Virginia Commission on Youth
2015 Legislative Studies and Initiatives

TEMPORARY PLACEMENTS OF CHILDREN

ADOPTED RECOMMENDATIONS IN BLUE

Findings/Conclusions	Recommendations and Public Comments
Study Mandate During the 2015 General Assembly Session, Delegate Kathy J. Byron introduced House Bill 2034. It provides that a parent or legal custodian of a minor may delegate to another person by a properly executed power of attorney any powers regarding care, custody, or property of the minor for a period not exceeding one year. The bill also creates a licensing exemption for private, nonprofit organizations that do not accept public funds and that assists parents with the process of delegating parental and legal custody of their children. The intent of the legislation is to provide parents with support and respite during difficult times while having children stay in a safe environment with the ultimate goal of reunification. Members of the House Courts of Justice Committee reviewed the bill and determined that further study would be appropriate. The Committee passed the bill by indefinitely and requested that the Commission on Youth study the provisions set forth in House Bill 2034 and report its findings and recommendations. **Findings** <u>Prevention Services</u>: Prevention Services are meant to strengthen families and prevent child maltreatment. The Virginia Department of Social Services uses a practice model, which promotes safe, stable,	**<u>Recommendation 1</u>** Request a budget amendment in the 2016 budget (caboose) and new biennial budget for the Department of Social Services to partner with Patrick Henry Family Services to implement a pilot program in the area encompassing Planning District 11 (Amherst, Appomattox, Bedford, Campbell Counties and the City of Lynchburg) for the temporary placements of children for children and families in crisis. This pilot program would allow a parent or legal custodian of a minor, with the assistance of Patrick Henry Family Services, to delegate to another person by a properly executed power of attorney any powers regarding care, custody, or property of the minor for temporary placement for a period that is not greater than 90 days. This program would allow for an option of a one-time 90 day extension. Prior to the expiration of the 180 day period, if the child is unable to return to his home, then Patrick Henry Family Services shall contact the local department of social services and request an assessment of the child and an evaluation of services needed and to determine if a petition to assess the care and custody of the child should be filed in the local juvenile and domestic relations court. DSS shall ensure that this pilot program meets the following specific programmatic and safety requirements outlined in 22 VAC 40-131 and 22 VAC 40-191. • The pilot program organization shall meet the background check requirements described in 22 VAC 40-191. • The pilot program organization shall provide pre-service and ongoing

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and healthy families. In Virginia, prevention services have transformed and grown over the past several years starting with the Children's Services System Transformation implemented in 2007. While the implementation of recent improvements have resulted in a decrease in the number of children in Virginia's foster care system and an increase in the use of kinship care, lack of funding and staffing is still a concern. According to the latest CSA Critical Services Gap presentation for fiscal year 2013, the top five of statewide service gaps includes parenting/family skills training and regular foster care/family care. As well, the top barriers highlighted to community service availability remain a need for a greater buy-in and support from the line staff and a need for greater collaboration among community stakeholders. Use of family driven services continues to be promoted in Virginia as a best practice model. Since early prevention services are mostly voluntary they require that the family unit act as the primary decision maker, making it even more important that the services provided are family focused. As well as embracing family driven services, the Department of Social Services stresses an entrepreneurial approach to program development and service delivery. This means thinking "out of the box" to provide services to assist families whose children are safe, but the family unit is struggling as a whole. <u>Diversion</u>: In addition to its prevention efforts, over the past decade Virginia has paved the way to increase diversion efforts. In 2010, Delegate Peace introduced a § 1 bill (HB 718) , which became law, requesting that the Governor and the Department of Social Services work together to reduce the number of children in foster care by 25 percent within 10 years. Five years into this effort, there has been a 17.86% decrease as of July 1, 2015. Virginia also supported the effort of improving outcomes to its current diversion program by partnering with the Annie E. Casey Foundation in 2011 for a qualitative study on kinship care. Specific recommendations included: develop and adopt clear state-level policy guidelines and provide caseworkers with training and tools for clients in order to inform and advise families on available benefits and options. Most recently in 2014, Senator Howell introduced a § 1 bill (SB 284), which became law, directing that the Department of	training for temporary placement providers and staff (22 VAC 40-131-210 and 22 VAC 40-131-150). • The pilot program organization shall develop and implement written policies and procedures for governing active and closed cases, admissions, monitoring the administration of medications, prohibiting corporal punishment, ensuring that children are not subjected to abuse or neglect, investigating allegations of misconduct toward children, implementing the child's back-up emergency care plan, assigning designated casework staff, management of all records, discharge policies, and the use of seclusion and restraint (22 VAC 40-131-90). The Department of Social Services shall evaluate the pilot program and determine if this model of prevention is effective. A report of the evaluation findings and recommendations shall be submitted to the Governor and Chairs of the House Appropriations and Senate Finance Committees as well as the Commission on Youth by December 1, 2017.

