

DEPARTMENT OF EDUCATION

Special Education and the Comprehensive Services Act

Two special education funding streams were placed in the CSA Pool effective July 1, 1993. These streams had previously paid for placements in private day schools and private residential special education facilities, whether made by the local school division according to the student's IEP (Special Education Private Tuition) or made by social services or the juvenile justice system (Interagency Assistance Fund). The rules governing these funding streams were applied to the CSA Pool and thus define what services are funded by the CSA Pool.

The passage of CSA in 1992 enabled communities to better meet the needs of children and youth, including children receiving special education services. Local social service or court services staff persons have long been involved in IEP meetings on a case specific basis, but the comprehensive multidisciplinary planning mandated by CSA significantly enhanced the ability of local communities to collaborate around the needs of children and families and to provide services outside of the IEP. When local teams utilize multidisciplinary planning to support students with disabilities, communities and schools may be better able to meet child and family needs within less restrictive environments. This approach enables communities to wrap the necessary services around children and families in an effort to prevent more restrictive, and potentially more costly, placements.

The special education target population defined in the (Code of Virginia) includes those "children placed for purposes of special education in approved private school educational programs, previously funded by the Department of Education through private tuition assistance." This includes all children whose IEP's include placements in private day school or private residential facilities. When an IEP has been developed for a private day school or private residential program, multidisciplinary planning may be employed to consider services outside of the IEP that will enhance the student's benefit from the educational services and/or facilitate a more effective return to the public schools.

The requirements associated with special education are specified by federal law and regulations (the Individuals with Disabilities Education Act), as well as state law (Code of Virginia § 22.1-215, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-215>) and regulations (*Regulations Governing Special Education Programs for Children with Disabilities Act in Virginia* 8 VAC 20-80-10 et seq) http://www.doe.virginia.gov/special_ed/resolving_disputes/due_process/. These requirements:

- specify criteria for evaluation and determination of a child's eligibility for special education services;

- define the process by which special education services and placements are determined (through development of an Individualized Education Program, IEP);
- define special education ("specially-designed instruction, at no cost to the parent, to meet the need of a child with a disability") and related services ("services required to assist a child with a disability to benefit from special education")
- define the timeline for and content of review and revision of a child's special education program; and
- establish significant parent and student rights regarding notice of meetings, notice of rights, consent for services for release of records, participation in meetings and steps when the parent or student disagrees. A copy of the procedural safeguards afforded parents and students and *A Parent's Guide to Special Education* can be found in the For Parent's section on the Virginia Department of Education's web site http://www.doe.virginia.gov/special_ed/parents/parents_guide.pdf

The CPMT must ensure that no local policies or procedures interfere with the provisions and protections afforded to students with disabilities under federal and state laws and regulations.

Individual Education Program (IEP)

A child may be found eligible to receive special education after an evaluation is conducted, in accordance with IDEA procedures, and a team (including the parents) determines that the child meets the eligibility criteria. Following determination of eligibility, an Individual Education Program (IEP) is developed for the child. The IEP will address the special education and related services the child needs to benefit from the general curriculum and identify the "least restrictive environment" (LRE) in which the child's needs can be met. The local school division develops the IEP to assure the child receives a free and appropriate public education (FAPE) as required by the IDEA.

The IEP team develops the IEP considering the strengths of the child, concerns of the parents for the child's education, and evaluation results. It includes annual, measurable goals to address the needs identified, special education and related services and supplementary aids and services to be provided, and a statement of the program modifications or supports for school personnel that will be provided.

Beginning when a child is age 14, the IEP must address transition to adult services. By the time the child is 16, the IEP shall include a statement, if appropriate, of interagency responsibilities or any linkages.

The child's placement is determined following the identification of services. IDEA requires that services be provided to children with disabilities in the least restrictive environment, generally the environment where the child would be educated if he/she did not have a disability. Decisions regarding moving to a more restrictive

environment are made when the use of supplemental supports and services are insufficient to enable the child to remain in the least restrictive setting.

