

Special Education and the Children's Services Act (CSA)

**Guidance for Community Policy Management Teams (CPMT),
Family Assessment and Planning Teams (FAPT),
CSA Coordinators, and Local School Divisions**



**Office of
Children's Services**

Empowering communities to serve youth

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1. Purpose Statement

This document provides guidance related to the interface of special education services and the Children's Services Act. While the document addresses a wide breadth of circumstances, it is not intended to address every situation that might be encountered when navigating the CSA and special education processes. Readers are encouraged to contact the Office of Children's Services and/or the Virginia Department of Education concerning specific situations that are not covered within this document.

2. Introduction

The Children's Services Act (CSA), formerly known as the Comprehensive Services Act, is the name for a law enacted in 1993 that establishes a single state pool of funds to purchase services for at-risk youth and their families. State general funds, combined with local matching funds, are managed by local interagency teams who plan and oversee services to youth. The mission of the 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 youth and their families in the Commonwealth.

The passage of the CSA enabled communities to better meet the needs of children and youth, including children receiving special education services. Agency staff from local child-serving agencies, such as community services boards (CSB), local departments of social services (LDSS), and court service units (CSU), have long been involved in Individualized Education Program (IEP) meetings on a case specific basis. However, the comprehensive multidisciplinary planning mandated by the CSA significantly enhanced the ability 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 the least restrictive environment. This approach enables communities to wrap the necessary services around children and families in an effort to prevent more restrictive placements.

Two special education funding streams were placed in the CSA funding 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 Individualized Education Plan (IEP) (Special Education Private Tuition Fund) or made by social services or the juvenile justice system (Interagency Assistance Fund). The rules governing these funding streams were applied to the CSA funding pool and thus define the educational services funded through the CSA.

The special education target population defined in [§2.2-5211.B.1](#) of the Code of Virginia includes those "children and youth 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 IEPs dictate placements in private day schools and private residential facilities.

Additionally, State Executive Council (SEC) Policy 4.1.3 has extended the special education mandate established under [§2.2-5211.B.1](#) as follows:

The special education mandate may be utilized to fund nonresidential services in the home and community for a student with a 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 doing so, the SEC created a venue for communities to address disability-related behaviors, outside of the school setting, which affect a child's ability to be maintained in the least restrictive environment. This is referred to as Special Education Wraparound. Expenditures for such services are limited by the current Appropriation Act to \$2.2 million of state general funds, with local matching funds required. Further information about Special Education Wraparound services and funding can be found in Section 16.

3. Primary Authority Regarding Special Education Services

The requirements associated with special education are governed by federal and state law, specifically, [the Individuals with Disabilities Education Act](#) (Public Law 101-476), Section 22.1-215 of the Code of Virginia, and the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (the Virginia Regulations), at ([8VAC20-81-10 et seq](#)). Although local Community Policy and Management Teams (CPMT) are required to develop policies regarding the access to CSA funding for all CSA funded services, **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.**

4. CSA Funding Responsibility

The sum sufficient nature of defined special education services is captured in the Children's Services Act statute ([§ 2.2-5211.C](#)). Sum sufficient funding means the state pool and the required local matching funds must cover the full cost of services in order to meet relevant federal mandates, regardless of the amount.

The CSA pool is responsible to fund the following special education services:

- All services delineated in an IEP identifying the least restrictive environment (LRE) as a private day special education school 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 (day or residential) 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.

Services in a residential setting as required by an IEP are reported under the service category “Educational Services - Congregate Care” (Expenditure Code =1e) and are subject to the base match rate assigned to each local CSA program. They should be coded as Service Name 28 (Private Residential School) for CSA reporting purposes. This assures compliance with federal prohibition against fiscal incentive or disincentive for placement of students with disabilities.

CSA pool funds **may not** be used to fund any services for students with educational disabilities in the public-school setting.

[Appendix A](#) contains a tabular summary of CSA funding responsibilities for a student with a disability.

5. Local School Division Funding Responsibility

Local school divisions are responsible for payment of the following:

- All services specified in the IEP for students with disabilities served in the public schools;
- Evaluations to determine eligibility for special education and as required for re-evaluation of students with disabilities;
- Homebound instruction;
- Home-based 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;
- Regional special education programs costs;
- Tuition payments to another school division when the student is placed in the other school divisions program pursuant to the IEP with the consent of the receiving school division; and
- Transportation costs necessary to implement IEP placements in public and private programs (i.e., private day and private residential placements).

6. 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 yet received a standard or advanced studies high school diploma and who has not reached his/her 22nd birthday on or before September 30 of the school year. For example, an eligible student whose 22nd birthday falls on October 20, remains eligible for (CSA funded) special education through the end of the school year (including the “extended school year” if appropriate) which began on or about September 1st. This eligibility also includes the use of CSA funds to provide community-based wraparound services for students with disabilities (Special Education Wraparound Funds).

7. Individualized Education Program (IEP)

A child is eligible to receive special education after an evaluation conducted in accordance with IDEA procedures, and a team, which includes the child's parents, determines that the child meets specific eligibility criteria. Following the determination of eligibility, an Individualized Education Program (IEP) must be 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.

8. Role of the Local FAPT/CSA Program with Respect to the IEP

Federal and state requirements prohibit any entity from changing the services or placement specified on the IEP. **The Family Assessment and Planning Team (FAPT) and the Community Policy and Management Team (CPMT) are likewise prohibited from changing the IEP, including the specified services and placement.** When an IEP for private day services or private residential services is reviewed by the FAPT, the role of the team includes the non-discretionary recommendation for funding, collection of uniform assessment and demographic data required for CSA reporting, consideration of the child/family's 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 and authorization of CSA funds to ensure access to funds for eligible children, i.e., students with IEP's directing placement into private education programs. However, no CSA policy or practice may delay or otherwise compromise a school division's ability to fulfill IEP and FAPE responsibilities for its children with disabilities.

