



VIRGINIA COMMISSION ON YOUTH

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

June 15, 2015 – 1:00 p.m. to 4:00 p.m.
Tuckahoe Library Conference Room
1901 Starling Drive
Henrico, VA 23229

Meeting Notes

Advisory Group Members:

The Honorable Richard “Dickie” Bell, Janet Aerson, Carl Ayers, Sandra Barnstead, Lisa A. Bennett, Beau Blevins, III, Justine Blincoe, Suzanne Bowers, Kara Brooks, Christine Cadwallader, Sean Campbell, Rebecca China, John Eisenberg, William Elwood, Royal Gurley, Pam Kestner, Rebecca King, Kevin Kirst, Donna Krauss, Angela Langrehr, Heidi Lawyer, Janet Lung, Catherine Lochner, Tracie L. Mauch, Margie Messick, Brady Nemeyer, Ty Parr, Jeff Pennington, Kristi M. Schabo-Putney, Laura Sellers, Thomas Smith, Sara Staton, Matthew Stanley, Emily Webb

Guests/Presenters:

Jana Carter, Doug Cox, Michelle Darby, Donice Davenport, David Forbes, Patricia Haymes, Samantha Hollins, Rhonda Jackson-Smith, Todd Jenkins, Jason Kisson, Jim McGee, Monica Manns, Joy McMillian, Jenny Oxendine, Patricia Popp, Elizabeth Tacey, Lloyd Tannebaum, Harley Toomey, Otissa Williams

General Assembly Staff:

Ryan Brimmer, Susan Herzog

Virginia Commission on Youth Staff:

Amy Atkinson, Will Egen, Leah Mills

Welcome and Introductions

The Honorable Delegate Richard “Dickie” Bell

Amy Atkinson

Virginia Commission on Youth

Delegate Bell welcomed the Advisory Group members and guests and then introduced Delegate Adams. Delegate Bell then turned the meeting over to Amy Atkinson to discuss the plans for the meeting.

Ms. Atkinson stated that House Joint Resolution 196 (Adams) directed the Commission on Youth to examine the use of Children’s Services Act for At-Risk Youth and Families (CSA) for private day and

private residential special education placements. Ms. Atkinson stated that the Commission is to complete its meetings by November 2015 during this second year and report recommendations prior to the 2016 General Assembly Session.

Ms. Atkinson stated that the Advisory Group represented all impacted parties and it was the Commission's intent that by having all the parties work together, staff could submit recommendations for public comment and present sound recommendations so the Commission could adopt wise policy decisions.

Study Overview

Amy Atkinson, Executive Director

Ms. Atkinson provided an overview about the Commission on Youth including the Commission's membership and recent study activities. She then provided the members with information about the study mandate. The presentation and meeting handouts can be accessed on the Commission's webpage under the June 15 Advisory Group meeting tab.

Ms. Atkinson stated that House Joint Resolution 196 (Adams) directed the Commission to:

- examine the use of Comprehensive Services Act for At-Risk Youth and Families (CSA)¹ and Medicaid funds for private day and private residential special education placements;
- gather local and statewide data when youth are placed in these placements;
- determine the feasibility and cost-effectiveness of more integrated alternatives to provide special education services to students including students with intellectual and developmental disabilities currently in segregated settings; and
- consider any other matters appropriate to meet the objectives of this study.

Ms. Atkinson stated that the Commission is to complete its meetings by November of 2014 the first year and by November 2015 during the second year and report recommendations prior to the 2016 General Assembly Session.

Ms. Atkinson then provided an overview of special education requirements pursuant to the Individuals with Disabilities Education Act (IDEA). IDEA guarantees a free appropriate public education (FAPE) to all eligible children with disabilities. IDEA requires that students be provided special education services in the least restrictive environment (LRE) and that students with an Individualized Educational Program (IEP) not be unnecessarily segregated from nondisabled students, including those receiving educational services in private day and private residential schools or facilities.

Ms. Atkinson informed the Commission members on staffs' activities during the first year of the study. She also outlined the plan for year two. Delegate Bell thanked Ms. Atkinson for her presentation.

Overview of Special Education in Virginia

*John Eisenberg, Assistant Superintendent of Special Education and Student Services
Virginia Department of Education*

Mr. Eisenberg provided an overview of the federal and state laws governing special education under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). The presentation can be accessed on the Commission's webpage under the June 15 Advisory Group meeting tab.

