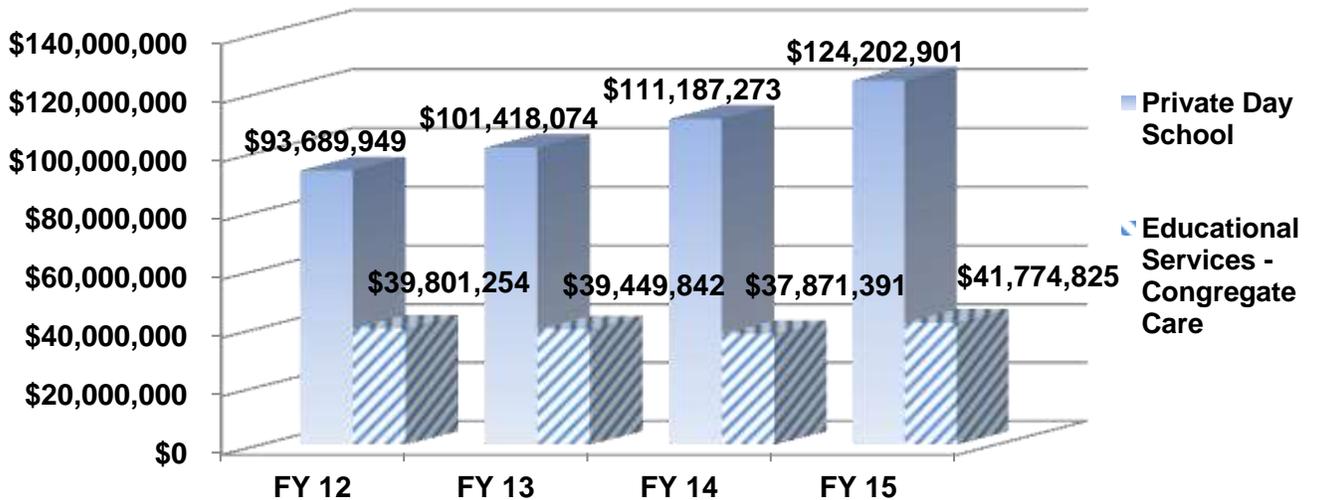


Chart 6 depicts CSA special education net expenditures by placement type. Private day placement net expenditures increased 9 percent between Fiscal Years 2013 and 2014 and almost 12 percent between Fiscal Years 2014 and 2015.<sup>88</sup>

**Chart 6**  
**Net Expenditures by Placement Type – Special Education Services by Fiscal Year**



<sup>88</sup> Ibid.

## VII. Findings and Recommendations

At its September 8 and October 20, 2015, meetings, the Commission on Youth received findings and recommendations for this study. At its October 20, 2015 meeting, the Commission voted to adopt the following recommendations.

### **There are challenges with using CSA wrap-around services to maintain LRE.**

#### *Finding*

*The special education mandate cited in §2.2-5211 (B)(1) of the Code of Virginia may be utilized to fund non-residential services in the home and community for a student with an educational disability when the needs associated with his/her disability extend beyond the school setting and threaten the student's ability to be maintained in the home, community, or school setting. In 1996, the State Executive Council (SEC) authorized the use of Children Services Act (CSA) funds for non-Individualized Education Program (IEP) services when a student with a disability exhibits needs that extend beyond the responsibility of the public schools. These are non-residential services provided in the home and community when the needs associated with the student's disability extends beyond the school setting. The policy recognizes that needs arising from significant disabilities are not contained within school walls and may provide significant challenges to families and communities. The use of mandated special education funds for "wrap-around" services may be used when the child's disability/behavior:*

- *interferes with family routines;*
- *creates safety concerns in community; and*
- *compromises their adjustment across settings.*

*However, these CSA state pool funds for wrap-around services for students with disabilities may not be used to fund services in the school setting or for services provided by school employees. The term "school setting" means an environment in which school services are being provided. Thus, wrap-around services can only be provided by private providers outside of the school setting. While CSA funds are not to be used to supplant school division funds, this may be a barrier to the provision of services in the least restrictive environment (LRE) because some school divisions have created programs with highly qualified professionals that cannot provide these services outside of the school environment.<sup>89</sup>*