8.1 Selection of private education providers

A local school division is responsible for ensuring the provision of a Free Appropriate Public Education (FAPE), including identification of the least restrictive environment and service providers, for children residing within its jurisdiction. The IEP team is required to select a provider based upon the needs of the child and the ability of the provider to implement the child's IEP. Restricting providers to those approved by the Community Policy and Management Team (CPMT) may not infringe upon the school division's ability to fulfill these responsibilities.

When an IEP team determines that there are multiple providers that can implement a child's IEP, the selection of provider may be governed by requirements established by the CPMT. However, if a child's IEP clearly identifies and names a specific provider of services and/or if the IEP team determines that a single provider is uniquely able to implement the child's IEP and names that provider in the IEP, that provider must be utilized regardless of its status relative to licensure, contracting, CPMT approval, etc. Placements in private schools not licensed by the VDOE must be fully justified in the IEP and/or the prior written notice provided to the parent subsequent to the IEP team's proposed and refused actions.

8.2 CSA Utilization Review and Special Education services

CSA Utilization Review (UR) procedures for students placed for private special education services are completed by the IEP team. Non-school based persons conducting CSA UR activities staff may provide information and recommendations to an IEP team, however the IEP team is solely responsible for all determinations regarding services and placement.

Special education laws and regulations determine the frequency with which an IEP must be reviewed and the frequency with which progress must be reported. These reviews fulfill CSA UR requirements. The school division is responsible for at least an annual review of a student's IEP. The purpose of an IEP review is to review, among other things, the student's progress toward the annual goals on the IEP and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

9. Parental Rights and Consent for Information Sharing for CSA Special Education Funding

Federal and state 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 require 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 and state special education laws and regulations do not apply to CSA processes for the development of a CSA Individual and Family Service Plan (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 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 and their right to a free appropriate public education (FAPE).**

Federal law ([The Family Educational Rights and Privacy Act or FERPA](#)) specifies the authority of parents over disclosure of their child's educational records, including to participants at meetings in which their child's education record is discussed. Schools must secure parental consent whenever any non-school employee is granted access to the child's educational record; this includes CPMT, FAPT, and private providers. In the absence of parental consent, the schools cannot share information with others, including CSA entities.

Absent parental consent, school divisions may not disclose to the CPMT certain minimum information from the student's educational records necessary to accomplish two basic requirements: (i) to verify the student's eligibility for CSA funds (i.e., the portions of the IEP confirming a placement in a private educational program), (ii) to submit the proper information about such student to contract with a private special education provider and to meet the requirements of CSA data collection (e.g., name, date of birth, Student Testing Identifier). Without the required information CSA must deny state pool funding for these placements. (Source: OCS Administrative Memo #18-01) ([See Appendix B](#))

10. Least Restrictive Environment (LRE)

IDEA stipulates that students with disabilities be educated in the least restrictive environment. This means 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 that “special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only when the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily.” (34 CFR 300.114)

The LRE is a continuum consisting of a range of educational placements in which an IEP can be implemented to meet the individual needs of students with disabilities. These placement options vary from the least restrictive (general education classroom) to the more restrictive (residential facility, home-based, etc.). It is the determination of least restrictive environment in two specific situations that makes a child eligible for CSA funding. As discussed earlier, students are eligible for CSA funding for educational services when their IEP dictates a least restrictive environment of private day or residential placement.

The following sections will discuss LRE in relationship to the CSA in greater depth.

11. CSA Funding for Public School Services and Tuition

As noted earlier, CSA funds cannot be used to fund services occurring in the public school setting for a child who is eligible for special education (has an IEP). This applies regardless of any other eligibility the student may have for CSA funded services. According to guidance provided by the Virginia Department of Education (VDOE) in [Superintendent’s Memo #018-10](#) (January 29, 2010), school divisions maintain full responsibility for the provision and funding of all services necessary to provide a Free Appropriate Public Education (FAPE) to students who are served in public school programs. Consequently, CSA state pool funds cannot be used to fund any services that occur in the public school setting for students with IEPs, even if those services address non-educational factors. CSA may, however, be used to fund services, such as Therapeutic Day Treatment (TDT), in the school setting for **students without disabilities** as long as they meet eligibility requirements for CSA and those services are found on an IFSP recommended by the FAPT and authorized by the CPMT.

12. CSA Funding for Special Education Private Day Schools

The following are guidelines for various categories of students with disabilities placed in special education private day schools.

12.1 IEP directed placements (students not in foster care)

- Students with IEPs identifying a private day school as the LRE are eligible for CSA funding for the educational services included in the IEP.
- Consent to exchange information is obtained from the parent.
- The student is referred to CSA for funding.

- The case is referred to FAPT consistent with local policy (see section related to FAPT and special education).
- CPMT approves funding consistent with state and local policy.

12.2 Parental placements (when a parent unilaterally places a student with a disability)

- CSA funds may not be used to support educational services in a special education private day school of students placed unilaterally by their parent/guardian in a special education private day school, not subsequent to the student’s IEP. (See VDOE Superintendent’s Memo 019-11 for justification).