IEP Team

A multi-disciplinary team that includes the parent, teachers, related services providers (e.g., psychologists, school social workers, occupational therapists, physical therapists, speech-language pathologists) administrators, and others as appropriate, develop the IEP in accordance with IDEA. The child's parents must give consent for a representative of another agency to participate in the IEP meeting. Including representatives of other agencies (e.g., social services for children who are in foster care, court services unit for children who are on probation, or community services board for children receiving mental health services) will enhance seamless coordination of services between the schools and other agencies and is considered best practice.

Role of the local FAPT/CSA with respect to the IEP

Federal and state requirements prohibit any entity from changing the services or placement specified on the IEP. The FAPT and the CPMT are likewise prohibited from changing the IEP, including services and placement specified. When an IEP for private day services or private residential services is reviewed by the FAPT, the role of the team includes the recommendation for funding, collection of uniform assessment and demographic data required for reporting, consideration of the child/family needs beyond the IEP, collecting information from IEP reviews and progress reporting for purposes of documenting utilization review, and assuring coordination of services for those children served by multiple agencies. The CPMT holds responsibility for establishing policies and procedures to ensure access to funds for eligible children, i.e., students with IEP's directing placement into private education programs.

With respect to the IEP, best practice suggests that students with IEP's may benefit from multidisciplinary planning to address needs of the child and/or family that extend beyond the IEP. An IFSP may be developed by the FAPT to address non education needs of the child and/or the child's family. Such needs would arise from the child's disability and require services that are not a part of the child's special education program. The services would be designed to increase the child's ability to be successful in the home, community, or school setting. Services might be provided to a student receiving special education services in the public school, a private day school, or in a residential program as needed to maintain the student in, or transition the student to, a less restrictive home, community, or school placement.

Special Education and Utilization Review

Due to federal mandates associated with the special education process, utilization review procedures are to be completed by the IEP team and must be based upon the goals in the IEP. IDEA requires at least annual review of the IEP and progress

reporting at least as often as reporting is provided to parents of students without disabilities. It is common for IEP progress reporting to coincide with the school division's report card schedule.

The CSA utilization management process must be applied to special education services in conformity with special education laws and regulations. IDEA requires that students with disabilities be provided services in accordance with their IEP's and that funding for such services must be "sum sufficient," i.e., these services must be provided regardless of cost. IDEA prohibits a State from using a funding mechanism by which funds are distributed based on the type of setting in which a child is served that would result in the failure to provide a child with a disability a free and appropriate education. Each locality must ensure that its utilization management processes do not interfere with the IDEA protections provided to each individual student with a disability.

Parental Rights in Special Education

Federal special education law and regulations afford the parents of children with disabilities significant rights regarding their children. Compliance with federal laws and protections to children with disabilities requires that CSA processes not impede a child's access to the services specified in his/her IEP, e.g., a parent may not be required to attend a FAPT meeting in order to gain access to funding for placement or services specified in a child's IEP.

Federal special education law and state regulations do not apply to CSA processes around the development of an IFSP for a child with a disability. Best practice suggests that FAPT planning outside of a child's IEP (e.g., development of an IFSP) may be beneficial to the child and family and may, in fact, enable the CPMT to maintain the child within the community. Clear explanation must be given to the parent/family that the purpose of FAPT planning is not connected to the child's special education program, i.e., to his right to a free appropriate public education.

Federal confidentiality requirements give parents the authority over their child's educational records, including participants at the meetings in which their child's education record is discussed. Schools must secure parental consent whenever any non-school employee is to review the child's confidential record. In the absence of parental consent, the schools cannot share information with others including CSA entities. The absence of parental consent for the release of student records may not prevent the authorization of funding or implementation of services in accordance with a student's IEP.

Students with Disabilities in Private Placements

All children placed in a private placement through CSA who are eligible for special education shall have an IEP. The local school division that is part of the CSA Team that placed the child shall be responsible for the IEP.