*State general funds for CSA wrap-around services are \$2,200,000. While these funds are considered mandated, localities do not have to utilize these funds and many chose not to do so. A study conducted in 2013 found that 62 localities opted not to utilize these funds.<sup>90</sup> If all localities opted to utilize these funds, the average state allocation per locality would have been approximately \$16,800. This study also found that localities utilizing wrap-around services for students with disabilities have decreased the number of youth served in private day and congregate education programs over a two-year period, while those not providing such services have seen an increase the number of youth served in these more restrictive*

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<sup>89</sup> Virginia Office of Comprehensive Services. (2013). Report to the General Assembly from the Office of Comprehensive Services on behalf of the Secretary of Health and Human Resources. *Wrap-around Services for Students with Disabilities Funded Through the Comprehensive Services Act*. Retrieved from [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD3952011/\\$file/RD395.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD3952011/$file/RD395.pdf).

<sup>90</sup> Virginia Office of Comprehensive Services. (2013). Report to the General Assembly from the Office of Comprehensive Services on behalf of the Secretary of Health and Human Resources. *Wrap-around Services for Students with Disabilities Funded Through the Comprehensive Services Act*. Retrieved from [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD3952011/\\$file/RD395.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD3952011/$file/RD395.pdf).

placements. These data suggest that the provision of wrap-around services to youth positively influences the community's ability to serve youth in the least restrictive placement.

Localities that opt to use the funds may request additional funds from the balance that is unused by other localities; however, localities do not know if they will receive additional funds until mid-year, which makes it difficult to plan. There is no other dedicated funding for local CSA administrators to use to serve students with disabilities to prevent more restrictive placements other than CSA funds dedicated for private day or residential placements.

### **Recommendation**

**Request the SEC revisit existing policy restrictions and budgetary constraints with CSA state pool funds for wrap around services for students with disabilities. This review will include whether the community match rate could be utilized, existing parental co-payment policies for additional services not included in the IEP, and the prohibition on using funds for non-educational services provided by school employees, and make recommendations to improve both utilization and access to these funds to the Commission on Youth by the 2017 General Assembly Session.**

### **Virginia's existing special education state funding structure does not adequately meet the needs and increasing numbers of hard-to-serve, special education students.**

#### *Finding*

*When IDEA was originally enacted, it was estimated that children with disabilities cost approximately twice as much to educate as other children. The most recent attempt to account for the cost of special education spending at a national level was undertaken by the Special Education Expenditure Project (SEEP). SEEP reviewed special education expenditure data from the 1999-2000 school year and found that average expenditures for a general education student was \$6,556 compared to \$12,474 for students with disabilities — a difference of \$5,918 (90.3 percent).<sup>91</sup> Students with the most complex medical and educational needs may actually cost school divisions between 8.8 and 13.6 times more to educate than general education students.<sup>92</sup>*

*In Virginia, state funds are provided to school divisions to assist in the cost of implementing the Commonwealth's special education program standards. For each child counted in the school division's average daily membership (ADM), an amount is paid to the school division for this purpose.<sup>93</sup> This per-child amount is referred to as the special education add-on. The per-child special education add-on amount is determined by calculating the theoretical number of teachers and aides necessary to meet the special education program standards in each school (based on information supplied on the December 1 Count of Children Receiving Special Education and Related Services), and then determining the state's share of the theoretical cost of those teachers and aides. The state's share of this cost is determined according to the locality's composite index of local ability to pay. Local school boards determine how much local funding to request from the governing body (city council, town council or board of supervisors) by costing out all of its programs and then subtracting out the anticipated revenues from state, federal and other sources. The per-pupil funding amount may vary by school division depending on the size of the special education student*

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<sup>91</sup> Chambers, J.G., Parrish, T.B., & Harr, J.J. (2004). What Are We Spending on Special Education Services in the United States, 1999-2000, *Special Education Expenditure Project*, Center for Special Education Finance. Retrieved from <http://csef.air.org/publications/seep/national/AdvRpt1.PDF>.

<sup>92</sup> These students are classified as high-need, low incidence.

<sup>93</sup> Virginia Department of Education. (n.d.). *How Special Education Programs are Funded in Virginia's Schools*. Retrieved [http://www.doe.virginia.gov/special\\_ed/grants\\_funding/how\\_speced\\_funded.pdf](http://www.doe.virginia.gov/special_ed/grants_funding/how_speced_funded.pdf).

population.