13. CSA Funding for Education in Private Residential Facilities [\(See Appendix C\)](#)

The following are guidelines for various categories of students with disabilities placed in residential settings:

13.1 IEP directed placements (students not in foster care)

- Students with IEPs identifying a private residential school as the LRE are eligible for CSA funding for all the costs associated with the residential placement (can utilize Medicaid (may require parental consent)).
- Consent to exchange information is obtained from the parent.
- The student is referred to CSA for funding.
- The case is referred to FAPT consistent with local policy (see section related to FAPT and special education).
- CPMT approves funding consistent with state and local policy.
- Students shall typically be placed only in residential placements licensed by the VDOE and/or Department of Behavioral Health and Developmental Services (DBHDS).

13.2 CSA funding for a student with an disability placed for non-educational purposes (facilitated through the CSA/FAPT vs. the IEP process)

Students with disabilities may be placed, through the CSA, in residential treatment settings to address psychiatric/behavioral issues without that setting identified as the LRE in their IEP. The following section addresses such placements.

13.2.1 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.

13.2.2 Local School Division and CSA Responsibilities

- Per 8VAC20-81-150, the school division that is part of the placing CPMT shall revise and amend the IEP to reflect the non-educational placement by noting that, pursuant to a CSA placement, the student is attending a residential facility. This non-educational placement was made upon a referral by the FAPT, the referring agency, and the student's family. The educational services necessary to provide the child with FAPE as described in the IEP are contingent upon FAPT funding for this purpose. This IEP is not "stay put" for the purposes of 20 U.S.C. sec. 1415 (j) or any other educational purpose, unless so identified by a due process hearing officer or as a result of a mediated agreement. Otherwise the least restrictive environment will revert to what was identified in the "last agreed upon" IEP before the student was placed in a residential facility for non-educational reasons; unless the IEP team determines that a different replacement is warranted to ensure that the student can receive FAPE.
- The revised IEP shall reflect that the student is 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 student's IEP should be amended to reflect the non-educational placement as the educational placement as the previous IEP is "functionally unavailable."

If a parent requests a due process hearing to challenge a student's removal by the FAPT/CPMT from a residential placement made for non-educational, the child shall remain in the previous IEP placement (LRE) agreed upon by the parent(s) and the local educational agency prior to the placement by the CSA team. (8VAC20-81-150.A.8).

- While the student's school division may not be responsible for the actual delivery of the services outlined in the student's IEP, the school division does remain responsible for ensuring that special education and related services required to ensure FAPE are provided in accordance with the IEP while the child is in the non-educational placement. Typically, students with educational disabilities placed in Virginia residential facilities are provided CSA funded special educational services by the facility as identified in the IEP.
- The school division has no responsibility for the non-educational (non FAPE) services in a residential placement made by CSA for non-educational purposes.

13.3 Residential placement of a student with an disability by the parent/ guardian for non-educational reasons without the involvement of the CSA

Students with disabilities may be placed by the parent(s)/guardians in residential treatment facilities for non-educational reasons (without an IEP for this LRE) and without the involvement of the local CSA. This is often referred to as a "unilateral parental placement."

13.3.1 Residency

The school division of the parent's residence continues to have the responsibility for FAPE. (8VAC20-81-30 E.3 and 8VAC20-81-30 B.9)

13.3.2 Local School Division and CSA Responsibilities

- Although the school division maintains responsibility for FAPE, the scope of this responsibility is limited and does not mean the full array of educational services as offered by the residential treatment facility. It is the sole responsibility of the IEP team to determine the accommodations and services necessary to ensure FAPE.
- Once a school division learns that a child has been unilaterally placed in a residential facility by a parent for non-educational reasons, they should promptly convene an IEP meeting to determine whether the student's needs have changed in such a way that they now require a residential placement for educational reasons.
- If the IEP team determines that a change in placement is appropriate for educational reasons, the IEP should be modified to reflect this change. If the IEP becomes a residential IEP, the child is/becomes eligible for CSA funding, and should be referred to CSA for IEP directed services.
- If the IEP team determines that the least restrictive environment is/should remain a private day school, the IEP should indicate private day placement as the LRE, the child is/becomes eligible for CSA, and it is appropriate to utilize CSA funds for the educational services (in the residential facility) necessary to ensure the student's access to FAPE (as directed by their IEP). This does not obligate CSA to fund the not required for FAPE services in the residential placement.
- If the IEP team determines that public school placement as indicated in the current IEP remains educationally appropriate, the IEP should be amended to state that the public school placement remains appropriate; however, it is functionally unavailable because the child is currently placed in a residential facility for non-educational reasons. The IEP team must then determine how FAPE (special education and related services) will be delivered.
- The school division may elect to provide services in a variety of ways (through a home-based model, an itinerant teacher, contracting with the local school division where the facility is located, or purchasing the appropriate educational services from the facility). However, service provision, including how the services will be provided, must be clearly outlined in the IEP.
- If it is determined that FAPE will be provided through the purchase of educational services from the residential provider, it is the **school division**, not CSA, which **bears the financial responsibility** for these services.

(Source: [Virginia Department of Education Frequently Asked Questions 014-11](#))

14. Special Circumstances

There are a variety of special circumstances which impact the intersection of special education and CSA. These include youth in foster care, youth placed in a residential setting with an adoption assistance agreement, and cross-jurisdictional placements. These situations are discussed in the following sections.