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Social Services review current policies governing kinship care placements. The legislation also directed DSS to develop recommendations for regulations. <u>Delegation of Parental Authority</u>: Approximately half of states have some form of a temporary delegation of authority by power of attorney law. Nine states limit this authority to one year and 13 states limit this authority to six months. The remaining states laws limit the temporary delegation of authority solely to grandparents or they have no time frame for expiration of the power of attorney. The most common model followed is based on the Uniform Guardianship and Protective Proceedings Act of 1982 (UGPPA), which states, “A parent or a guardian of a minor or incapacitated person, by a power of attorney, may delegate to another person, for a period not exceeding six months, any power regarding care, custody, or property of the minor or ward, except the power to consent to marriage or adoption.” States that utilize this process make their agreement on a power of attorney form instead of going to court. In addition, the power of attorney device does not act to confer custody on the caregiver, but rather allow the designated caretaker to enroll the child in school or obtain medical care. In Virginia, kinship caregivers are permitted to use an affidavit and power of attorney to enroll a child in school.	

STUDY ON THE USE OF FEDERAL, STATE, AND LOCAL FUNDS FOR PRIVATE EDUCATIONAL PLACEMENTS OF STUDENTS WITH DISABILITIES YEAR TWO

ADOPTED RECOMMENDATIONS IN BLUE

Findings/Conclusions	Recommendations and Public Comments
There are challenges with using CSA wrap-around services to maintain LRE. 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	**Recommendation 1** 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.

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highly qualified professionals that cannot provide these services outside of the school environment.[1] 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.[2] 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 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.	
Virginia's existing special education state funding structure does not adequately meet the needs and increasing numbers of hard-to-serve, special education students. 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	**Recommendation 2** 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

[1] Office of Children's Services. (2013). Wrap-around Services for Students with Disabilities Funded Through the Comprehensive Services Act.
[2] 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

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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).[3] 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.[4] 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.[5] 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 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	the Commonwealth. VDOE shall report findings and recommendations to the Commission on Youth prior to the 2016 General Assembly Session.

[3] 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.
[4] These students are classified as high-need, low incidence.
[5] 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.

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(SOQ) and encompass the requirements that must be met by all Virginia public schools and divisions for the provision of special education services.[6] 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.*[7] 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. [8] 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.[9] In 2014, the Virginia Department of Education outlined a variety of issues with SOQ funding.[10] 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	

[6] 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/$file/RD407.pdf.
[7] 8 VAC 20-81-340.
[8] Virginia Department of Education. (2010). *Regulations Governing Special Education Programs for Children with Disabilities in Virginia.* Retrieved from http://www.doe.virginia.gov/special_ed/regulations/state/regs_speced_disability_va.pdf.
[9] Ibid.
[10] Virginia Department of Education. (2014). *2014 Annual Report on the Condition and Needs of Public Schools in Virginia.* Retrieved from http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD4072014/$file/RD407.pdf.

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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 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.	
The Utilization and Costs of Private Placements for Special Education Students in Virginia have Increased Significantly. 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.[11]	**Recommendation 3** 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

[11] 8 VAC 20-81-130.

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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.[12] Net total expenditures for residential services for special education have increased 5% since 2012 and 8.4% since 2014.[13] 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.[14] [15] This amount is an average and will fluctuate by locality depending on the locality's composite index value. 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	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 4** 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 5** 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.

[12] 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.
[13] Ibid.
[14] 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.*
[15] This includes state, local, and federal funds.

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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.[16] 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	

[16] 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.

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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 responsibilities and enhancing communication between private providers, schools and FAPTs to assist student transition back to public school.	
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. 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.[17] 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	Recommendation 2 was adopted by the Commission which addresses the issues set forth in this Finding.

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

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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 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.[18] 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.[19] 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	

[18] 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.

[19] 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.

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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.	
There is no available data about the effectiveness of CSA-funded private day and residential programs. 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.[20] This number includes both private day and private residential schools. 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.	**Recommendation 6** 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 7** 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 8** 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.

[20] 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.

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In FY 2014, 2,796 youth were served in a private special education placement.[21] 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.[22] 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.	

[21] 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.
[22] McKinney, J. (2011). *The Privatization of Special Education.* Virginia Commonwealth University Scholars Compass.

Findings/Conclusions	Recommendations and Public Comments
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 §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.	
Virginia's parent consent provisions exceed federal regulations and may hinder serving students with disabilities in the least restrictive environment. 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 CFR 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	**Recommendation 9** 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.

Findings/Conclusions	Recommendations and Public Comments
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.[23] 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	

[23] Bd. Ed. Hendrick Hudson Sch. Dist. v. Amy Rowley (458 U.S. 176).

Findings/Conclusions	Recommendations and Public Comments
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.[24] 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.	

[24] 34 CFR §300.320(a)(4)(i)-(iii).