- For an educational placement of a student with a disability (as specified by the child's IEP) the school division shall develop the IEP and hold responsibility for assuring that special education services are provided.
- For a non-educational placement for a student with a disability (a placement made by another agency or the CSA team as a whole), the school division that is part of the CSA team shall revise the IEP to reflect the non-educational placement. The IEP shall reflect that the student is now in a non-educational placement and shall address the student's special educational needs while in the placement. The revised IEP for a non-educational placement is not considered the source of the residential placement.
 - The school division is responsible for ensuring that special education and related services are provided in accordance with the IEP while the child is in the non-educational placement. The school division has no responsibility for the residential placement/services.
 - The school division is not responsible for special education least restrictive environment requirements, as the child's placement was made for non-educational reasons.
 - If a due process hearing is filed, the last educational placement agreed to by the school and parent is the "stay put" placement.

Role of Private Special Education School

Any IEP meeting for a child in a private school placement shall include a representative of a private school or facility. The school division **may** have the private school or facility revise the IEP, however, the facility may not do so unless requested by the school division and must involve school division personnel. No changes may be made to the IEP without local school division involvement and written approval. For any child placed into a private special education school through CSA, for educational or non-education reasons, the responsibility for compliance with special education requirements remains with the school division on the CPMT responsible for the placement.

Students with Disabilities Placed in Care in another Locality

If the local social services agency, community services board, court services unit, or Community Policy and Management Team places a student with a disability in a child caring facility, foster home or other residential setting cross-jurisdictionally (outside of the CPMT's political jurisdiction), the placing CPMT shall ensure that the student's special education needs are considered in the context of the proposed placement. When the IEP specifies services within a public school setting, the receiving school division must review the current IEP and determine if a) the school division can implement the IEP as written, or b) make appropriate modifications to the IEP so that it can be implemented. If it is determined that the student's needs cannot be met in the receiving school division, the school division on the placing CPMT is responsible to determine an appropriate placement for the child. Collaboration with the school division in the receiving locality is

encouraged. Funding for private educational services remains the fiscal responsibility of the placing CPMT.

Students with Disabilities in Foster Care

Local school divisions shall provide special education services to children in foster care who can be educated in the public schools in that locality or in a public regional program. The division will be reimbursed by the Department of Education as part of the foster care reimbursement fund (Code of Virginia) §22-101.1 <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-101.1>, and §22.1-215 <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-215>

If a child's special education needs cannot be met within the public schools in the jurisdiction in which the child is placed, the school division that is part of the placing CSA team is the division responsible for ensuring development of an IEP to determine an appropriate educational placement. Fiscal responsibility for private education placements remains the responsibility of the placing CPMT.

Students with Disabilities not in Foster Care

Local school divisions are not required to enroll children who are non-residents and not in foster care nor a licensed child-caring facility (Code of Virginia) § 22.1-101.1 <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-101.1>. Each local school board can determine whether that division will admit non-residents and, if so, if the board will charge tuition (Code of Virginia) § 22.1-3; § 22.1-5. <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-3> <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-5>

Prior to placing a non-foster care child cross-jurisdictionally; it is imperative that the CPMT determine if the child can enroll in the local school division. If the school board's policies do not permit enrollment, then other arrangements must be made for either the child's education, or for another living arrangement. The CPMT shall not make a placement for a child which denies the child's access to education.

The CSA Pool cannot pay tuition to a local school division. If a child who is not in foster care is placed for non-educational reasons in a group home in a locality which charges tuition for non-resident students, the local school division on the placing CSA team will be responsible for payment of tuition. This underscores the importance of working with the local school division representatives on the FAPT/CPMT prior to out-of-jurisdiction placements.

Residency

The Regulations Governing Special Education Programs for Children with Disabilities in Virginia define residency for students with disabilities who are placed in residential programs for non-educational reasons outside of their resident jurisdictions. In general, students who are not in foster care remain residents of the locality in which their parents reside.