14.1 Students with Disabilities in Foster Care

Children and youth in foster care are among the most vulnerable populations, averaging one to two residential placement changes per year. Of the approximately 5,000 children and youth in foster care in Virginia, approximately 80% are school-aged (ages 4-17). Statistics show that close to 64% of youth in care experience two or more foster home placements throughout the duration of one foster care episode, indicating the vital need to provide stability for these youth wherever possible. Stability can be promoted by maintaining a predictable and familiar school environment, when in the youth's best interest, where the youth is known, cared for, and supported.

Virginia has identified a process (Best Interest Determination) to address school stability for youth in foster care. Joint guidance ([Fostering Connections and the Every Student Succeeds Act: Joint Guidance for School Stability of Children and Youth in Foster Care, October 2017](#)) from the Virginia Department of Education and Virginia Department of Social Services addresses school stability for children in foster care.

Local school divisions must 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 (§22.1-215). The division is reimbursed by the Department of Education.

If a child's special education needs cannot be met within the public schools in the jurisdiction in which the child is placed (as determined by that school division), 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 special education placements remains the responsibility of the CSA program in the jurisdiction in which the child was placed in foster care. The school division of the responsible CPMT pays for transportation costs. Transportation to a private day special education placement is always the responsibility of the school division, not CSA. A student's status as a child in foster care does not impact this.

14.2 Adoption Assistance

Local CSA programs are not automatically required to fund the educational costs for students with educational disabilities placed in residential treatment facilities using adoption assistance funds administered by the Virginia Department of Social Services.

Adoptive parents may seek assistance from the CSA program where they reside (as a parental placement for non-educational purposes) and/or if assistance is needed with educational costs, the adoptive parent may contact the LDSS that initiated the adoption assistance agreement to

request special services payment be negotiated to assist in covering the general educational costs (See VDSS Broadcast 9091 in [Appendix D](#)).

If the student was receiving private day special education services per their IEP prior to placement in a residential setting (for non-educational reasons), it is appropriate to utilize CSA funds for the educational services necessary to ensure the child's access to FAPE while in the private placement.

14.3 Cross Jurisdictional Placements

Unless the child is in foster care, local school divisions are not required to enroll children who are non-residents, including those residing in group homes. Each local school board can determine whether that division will admit non-residents and, if so, if the board will charge tuition.

Prior to placing a child not in foster care in another jurisdiction, the CPMT must determine if the child can enroll in that locality's school division. If the school board's policies do not permit enrollment, then other arrangements must be made either for the child's education or for another placement. The CPMT should exercise caution in making placements across jurisdictional lines where the child is unable to enroll in the public school. CSA state pool funds may not be used to pay tuition to a local school division. Therefore, if a child who is not in foster care is placed for non-educational reasons in a group home in a locality that charges tuition for non-resident students, the local school division of the placing CPMT 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.

The following chart summarizes cross-jurisdictional placements of students with educational disabilities.

Cross Jurisdictional Placements of Students with Disabilities			
	Current Least Restrictive Environment (per IEP)		
	Public School	Private Day	Residential
Youth in Foster Care	<ul style="list-style-type: none"> • BID process is initiated • If BID determines that child is to attend new school division: <ul style="list-style-type: none"> ○ The student is enrolled and the new school division is responsible for FAPE and develops an IEP ○ No CSA educational funding is necessary • If BID determines that child is to attend the (current) school of origin: <ul style="list-style-type: none"> ○ The student is remains enrolled ○ CSA or Title IV-E funding is used for transportation 	<ul style="list-style-type: none"> • BID process is initiated • If BID determines that child is to attend new school division: <ul style="list-style-type: none"> ○ The student is enrolled and the new school division develops an IEP. If the IEP calls for private day, the CSA in the placing locality is responsible for payment for private day costs • If BID determines that child is to attend the (current) school of origin: <ul style="list-style-type: none"> ○ The student is remains enrolled and the CSA in the placing locality responsible for payment for private day costs • The school division in the placing locality funds the transportation regardless of the BID determination 	<ul style="list-style-type: none"> • No BID meeting is necessary • The school division of the placing CPMT is responsible for ensuring special education and related services in the IEP • IEP is revised (as needed) to support non-educational residential placement • Placing CSA is responsible for educational funding (in addition to other placement costs)
Youth Not in Foster Care	<ul style="list-style-type: none"> • If the student is enrolled in the new school division: <ul style="list-style-type: none"> ○ The new school division is responsible for FAPE and develops a public school IEP ○ There is no CSA educational funding necessary (CSA funding may not be used for public school tuition) • If the student is NOT permitted to enroll pursuant to school board policy: <ul style="list-style-type: none"> ○ The school division of the placing CPMT is responsible for developing (and funding) an IEP for services while the student is in the non-educational placement (e.g., homebound instruction, on-line instruction) 	<ul style="list-style-type: none"> • If the student is enrolled in the new school division: <ul style="list-style-type: none"> ○ The new school division is responsible for FAPE and develops an IEP. If the IEP calls for private day, the placing local CSA locality is responsible for educational costs • If the student is NOT permitted to enroll pursuant to school board policy: <ul style="list-style-type: none"> ○ The current IEP for private day remains in place and the CSA in the placing locality is responsible for funding that placement ○ The school division in the placing locality funds the transportation 	<ul style="list-style-type: none"> • School division of the placing CPMT is responsible for ensuring special education and related services in the IEP • IEP is revised (as needed) to support non-educational residential placement • Placing CSA is responsible for educational funding (in addition to other placement costs)

****Note:** All students placed residentially across state lines must complete the Interstate Compact on the Placement of Children (ICPC) process. More information on ICPC can be found at: <https://www.dss.virginia.gov/family/icpc/index.cgi>

15. Medicaid-Funded Services

15.1 IEP-based Services in Residential Placements for Students with Disabilities

When an IEP team or FAPT/CPMT team places a Medicaid-eligible student with a disability into a private day or residential treatment program, Medicaid funding may be utilized with the parent's permission, to fund Medicaid-eligible treatment and related services (speech, occupational, physical, and/or psychotherapies). However, the cost for non-Medicaid eligible educational services is the responsibility of the CSA. In order to access Medicaid funding for services, there may be a variety of regulatory requirements (through the Department of Medical Assistance Services, DMAS) that must be met to access this funding. It is the expectation that community partners and/or case managers will complete all requirements. Parents of students placed in residential settings **per their IEP**, cannot however be forced to utilize Medicaid to fund any of the potential reimbursable services.