*The Constitution of Virginia requires the Board of Education to prescribe standards of quality for the public schools of Virginia. These standards, found in the Code of Virginia §§ 22.1-253.13:1 through 22.1-253.13:10, are known as the Standards of Quality (SOQ) and encompass the requirements that must be met by all Virginia public schools and divisions for the provision of special education services.<sup>94</sup> All local school divisions are expected to meet the division and school student-teacher ratios specified in the SOQ, which are based on ratios of students in average daily memberships to full-time equivalent teaching positions. The special education staffing requirements are prescribed in Virginia's Regulations Governing Special Education Programs for Children with Disabilities.<sup>95</sup> The service level, Level I or II, is based on the amount of time the student receives special education. Students who receive less than 50 percent of their instruction from a special educator are considered to receive Level I services. Students receiving 50 percent or more of their instruction from a special educator are considered to receive Level II support according to state standards.<sup>96</sup> No more than 14 children are to be assigned to a single class period if there are similar achievement levels and one subject area and level are taught. No more than 10 students are to be assigned to a single class period when there are varying achievement levels.<sup>97</sup>*

*In 2014, the Virginia Department of Education outlined a variety of issues with SOQ funding.<sup>98</sup> Among the issues identified were the challenges in serving the increasing number of those special education students who are the most challenging to serve (i.e., children with Autism or Other Health Impairments), which has increased by 23% since 2009. As part of its recommendations in 2012, the Board of Education requested the Joint Legislative Audit and Review Commission (JLARC) to include the below-noted issues in its study on the efficiency and effectiveness of elementary and secondary school spending in Virginia. JLARC is to report its findings in November 2015 but it is unclear as to whether JLARC will address these issues. The items the Board of Education asked JLARC to consider were:*

- *assigning weights for students who may be at-risk or who may have disabilities and require additional support, including services to special education students; and*
- *mitigating the perverse incentive of reducing a school division's special education funding when it includes students with disabilities into general education classrooms or uses other instructional supports to meet students' needs without special education services.*

*School divisions may also confront challenges serving the medical needs of students with disabilities. These students often require multiple services such as speech-language pathology, assistive technologies, and specialized transportation. Schools may also have to provide assistive technology for children with hearing or visual impairments and modify classrooms to accommodate specific physical disabilities. Other services may include providing therapists and nurses to meet physical developmental needs, as well as*

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<sup>94</sup> Virginia Department of Education. (2014). *2014 Annual Report on the Condition and Needs of Public Schools in Virginia*. Retrieved from [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD4072014/\\$file/RD407.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD4072014/$file/RD407.pdf).

<sup>95</sup> 8 VAC 20-81-340.

<sup>96</sup> Virginia Department of Education. (2010). *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. Retrieved from [http://www.doe.virginia.gov/special\\_ed/regulations/state/regs\\_speced\\_disability\\_va.pdf](http://www.doe.virginia.gov/special_ed/regulations/state/regs_speced_disability_va.pdf).

<sup>97</sup> Ibid.

<sup>98</sup> Virginia Department of Education. (2014). *2014 Annual Report on the Condition and Needs of Public Schools in Virginia*. Retrieved from [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD4072014/\\$file/RD407.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD4072014/$file/RD407.pdf).

*psychologists, counselors, and other mental health experts to support students' behavioral needs. The school division is responsible for providing such services, whether they are for one student or multiple students. For example, a small rural school division may need to purchase a specialized van and contract with a driver to provide transportation for one student. These extra services are usually unnecessary for students without disabilities, but are often essential for children with disabilities to learn in school.*

### **Recommendation**

**Request VDOE include in its analysis of regional special education programs other states' funding formulas and policies identified during the course of their study that may be employed in the Commonwealth. VDOE shall also determine the efficacy of Virginia's regional special education programs and assess whether provisions are needed to revise these programs and if these programs should be expanded to other regions of the Commonwealth. VDOE shall report findings and recommendations to the Commission on Youth prior to the 2016 General Assembly Session.**

### **The Utilization and Costs of Private Placements for Special Education Students in Virginia have Increased Significantly.**

#### *Finding*

*For students with significant disabilities, or those requiring specialized services and/or supports, alternative settings may be necessary to meet the individualized need of the child. Pursuant to IDEA and Virginia regulations, no single model for the delivery of services to any specific population of children with disabilities is acceptable for meeting the requirement for a continuum of alternative placements.<sup>99</sup> All placement decisions are to be based upon the individual needs of the child. For some children, a private day or residential placement may be the least restrictive environment. An IEP team or a CSA team may decide to place a child with an IEP in a private school or facility for educational reasons that is licensed or has a certificate to operate from the VDOE. Faced with the complex needs of students with disabilities, many school divisions place these students in private schools in order to meet their educational needs. While private schools are an appropriate option within the continuum of placement options, they usually are quite costly.*