When a student with a disability who is not in foster care is placed into a residential program by a CSA participating agency or by the FAPT/CPMT, the student remains a resident of the locality in which his/her parent resides. The CPMT of the child's residence is fiscally responsible for special education services.

When a student who is not in foster care is placed into a residential program by his/her parent for non-educational reasons, the school division of the child's residence is responsible for the provision of a free, appropriate public education (FAPE).

Age of Eligibility for Students with Disabilities

Consistent with a student's eligibility for special education services under IDEA, CSA is responsible for funding private school special education services specified in the IEP for a student who has not reached his/her 22nd birthday on or before September 30 of the school year. A child with a disability whose 22nd birthday is after September 30 remains eligible for the remainder of the school year.

CSA Pool Responsibility

The sum sufficient nature of special education is captured in the Comprehensive Services Act legislation (Code of Virginia) § 2.2-5211 C <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-5211>. The CSA pool is responsible to fund the following special education services:

- All services delineated in an IEP which specifies placement into a private day special education facility or a private residential facility,
- The special education costs associated with the non-educational placement of a student with a disability into a private residential program by a participating CSA entity or CSA team (FAPT/MDT/CPMT).
- Placement into a private school which is ordered by a hearing officer as a result of a due process hearing or which is part of a legally binding mediation agreement between a parent and school division.

Local School Division Responsibility

Local school divisions are responsible for payment of the following:

- All services specified in the IEP for students with disabilities who are served in the public schools.
- Evaluations to determine eligibility for special education and as required for re-evaluation of students with disabilities
- Homebound instruction
- Public school personnel necessary to implement the Standards of Quality and staffing requirements specified in the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (including teachers and paraprofessionals), and staff necessary to provide services specified in a child's IEP when the child is served in the public schools

- o Regional special education programs costs
- o Tuition payments to another school division
- o Transportation costs necessary to implement IEP placements in private programs (i.e., private day and private residential placements)

Regional Special Education Programs

Local school boards that create a regional special education program to serve children with low incidence disabilities may receive "regional tuition reimbursement" from the Department of Education. The cost for services is shared by the state and local school divisions.

Parental Co-Payments

As federal law requires that all special education services must be provided at no cost to parents, no co-payment may be charged to a parent for any service specified on the IEP or otherwise provided as a requirement of a free appropriate public education. Thus, IEP services funded by CSA (i.e., private day and private residential services) are exempt from the parental co-payment. For a student with a disability placed into a residential program for non-educational reasons (e.g., by social services), the educational portion of the placement is exempt from the parental co-payment.

Medicaid-Funded Residential Placements of Students with Disabilities

When a CSA team places a student with a disability into a residential treatment program and utilizes Medicaid funding for the treatment services, the cost for educational services is the responsibility of the CSA pool.

If a student with a disability is placed into a residential program by his/her parents for non-educational reasons, the school division of the parent's residence is responsible for the provision of a free appropriate public education (FAPE). If the school division determines that a public school service (e.g., enrollment in the LEA where the residential program is located, homebound, etc.) is appropriate to meet the needs of the student, the school division is responsible for ensuring the delivery and funding of those services. If the school division determines that private day or private residential service is necessary to meet the needs of the student and develops an IEP for those services, the services are funded by the CSA pool.

NOTE: If a student without a disability is placed into a residential program by his/her parents for non-educational reasons, neither the local school division nor the CSA team have any obligation to pay for educational services.

Agency Disputes Involving Children with Disabilities

The local school division is responsible to ensure compliance with IDEA requirements for the provision of a free appropriate public education to every student in accordance with the IEP. IDEA requires that special education services

must be provided as soon as possible following the development of an IEP and that services may not be delayed while funding is being determined. In the instance of any interagency dispute that may interfere with the provision of a free appropriate public education to a student with a disability the local school division shall provide or pay for such services and claim reimbursement from the CPMT.

For questions about Special Education and CSA, please contact:

The Department of Education at
(804) 225-2013
patricia.haymes@doe.virginia.gov