When all is equal between a Medicaid and a non-Medicaid facility (unless the IEP names a specific facility), CSA may require placement into the Medicaid facility. If there is not a Medicaid facility that is able to meet the child's needs, i.e., to implement the child's IEP, or the parent refuses to allow the use of Medicaid for the placement, a non-Medicaid facility is appropriate and allowable.

15.2 Medicaid-Funded Therapeutic Day Treatment

Therapeutic Day Treatment (TDT) is a Medicaid funded therapeutic service that provides "medically necessary, individualized, and structured therapeutic interventions to children/adolescents with mental, emotional, or behavioral illnesses as evidenced by diagnoses that support and are consistent with the TDT service and whose symptoms are causing significant functional impairments in major life activities such that they need the structured treatment interventions offered by TDT. TDT treatment interventions are provided during the school day or to supplement to school day or year. This service includes clinical evaluation, psychiatric medication education and management, interventions to build daily living skills or enhance social skills, and individual, group, and family counseling and contacts provided in a structured setting." (Source: DMAS)

TDT services are available to Medicaid-eligible students with and without educational disabilities provided they meet the medical necessity criteria assigned by the Department of Medical Assistance Services (DMAS). TDT services may be provided in public and private school settings and the utilization of such services are separate from a child's special education and related services. While Medicaid funding may be used to access TDT services for students with disabilities, CSA state pool funds cannot be used to purchase these services unless they are included as a service in a student's IEP which calls for private educational placement (day or residential). CSA state pool funds can, however, be used to purchase TDT for students without educational disabilities provided they meet CSA eligibility criteria and are in compliance with Policy 6.3 (Community-based Behavioral Health Services) in the Children's Services Act Policy Manual. CSA state pool funds cannot be used to fund TDT or any other services that occur in the public school setting for students with IEPs, even if those services address non-educational factors.

16. Special Education Wraparound Funding

State Executive Council (SEC) Policy 4.1.3 extends the “special education mandate” established under Code of Virginia, Section 2.2-5211(B) to include students whose disability extends beyond the school setting and impacts the student’s ability to be maintained in their home, community, or school. This category of funding is intended to support children with disabilities and their families by addressing disability-related, non-educational, or non-IEP based needs through **community-based services** that are provided outside of the school day/setting. The goal of such services is to maintain the child in the least restrictive environment possible. Services can be provided to directly support the student or they may be used to assist the parent in managing the child's needs in the home. It is important to remember that special education wraparound services are part of an Individual and Family Services Plan (IFSP), NOT the IEP. Accommodations, modifications, and services required for the child to access a free appropriate public education, or FAPE, are protected under IDEA and should be contained in the student’s IEP.

In order for a student to be eligible for special education wraparound funding, they must have a disability and have an IEP, regardless of the specific disability.

Residential services and services provided in the school setting are not eligible for special education wraparound funds. Remember: the term “school setting” means an environment where educational services are provided. It does NOT include use of a school building outside of school hours for activities beyond the scope of responsibility of the public schools.

17. 504 Plans and CSA Special Education Wraparound Funds

A 504 Plan addresses accommodations needed for a student due to a medical condition. Individualized Education Programs and 504 Plans are governed by different federal laws. Section 504 of the Rehabilitation Act of 1973, which applies to 504 plans, is a federal civil rights law which prohibits discrimination against individuals with disabilities. Section 504 has a much broader definition of a disability than IDEA. Having a 504 plan does not necessarily establish that the student has a disability making them eligible for CSA funding. In order for students to be eligible for special education funding, they must be identified through the eligibility process, outlined in IDEA and the Virginia Special Education Regulations, as a student with a disability, and have an IEP.

18. Parental Financial Contributions and Co-Payments

As federal law requires that all special education services must be provided at no cost to parents, no co-payment or parental contribution 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/contribution. For a student with a disability placed into a residential program for non-educational reasons (i.e., by the parent), the educational portion of the placement is exempt from the parental co-payment. Special education wraparound funds are however, subject to CSA parental contributions as specified in local CSA/CPMT policy.