*While the number of special education students in the Commonwealth has declined slightly in recent years, data shows that net total expenditures for private day placements under CSA have increased by 32% between Fiscal Years (FY) 2012 and 2015 and 11.7% between 2014 and 2015.<sup>100</sup> Net total expenditures for residential services for special education have increased 5% since 2012 and 8.4% since 2014.<sup>101</sup> The number of youth served in private day placements in FY 2014 is 2,452, which is an increase of 4.7% since 2013. The annual CSA expenditure per child for special education services is over \$40,000. This is in contrast to the average state per pupil amount per special education student, which was \$13,0497 in 2014.<sup>102</sup> <sup>103</sup> This amount is an average and will fluctuate by locality depending on the locality's composite index value.*

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<sup>99</sup> 8 VAC 20-81-130.

<sup>100</sup> Office of Children's Services. (2015). *CSA Pool Reimbursement Request Report Comparison*. (FY12 to FY 15). Retrieved from [http://www.csa.virginia.gov/publicstats/pool/poolreports/state\\_pool\\_categories.cfm?fy=2015](http://www.csa.virginia.gov/publicstats/pool/poolreports/state_pool_categories.cfm?fy=2015).

<sup>101</sup> Ibid.

<sup>102</sup> Virginia Department of Education. (2015). *Special Education in Virginia. Presentation on June 15, 2015 to the Virginia Commission on Youth's Advisory Group on Use of Federal, State, and Local Funds for Private Educational Placements of Students with Disabilities – Year Two*.

<sup>103</sup> This includes state, local, and federal funds.

*Once the child is placed in a private day or residential program, the cost of meeting the needs of the child is shifted from the local education agency (LEA) to the locality's budget because in most localities, schools do not cover the cost of the placement. Although LEAs lose SOQ funding for the student, the loss of funds is minimal. The local CSA Office is bound by federal law to abide by provisions and placement determinations set forth in the IEP, even if they are willing to identify community based services and supports that will help the child remain in their home school. School budgets do not cover or oversee the costs of the private day placement, other than transportation costs, because the local CSA match typically comes from the general fund portion of the locality's budget. Several interviewees noted that this should be taken into account when calculating the school's annual funding level from the local government's budget.*

*Another factor is that once a child is placed in a private setting, CSA does not require localities to maintain active case management of referred students by the Family Assessment Planning Team (FAPT). Many local CSA offices do not case manage referred students because, pursuant to IDEA, CSA policies are not to impede the delivery of IDEA services and CPMTs cannot deny funding for a private day or residential placement that included in a student's IEP. While some localities remain actively involved in some cases, other localities rely upon the CSA coordinator to process purchase orders and ensure that the locality properly reimburses the private provider. One interviewee noted that, once the IEP team determines a private placement is necessary, CSA is merely a "caboose in the process." According to Best Practice Recommendations developed by VDOE, the FAPT can be brought into the planning for a student with a disability at the earliest indication that the student may be in need of supports that fall outside the purview of the public school.<sup>104</sup> The FAPT can work with school personnel to identify non-educational issues that may be negatively affecting the student's performance in school. Such issues might include difficulties in the family/home, mental health issues not related to the student's disability, behavioral issues not related to the student's disability, involvement with the juvenile justice system, etc. The FAPT/MDT can develop an Individual Family Services Plan to identify strategies for assisting the child and/or family.*

*Another complication is the difficulty of transitioning a child back from a private day placement to the public school setting. While transitioning the child back to the LRE is an expectation pursuant to IDEA, the process can be challenging. A child removed from his/her home school may experience varying degrees of difficulty in adjusting to a return to those environments. In addition, stringent parental consent provisions make it even more difficult to transition the child from a private placement to the public school setting, even if assessments and other documentation indicates that the student can be adequately served in their home school.*

*In the Spring of 2008, the State Executive Council requested that a workgroup be formed to improve communication and coordination between local schools and CSA. A statewide survey was also conducted of private day school providers, directors of special education in school divisions, and local CSA coordinators. Approximately 232 stakeholders responded to questions relating to private day school utilization, challenges to program creation, communication practices and best practice strategies. A key theme from the workgroup was the need for cross trainings of both CSA and school staff on each other's program*

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<sup>104</sup> Virginia Department of Education. (2009). *CSA and Schools Communication and Coordination Regarding Special Education. Best Practice Recommendations*. Retrieved from [http://www.doe.virginia.gov/support/comprehensive\\_services\\_act/csa\\_special\\_ed\\_best\\_practice.pdf](http://www.doe.virginia.gov/support/comprehensive_services_act/csa_special_ed_best_practice.pdf).