19. 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 Office of Children's Services
(804) 662-9815
OCS Help Desk

<http://csa.virginia.gov/Contact/TechnicalAssistance/1>

The Virginia Department of Education at
(800) 292-3820

http://www.doe.virginia.gov/special_ed/index.shtml

Resources

- Office of Children’s Services <https://www.csa.virginia.gov/>
- Virginia Department of Education <http://www.doe.virginia.gov/>
- U. S. Department of Education *34 CFR Part 300 Assistance to States for the Education of Children With Disabilities* <https://www.govinfo.gov/content/pkg/FR-2013-02-14/pdf/2013-03443.pdf>
- Individuals with Disabilities Education Act <https://sites.ed.gov/idea/>
- Regulations Governing Special Education Programs for Children with Disabilities in Virginia
http://www.doe.virginia.gov/special_ed/regulations/state/regs_speced_disability_va.pdf

Appendix A

AT A GLANCE

Funding Under the Children's Services Act (CSA) for Students with Educational Disabilities



Service	Authority for Funding	FAPT Responsibility	CPMT Responsibility	What CSA Funds	School Division Responsibility
Private Day IEP	COV §2.2-5211 B.1	Optional per local policy. Not required by statute or state policy.	<u>Must</u> authorize funding. CPMT requires from schools: <ol style="list-style-type: none"> Consent to share information. Sections of the IEP to establish student's eligibility. Demographic data for CSA reporting and purchase order. Progress reporting on IEP. Uniform assessment instrument (e.g., CANS). 	All special education and related services on the IEP, except transportation.	<ol style="list-style-type: none"> Arranging and funding transportation. Obtain parental consent and supply student name, DOB, and Student Testing Identifier (STI) to CSA. Monitoring student progress. Responsible for annual/ triennial IEP reviews.
Residential IEP	COV §2.2-5211 B.1	Optional per local policy. Not required by statute or state policy.	<u>Must</u> authorize funding. CPMT requires from schools: <ol style="list-style-type: none"> Consent to share information. Sections of the IEP to establish student's eligibility. Demographic data for CSA reporting and purchase order. Progress reporting on IEP. Uniform assessment instrument (e.g., CANS). 	<ol style="list-style-type: none"> All special education and related services on the IEP, except transportation. All costs associated with the residential placement including room and board. (Medicaid used as primary funding source when applicable.) 	<ol style="list-style-type: none"> Arranging and funding transportation. Obtain parental consent and supply student name, DOB, and Student Testing Identifier (STI) to CSA. Monitoring student progress. Responsible for annual/ triennial IEP reviews.
Special education services when a student with an IEP is placed by CSA into a residential program for non- educational reasons	COV §2.2-5211 B.2 COV §2.2-5212 A.1 Policy 4.1.1 (CHINS) of the State Executive Council for Children's Services	Residential placement is recommended by FAPT and included in the IFSP.	<ol style="list-style-type: none"> Authorize funding. Meeting all CSA reporting and data collection requirements Apply local parental contribution policy to non- educational / non-Medicaid placement costs. 	All costs associated with the placement.	<ol style="list-style-type: none"> Supply student name, DOB, and Student Testing Identifier (STI) to CSA. IEP should note that student is placed in a residential program through CSA for non-educational reasons. Monitoring student progress. Responsible for annual/ triennial IEP reviews.
Special Education Wraparound Services	Policy 4.1.3 of the State Executive Council for Children's Services	Determines eligibility, services and develops IFSP.	<ol style="list-style-type: none"> Authorize funding. Meeting all CSA reporting and data collection requirements Apply local parental contribution policy 	Non-residential services to a student and/or family in the home and community.	<ol style="list-style-type: none"> Obtain consent and supply student name, DOB, and Student Testing Identifier (STI) to CSA. Monitoring student progress.

FAPT – Family Assessment and Planning Team

CPMT – Community Policy and Management Team

IFSP – Individual and Family Services Plan

February 2020

Appendix B

OCS Administrative Memo #18-01



COMMONWEALTH OF VIRGINIA

OFFICE OF CHILDREN' S SERVICES

Administering the Children Services Act

SCOTT REINER, M.S.
Executive Director

Administrative Memo #18-01

To: CPMT Chairs CSA
Coordinators

From: Scott Reiner, Executive Director

Date: January 11, 2018

Subject: Parental Consent for Information Sharing for CSA Special Education Funding

A handwritten signature in black ink, appearing to read "Scott Reiner".

This office has received several inquiries concerning circumstances in which parents/legal guardians of students referred to local CSA programs for funding of private special education programs per their IEPs are refusing to sign a consent to share information between the school and the local CSA office.

Consultation with the Office of the Attorney General has confirmed the following:

1. Without parental consent, local school divisions cannot share student's educational records (including IEPs) with CPMTs. This includes the student's "directory information" as well as the educational record. Such disclosure without consent would constitute a violation of the Family Educational Rights and Privacy Act (FERPA).
2. Without such information, CPMTs cannot verify that the students are statutorily eligible for CSA funded services and would therefore be unable to authorize the use of CSA funds to cover the costs of private educational placements required by the student's IEP. The local school division would be responsible for the costs in order to provide a Free and Appropriate Public Education (FAPE) for these students under the federal Individuals with Disabilities Education Act (IDEA).
3. Section 2.2-5209 of the Code of Virginia contemplates this scenario and states: "In cases involving the denial of state pool funds resulting from parental refusal to consent to release of student records under federal law, where such refusal precludes the development of placement through the family assessment and planning team process or the approved collaborative, multidisciplinary team process, an appeal for good cause may be made to the [State Executive] Council." Local school divisions could thus appeal the denial of CSA funds in these cases, however the State

Executive Council would still be bound by the statutory requirements for verification of eligibility and funding under the CSA. Local school divisions would need to consult with their own legal counsel to determine what remedies, if any, may be available to them.

Therefore, without parental consent allowing the school division to disclose to the CPMT student's educational information and records that are necessary for the CPMT to (i) verify the student's eligibility for CSA funds and (ii) to submit the proper information about such student in the CSA data system (e.g., name, date of birth, Student Testing Identifier), CSA must deny funding for these placements.

This supersedes any previously issued guidance on this matter and will be applied prospectively from the date of issue of the Administrative Memorandum. Currently funded cases through CSA can be continued until the end of the current school year, at which time the provisions of this Memorandum would take effect.