*responsibilities and enhancing communication between private providers, schools and FAPTs to assist student transition back to public school.*

### **Recommendation 1**

**Introduce a budget amendment for VDOE to convene an interagency workgroup to assess the barriers to serving students with disabilities in their local public schools. The workgroup shall assess existing policies and funding formulas including school division's program requirements, localities' composite indices, local CSA match rate allocations, local CSA rate setting practices, the impact of caps on support positions, policies for transitioning students back to the public school, and funding for local educational programming based on models which are collaborative and create savings for both local and state government while providing youth an educational option within their communities. Membership shall include a balance of local and state representative, all impacted state agencies, local education agency (LEA) representatives, local CSA representatives, local government officials, local special education administrators, stakeholder organizations, parent representatives, the Arc of Virginia, the Coalition for Students with Disabilities, and members of the Virginia General Assembly. The workgroup shall make recommendations to the Virginia Commission on Youth prior to the 2017 General Assembly Session.**

### **Recommendation 2**

**Request the Office of Children's Services (OCS) collaborate with VDOE and include a track in their annual conference on best practices and effective strategies for serving children with disabilities in the least restrictive environments and increase knowledge and understanding on working with students with disabilities, and their parents, as well as improving coordination between schools and CSA.**

### **Recommendation 3**

**Request the OCS include in its annual training plan strategies best practices and effective strategies for serving children with disabilities in the least restrictive environment and increase knowledge and understanding on working with students with disabilities, and their parents, as well as improving coordination between schools and CSA.**

### **Virginia's regional special education programs allow select school divisions to serve students in an additional option in the continuum of placements but the existing structure needs to be re-evaluated.**

#### *Finding*

*In certain regions of the Commonwealth, children may be served in public regional special education programs. Regional special education programs deliver services to students either in the students' home school, in a neighboring division's school, or in separate schools managed by the program.<sup>105</sup> There are 11 regional special education programs in operation throughout Virginia. Over half (76) of the Commonwealth's 132 school divisions participate in at least one regional program, 14 school divisions participate in two programs, and one school division participates in three regional programs. Virginia's regional programs were created in the 1970s to reduce the Commonwealth's and local special education costs and improve the availability of specialized services for a small segment of children with disabilities in Virginia public schools. Regional programs can provide*

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<sup>105</sup> Virginia Joint Legislative Audit and Review Commission. (2012). *Encouraging Local Collaboration Through State Incentives*. Retrieved from <http://jlarc.virginia.gov/Meetings/December12/Rpt433.pdf>.

participating localities another option for serving students with disabilities. Accordingly, participating localities may achieve lower CSA educational costs because a lower percentage of the school divisions' special education students are placed in private special education services.

VDOE sets the tuition rates that regional special education programs may charge to the participating school divisions. At the end of each semester, school divisions may claim reimbursement for the state share of the tuition paid to the fiscal agent of the regional program. The composite index is applied to the tuition paid (not to exceed the approved rate) to determine the state share. School divisions are not allowed to count these students in ADM.<sup>106</sup> The Commonwealth's direct aid to public education includes funding designated for these programs. In the 2015 Appropriations Act, the appropriation for these programs was \$79,503,166 in FY 2015 and \$84,204,352 in FY 2016. In FY 2014, 4,464 students were served in a regional special education program with an average per pupil cost of \$29,097.<sup>107</sup>

While rules and regulations in the educational arena have changed significantly over the past several years, the regulations and policies applicable to Virginia's regional programs have not been revised since the 1970s. Under the federal No Child Left Behind Act of 2001, schools must report adequate yearly progress to determine whether schools are successfully educating their students and whether students are making progress toward meeting state academic content standards. Virginia's public schools and school divisions are required to provide information about student achievement, accountability ratings, attendance, program completion, school safety, teacher quality, and other topics. School-specific and division-specific information can then be accessed on the VDOE website under the school report card. Because regional programs are not LEAs, student achievement data and other quality measures are not linked to the regional program but are instead attributed to the child's home school division. Therefore, it is difficult to ascertain the effectiveness of the regional programs as well as assess other critical factors linked to high-achieving special education programs such as attendance and disciplinary practices. Additionally, there is no requirement that a certain percentage of funding be dedicated to programmatic rather than administrative components.

**Recommendation 1 for Finding 2 was adopted by the Commission which addresses the issues set forth in this Finding.**

**There is no available data about the effectiveness of CSA-funded private day and residential programs.**

*Finding*

*For students with significant disabilities, a private day or residential program may be the best option so that the student achieves FAPE. According to VDOE, 125 licensed private schools in Virginia serve students with disabilities.<sup>108</sup> This number includes both private day and private residential schools.*

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<sup>106</sup> Virginia Department of Education. (n.d.). *How Special Education Programs are Funded in Virginia's Schools*. Retrieved [http://www.doe.virginia.gov/special\\_ed/grants\\_funding/how\\_speced\\_funded.pdf](http://www.doe.virginia.gov/special_ed/grants_funding/how_speced_funded.pdf).

<sup>107</sup> Virginia Department of Education. (2015). *Special Education in Virginia. Presentation on June 15, 2015 to the Virginia Commission on Youth's Advisory Group on Use of Federal, State, and Local Funds for Private Educational Placements of Students with Disabilities – Year Two*.

<sup>108</sup> Virginia Department of Education. (2014). *Licensed Private Schools for Students with Disabilities*. Retrieved from [http://www.doe.virginia.gov/special\\_ed/day\\_residential\\_schools/directory.pdf](http://www.doe.virginia.gov/special_ed/day_residential_schools/directory.pdf).

According to § 22.1-321 of the Code of Virginia, the Superintendent of Public Instruction is tasked with issuing licenses for schools for students with disabilities. A school for students with disabilities means a privately owned and operated preschool, school, or educational organization, maintained or conducting classes for the purpose of offering instruction, for a consideration, profit or tuition, to persons determined to have a disability as defined by the Regulations governing Special Education Programs for Children with Disabilities in Virginia (8 VAC 20-81). Schools may also be accredited by governing entities such as the Virginia Association of Independent Special Education Facilities (VAISEF) and provide an array of curricula, programs, and services in a variety of settings. Although all private special education schools are licensed, not all schools are accredited.

In FY 2014, 2,796 youth were served in a private special education placement.<sup>109</sup> Of these children, 2,452 were educated in a private day program, 118 were educated in a residential program (non-Medicaid), and 226 were educated in a Medicaid residential program.

According to a 2008 survey conducted by VDOE and the Office of Children's Services, a number of factors influence decision making regarding placement into a private day school. The survey identified three recurring factors influencing student placement in a publicly funded, private program:

- availability of appropriate services in the public schools;
- limitations on LEA staff in serving children; and
- parent preference.<sup>110</sup>

While private special education schools have developed creative and innovative programming to address the unique needs of students with disabilities, unlike public schools, private schools are not formally held accountable for student progress. Public schools have accreditation ratings that reflect student achievement on SOL tests and other approved assessments in the four core academic areas. Each school's accreditation status is reported publically on their school report card and published on the VDOE website. Private schools frequently specialize by age, disability classification, services, and environment. A compilation of this information with associated student achievement indicators and transition outcomes would be helpful in assessing effectiveness.

In addition, the assessment scores for private day students are tagged as 'Special Situation' and are not reported back to the student's "home" school; the scores are reported back to the LEA, but they are only used for LEA accreditation. Therefore, the students' scores are averaged in with the school division's scores. Because students' scores are not reported back to the sending school, it is unknown how many students in private day settings are doing with their assessments fail their SOL tests.

As of July 1, 2009, the Child and Adolescent Needs and Strengths (CANS) assessment tool the CANS became the mandatory uniform assessment instrument required for children and youth served through CSA. The CANS is a multi-purpose tool developed for children's services to support decision-making, including level-of-care and service planning, to facilitate quality improvement initiatives, and allows for monitoring of service outcomes. The CANS collects information on three educational elements, school achievement, school behavior, and school attendance. CANS assessments are completed online as required by

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<sup>109</sup> Office of Children's Services. (2014). *Special Education Services Under the CSA*. Retrieved from [http://www.csa.virginia.gov/html/manual\\_pubs/Reports/2014/GA-FY14-REPORT%20ON%20SPECIAL%20EDUCATION%20SERVICES%20UNDER%20THE%20CSA.pdf](http://www.csa.virginia.gov/html/manual_pubs/Reports/2014/GA-FY14-REPORT%20ON%20SPECIAL%20EDUCATION%20SERVICES%20UNDER%20THE%20CSA.pdf).