Thank you for your attention to this matter.

Residential Placement of Students with Disabilities

	CSA Placement	Parental Placement
Placement for Educational Purposes	1 IEP identifies residential placement as Least Restrictive Environment	3 Parent makes unilateral placement for to meet student's educational needs
Placement for Non-Educational Purposes	2 IFSP identifies need for residential placement	4 Parent makes unilateral placement for treatment purposes

NOTES: A placement made through a signed Parental Agreement with a public child-serving agency is a CSA placement. A placement made through Adoption Assistance is a parental placement.

1 IEP identifies private residential placement as LRE

- §2.2-5211.B1 – “Special Education Mandate” – CSA pays for IEP services. When child is Medicaid eligible and meets medical necessity criteria for residential treatment, Medicaid funds may (with parent/guardian consent) be used for placement. Medicaid does not fund the educational portion of services.
- School division of child’s residence remains responsible for IEP, re-evaluation, progress reporting.

2 IFSP developed by the FAPT identifies need for residential placement

- §63.-905 (Statutory basis for foster care and the CHINS “mandate”) – CSA pays for all services. When child is Medicaid eligible and meets medical necessity criteria for residential treatment, Medicaid funds may be used for residential treatment services. Medicaid does not fund the educational portion of services.
- A revised IEP shall reflect that the student is 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.
- School division of child’s residence remains responsible for IEP, re-evaluation, progress reporting.

3 Parent makes unilateral educational placement

- Child gives up right to FAPE, i.e., child does not have access to public school services. Parent holds fiscal and oversight responsibilities for all services including educational services. (8 VAC 20-81-C.7.c.)

4 Parent makes unilateral placement for treatment purposes

- Child maintains right to FAPE – school division of child’s residence is responsible to ensure student has services necessary to benefit from the residential facility’s educational program.
- School division identifies appropriate services in the IEP and how they will be delivered, e.g., may provide direct services, arrange with another school division to provide services, or negotiate with provider for purchase of appropriate services.
- If the least restrictive environment identified in the IEP is private day school, it is appropriate to utilize CSA funds for the services necessary to ensure the child’s access to FAPE if such services are be purchased from a private provider.
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Appendix D

VDSS Broadcast

BROADCAST 9091

DATE: April 15, 2015
TO: Local Departments of Social Services
FROM: Carl E. Ayers, Director
Traci B. Jones, Adoption Program Manager
SUBJECT: Clarification regarding Responsibility for Educational Costs for Children with Adoption Assistance placed in Residential Treatment Programs
CONTACT(S): Jennifer Cooper, Senior Adoption Policy Consultant, jennifer.cooper@dss.virginia.gov (804) 726-7953
Carol Wilson, Program Consultant, OCS, carol.wilson@csa.virginia.gov (804) 662-9817
Pat Haymes, Education Administrator, patricia.haymes@doe.virginia.gov (804) 786-0116

The purpose of this broadcast is to provide guidance to local department of social services (LDSS) staff and their partners regarding payment of educational costs when parents who receive adoption assistance place a child into residential treatment centers. Specifically, questions have arisen regarding interpretation of the Virginia Department of Education's

FAQ 014-11 entitled "Parental Placement of a Student with Disabilities in a Residential Facility." ([VDOE FAQs related to Virginia Regulations Governing Special Education Programs for Children with Disabilities in Virginia](#))

"Students with Disabilities" Placed for *Educational Reasons*

Any "student with a disability" including children who are receiving adoption assistance, whose Individualized Education Program (IEP) requires placement into a residential program for educational reasons, is eligible and "mandated" for services under the Comprehensive Services Act (CSA). The Community Policy and Management Team (CPMT) in the locality of the parents' residence is responsible for ensuring payment.

Students with Disabilities Placed for *Non-educational Reasons*

FAQ 014-11 refers primarily to children who are placed by their parents for noneducational reasons, i.e., "a student with a disability" whose IEP does not require a residential treatment setting; rather, the child is placed to address emotional/behavioral needs.* The response to this FAQ states that the child "maintains his or her FAPE (free and appropriate public education) entitlement." It is the responsibility of the school division to "determine what is necessary to meet FAPE" requirements for the child.

Because of this wording, the assumption has been made by some local departments, community policy and management teams (CPMTs) and family assessment and planning teams (FAPTs) that it is the local school division's responsibility to cover all educational costs associated with the placement of a "student with a disability" into a residential treatment setting.

However, the school division's responsibility lies solely in the provision of FAPE. Virginia regulation [8VAC20-81-10](#) states that FAPE "means special education and related services." "Special education" is defined as "specially designed instruction", which is provided "at no cost to the parent to meet the unique needs of a child with a disability." Lastly, "specially designed instruction" means:

“adapting as appropriate to the needs of the eligible child under this chapter, the content, methodology or delivery of instruction...to address the unique needs of the child that result from the disability and **to ensure access of the child to the general curriculum** so that the child can meet the educational standards that apply to all children within the jurisdiction of the local educational agency.”

The school division’s responsibility is thus limited to FAPE, or to ensuring the provision of accommodations or activities on the IEP which are designed to adapt the general curriculum to the child’s needs. *The provision of FAPE does not mean that the school is responsible for the general educational costs of the child.* The school may opt to ensure FAPE in one of several ways, including contracting with the educational provider to ensure the services and adaptations noted in the IEP, purchasing adapted materials, providing an itinerant teacher, etc.