<sup>110</sup> McKinney, J. (2011). *The Privatization of Special Education*. Virginia Commonwealth University Scholars Compass.

§2.2-5210 of the Code of Virginia. The online version of CANS is known as CANVaS and is an interactive web site that collects assessment information.

The CANS is initially required for all youth receiving CSA-funded services. In addition, all youth placed in private day or residential placements receive an annual CANS re-assessment. However, information from the CANS is not shared. Having this information would be beneficial to assess if the child is achieving academic success and to allow the CSA/FAPT to assess whether the child or family would benefit from additional services.

### **Recommendation 1**

**Request VDOE work with private providers including the Virginia Association of Independent Specialized Education Facilities, the Virginia Council for Private Education, the Virginia Association of Independent Schools, the Southern Association of Colleges and Schools, the Virginia Coalition of Private Provider Associations, the Virginia Association of Community Services Boards, local school divisions, stakeholder groups, and parent representatives to identify and define outcome measures to assess students' progress such as assessment scores, attendance, graduation rates, transition statistics, and return to the students' home schools.**

### **Recommendation 2**

**Request VDOE establish a procedure requiring all assessment scores for private day students tagged as 'Special Situation' be included in the student's "home" school scores.**

### **Recommendation 3**

**Request OCS to report annually CANS and CANVaS scores that measure educational outcomes by service placement name and type for all students being served in CSA-funded educational placements.**

## **Virginia's parent consent provisions exceed federal regulations and may hinder serving students with disabilities in the least restrictive environment.**

### *Finding*

*The Code of Virginia, at § 22.1-16, authorizes the Board of Education to "promulgate such regulations as may be necessary to carry out its powers and duties..." Virginia must comply with the federal requirements outlined in IDEA 2004, and its federal implementing regulations, at 34 C.F.R. Part 300, to continue to be eligible for federal special education funding. However, Virginia's Regulations Governing Special Education Programs for Children with Disabilities exceed federal regulations in approximately 150 provisions. This includes IDEA parental consent provisions. IDEA requires parental consent under federal law when:*

- *the child undergoes initial assessment for eligibility for special education services;*
- *the child is initially determined to be eligible for special education services and is "staffed" into special education;*
- *the child is reassessed using formal tests or other measurement tools;*
- *the school division determines that the child is no longer eligible for special education services and terminates services; and*
- *an eligible child is between three and five years old and the school division proposes that an Individual Family Service Plan (IFSP) is used instead of an IEP.*

*In Virginia, parental consent also applies to any changes to a child's IEP. The right of consent to changes in a child's IEP were included promote a greater level of partnership between parents and schools. However, when a parent disagrees with an IEP and files for due process, the student is to continue receiving the placement and services in the last agreed upon and implemented IEP during the due process proceedings. This is commonly known as "stay put." If the parent disagrees with any portion of the IEP, the school division may only implement the agreed upon portions of the IEP.*

*Case law delineates FAPE and LRE. In Board of Education v. Rowley, the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement.<sup>111</sup> First, the state must have "complied with the procedures set forth in the Act," including allowing parents of a disabled child to examine school records, participate in meetings, and present complaints. Parents must also be given notice of any proposals to change the educational placement of a child, and they are entitled to an independent educational evaluation. If the child is being educated in the general education classrooms of their home school division, the IEP must be designed to enable the child to achieve passing marks and advance from grade to grade.*

*Virginia's parental consent provisions may prevent school divisions from modifying services when the child no longer requires them, even when the school division can show that the best interest of the child is being served pursuant to federal law. This can make it particularly challenging to transition students back to their home school even when the school can provide services which will enable the child to advance towards attaining their annual goals, be involved and make progress in the general education curriculum, participate in extracurricular and other nonacademic activities, and be educated and participate with other children with and without disabilities in those activities.<sup>112</sup> While case law may support the school's desire to transition the child back to the home school, most schools do not wish to pursue costly and time-consuming dispute resolution procedures while further alienating the child/family. This can hinder a school division's ability to serve the child in the least restrictive environment.*

### **Recommendation**

Request VDOE include in the development of the statewide model IEP, an ongoing planning process which facilitates returning students with disabilities served in private placements to the public school setting. The IEP will establish an ongoing process which should commence when a student with a disability is first placed in a private day or residential school. This process should involve the parents, home school officials, CSA officials, the child's teachers, and other involved stakeholders. VDOE shall also include in its guidance to schools best practices for transitioning students from private residential and private day schools such as employing gradual transition strategies and utilization of available community-based programs. VDOE will investigate the feasibility of incorporating in the statewide model IEP Medicaid billing for services provided to eligible IEP students.

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<sup>111</sup> Board of Ed. of Hendrick Hudson Central School Dist. v. Rowley, 58 U.S. 176, (1982).

<sup>112</sup> 34 CFR §300.320(a)(4)(i)-(iii).

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## **VIII Acknowledgements**

The Virginia Commission on Youth extends special appreciation to the following for their assistance and cooperation on this study:

Family Representatives

Alex Campbell  
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Local Children Services Act Representatives

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**APPENDIX A**

**HOUSE JOINT RESOLUTION NO. 196**

*Directing the Commission on Youth to study the use of federal, state, and local funds for the public and private educational placements of students with disabilities. Report.*

Agreed to by the House of Delegates, February 5, 2014

Agreed to by the Senate, February 25, 2014

WHEREAS, the Individuals with Disabilities Education Act (IDEA) guarantees a free appropriate public education to all eligible children with disabilities, including identification and referral, evaluation, determination of eligibility, development of an individualized education program (IEP) and determination of services, and reevaluation; and

WHEREAS, "special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in a classroom, in the home, in hospitals, in institutions, and in other settings and instruction in physical education; and

WHEREAS, IDEA requires that students be provided special education services in the least restrictive environment; and

WHEREAS, the Comprehensive Services Act for At-Risk Youth and Families (CSA), enacted in 1993, establishes a single state pool of funds to purchase services for at-risk youth and their families; these state funds, combined with local community funds, are managed by local interagency teams who plan and oversee services to youth; and

WHEREAS, CSA-established funds may be used to provide services for at-risk youth and their families, including private day school and residential placements for the purposes of special education; and

WHEREAS, Medicaid funds may support private residential placements made for the purposes of special education; and

WHEREAS, state general funds support special education services in public school settings; and

WHEREAS, the mission of the office of CSA is to create a collaborative system of services and funding that is child-centered, family-focused, and community-based when addressing the strengths and needs of troubled and at-risk youth and their families in the Commonwealth; and

WHEREAS, the State Executive Council for CSA should maintain high standards for sound fiscal accountability and the responsible use of taxpayer funds; and

WHEREAS, the General Assembly seeks to ensure that students in the Commonwealth are not unnecessarily segregated from nondisabled students, including those receiving educational services in private day and private residential schools or facilities; and

WHEREAS, it is important that students in the Commonwealth be provided the opportunity to receive integrated, supported services that enable them to interact with nondisabled students to the fullest extent possible; and

WHEREAS, a comprehensive review of the use of state funds for the aforementioned purposes may help to ensure that the Commonwealth's funds are being used efficiently and ensure the provision of special education services to students in the most integrated settings possible; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Commission on Youth be directed to study the use of federal, state, and local funds for the public and private educational placements of students with disabilities.

In conducting its study, the Commission on Youth shall (i) examine the use of CSA and Medicaid funds for private day and private residential special education placements; (ii) gather local and statewide data on the extent to which youth are placed in settings that are segregated from nondisabled students; (iii) determine the feasibility and cost-effectiveness of more integrated alternatives to provide special education services to students including, but not limited to, those students with intellectual and developmental disabilities currently in segregated settings in the Commonwealth; and (iv) consider any other matters as it deems appropriate to meet the objectives of this study.

All agencies of the Commonwealth shall provide assistance to the Commission on Youth for this study, upon request.

The Commission on Youth shall complete its meetings for the first year by November 30, 2014, and for the second year by November 30, 2015, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the next Regular Session of the General Assembly for each year. Each executive summary shall state whether the Commission on Youth intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summaries and reports shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

**APPENDIX B**

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**Study on the Use of Federal, State, and Local Funds for Private Educational Placements of Students with Disabilities – Year Two**

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