Adoption assistance funds may be used to pay the **general education** costs of children receiving adoption assistance if the local FAPT has provided the required multidisciplinary review, determined that services in the community are not available or have been exhausted, and recommended placement. If assistance is needed with educational costs, the adoptive parent may contact the LDSS that initiated the adoption assistance agreement to request a special services payment be negotiated to assist in covering the general educational costs. The adoptive parent may not be assessed a co-pay on the FAPE services provided by the school division or on any costs reimbursed by Medicaid.

The VDSS policy manual, Chapter 2 Adoption Assistance, will be revised to reflect this information. This broadcast will also be shared with CSA coordinators and CPMT chairpersons.

**The FAQ addresses all parental placements of students with disabilities into residential treatment; however the purpose of this broadcast is to provide information regarding children receiving adoption assistance who are placed into residential programs.*

Appendix E

Glossary

Age of eligibility (related to special education) - all eligible children with disabilities who have not graduated with a standard or advanced studies high school diploma who, because of such disabilities, are in need of special education and related services, and whose 2nd birthday falls on or before September 30, and who have not reached their 22nd birthday on or before September 30 (two to 21, inclusive) in accordance with the Code of Virginia. A child with a disability whose 22nd birthday is after September 30 remains eligible for the remainder of the school year. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.101(a) and 34 CFR 300.102(a)(3)(ii))

Child and Adolescent Needs and Strengths (CANS) – the mandatory uniform assessment instrument which must be completed for children and youth receiving services funded through the Children’s Services Act (CSA) state pool.

Children’s Services Act (CSA) – formerly called the Comprehensive Services Act for At-Risk Youth and Families, the Children’s Services Act establishes the collaborative administration and funding system for services for certain at-risk youths and their families. (Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia)

Community Policy and Management Team (CPMT) – a local team that is responsible for implementing and administering the mandates of the Children’s Services Act (CSA), including the authorization of state pool funds for services provided under the CSA. The CPMT’s membership and purpose is established by Code of Virginia and local team members are appointed by the governing body of a participating locality. (Chapter 52 (§ 2.2-5204-2.2-5206.) of Title 2.2 of the Code of Virginia)

Family Assessment Planning Team (FAPT) – a locally appointed multidisciplinary team whose membership and purpose is established by the Code of Virginia. The primary role of FAPT is service planning and review in collaboration with youth and families. In doing so, FAPT is directed by §2.2-5209 to “assess the strengths and needs of troubled youths and families who are approved for referral to the team and identify and determine the complement of services required to meet these unique needs.” (Chapter 52 (§ 2.2-5207-2.2-5208.) of Title 2.2 of the Code of Virginia)

Free appropriate public education (FAPE) - special education and related services that:

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the Virginia Board of Education;
3. Include an appropriate preschool, elementary school, middle school or secondary school education in Virginia; and
4. Are provided in conformity with an individualized education program.

Home-based Instruction - services that are delivered in the home setting (or other agreed upon setting) in accordance with the child’s individualized education program.

Homebound instruction - academic instruction provided to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist. For a child with a disability, the IEP team shall determine the delivery of services, including the number of hours of services. (Regulations Establishing Standards for Accrediting Public Schools in Virginia, 8VAC20-131-180)

Individual Family Service Plan (IFSP) – an individualized service plan, developed by the Family Assessment and Planning Team (FAPT), which includes goals, objectives, and services to be recommended to the CPMT for funding authorization. The IFSP is central to service planning and shall take into account the results of the mandatory uniform assessment (CANS), input from the youth and family, and other available information to inform the development of the plan.

Individuals with Disabilities Education Act (IDEA) – a four-part federal law, originally enacted by Congress in 1975, which ensures services to children with disabilities by governing how states and public agencies provide early intervention, special education, and related services to individuals with disabilities. (20 U.S.C. § 1400)

Individuals with Disabilities Improvement Act of 2004 (IDEIA - otherwise called IDEA) – the reauthorization of the Individuals with Disabilities Education Act (IDEA) in 2004 which included modifications to more closely align IDEA with the goals of the No Child Left Behind (NCLB) Act. (20 U.S.C. § 1400)

Individualized education program (IEP) – a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting.. The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child's educational needs. (34 CFR 300.23)

Least restrictive environment (LRE) - 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 that special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only when the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR 300.114 through 34 CFR 300.120)

Local educational agency (LEA) - a local school division governed by a local school board, a state operated program that is funded and administered by the Commonwealth of Virginia or the Virginia School for the Deaf and the Blind at Staunton. (§ 22.1-346 C of the Code of Virginia; 34 CFR 300.28)

School day - any day, including a partial day, that children are in attendance at school for instructional purposes. The term has the same meaning for all children in school, including children with and without disabilities. (34 CFR 300.11)

Section 504 - that section of the Rehabilitation Act of 1973, as amended, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance. (29 USC § 701 et seq.)

Special Education - specially designed instruction, at no cost to the parent(s), 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. The term includes each of the following if it meets the requirements of the definition of special education: (§ 22.1-213 of the Code of Virginia)

1. Speech-language pathology services or any other related service, if the service is considered special education rather than a related service under state standards;
2. Vocational education; and
3. Travel training

State Executive Council for Children’s Services (SEC) – a supervisory council, within the meaning of COV § 2.2-2100, in the executive branch of state government responsible for policy-making and oversight of the Virginia Children’s Services Act. (Chapter 52 (§ 2.2-2648.) of Title 2.2 of the Code of Virginia)

Wraparound services - individualized community-based services, developed through a team planning process, that focus on the strengths and needs of the child and family.