Mr. Eisenberg noted that special education was specially designed instruction where the content, methodology, or delivery of instruction, are adapted to meet the needs of the eligible child. For out-of-

¹ The 2015 General Assembly enacted legislation (SB 850, Favola) to change the name of the Comprehensive Services Act for At-Risk Youth and Families to the Children's Services Act (CSA) to better reflect the goals of CSA. This took effect July 1, 2016.

school placements, Mr. Eisenberg stated that the targeted populations for the Comprehensive Services Acts (CSA) were children placed in order to receive special education services in approved private school educational programs previously funded by the Department of Education through private tuition assistance. This includes all children whose individualized education program (IEP) include placement in private day schools or private residential facilities.

Mr. Eisenberg then discussed trends regarding disability categories included the increase in the number of students diagnosed with autism spectrum disorders. the role of school divisions and family assessment and planning teams. Additional information was provided regarding Regional Tuition Reimbursement Programs and Virginia's special education regulations. Mr. Eisenberg noted that the Department of Education was conducting a study of regional special education programs to examine current practices in the existing state regional programs, explore how they are serving students with disabilities who have intensive support needs, and develop a protocol for identifying which students should be claimed for regional tuition reimbursement under a new proposed regional tuition reimbursement model.

The advisory group asked questions regarding the per-pupil cost of serving students with disabilities and also the role of the Department of Education in reporting outcomes for students served in private educational placements.

Delegate Bell thanked Mr. Eisenberg for his presentation.

Special Education Services under the Children's Services Act

Brady Nemeyer, Program Consultant

Office of Comprehensive Services

Delegate Bell introduced Mr. Nemeyer and thanked him for attending. Mr. Nemeyer provided the Advisory Group with an overview of educational expenses covered by CSA during fiscal year 2014. This meeting handout can be accessed on the Commission's webpage under the June 15 Advisory Group meeting tab.

Mr. Nemeyer informed the Advisory Group that transportation costs for students in private educational placements were not included in these expenditures because these expenses were reimbursed by local education agencies. He stated that there had been an increase in expenditures for youth being served in private educational placements. Between June 2014 and June 2015, educational congregate services increased by \$1.1 million. During this same period, there has been an \$8.1 million increase in private day expenditures which accounted for a 9.9 percent increase in private day expenditures from the previous fiscal year. Mr. Nemeyer stated that his Office anticipates that expenditures were going to be at least \$10 million in excess from the previous fiscal year for private day placements. The census also appeared to be increasing. Localities have until September 30 to report final expenditures to the Office. Mr. Nemeyer then responded to questions from the Advisory Group.

A question was raised about foster care placements in residential facilities and how placement was reflected on the child's IEP. Another member asked about the breakdown of costs and private schools reported these costs. Mr. Nemeyer stated that if there were increased costs, this was noted in the comments section of the report that localities submit to his Office. However, localities are only required to note increases in costs if they were ten percent or higher. One Advisory Group member and local CSA administrator, stated localities regularly submit data to OCS which indicates whether the child was autistic, had a developmental disability diagnosis, and whether if they had Medicaid. Localities are collecting this detailed information. Another question was raised whether the Child and Adolescent Needs and Strengths (CANS) assessment tool was used to evaluate the success of these placements. Mr. Nemeyer stated that he was not aware that this was being done.

Discussion ensued regarding the role of CSA wrap-around funds and localities' attempts to maintain students in the least restrictive environment. Medicaid reimbursements for residential treatment were also discussed.

Delegate Bell thanked Mr. Nemeyer for his detailed presentation.

Overview of Special Education Data

*Samantha Marsh Hollins, Director, Office of Special Education Program Improvement
Virginia Department of Education*

Delegate Bell introduced Ms. Hollins and stated that Ms. Hollins would review the special education data collected by the Department of Education. She reviewed the information contained in the Commonwealth's State Performance Plan (SPP) and Annual Performance Report (APR). The APR includes 17 indicators including compliance and results-based indicators. She stated that IDEA requires states to submit the SPP which includes baseline data, targets and improvement activities for the indicators developed by the U.S. Department of Education.

Ms. Hollins informed the Advisory Group that school divisions are required to report an unduplicated count of students with disabilities receiving special education on Dec. 1 (or the closest school day to Dec. 1) for state funding and federal reporting under provisions the Individuals with Disabilities Education Act (IDEA). She stated that, to better serve the needs of some students with disabilities, certain school divisions might provide special educational services and programs through regional special education programs. There were currently 11 regional special education programs that serve 77 school divisions. These programs provide special educational services to students with all 14 IDEA disability categories and serve an average of 4,200 students annually. Approximately 3% of students with disabilities are served in regional special education programs.

Ms. Hollins stated that Indicator 5 reflects the placement setting data. Indicator 5 is broken down in to several sub-categories. These categories reflect the following statistics whether students with disabilities are:

- educated in the regular class 80% or more of the day;
- educated in the regular class between 40% and 80% of the day;
- educated in the regular class less than 40% of the day; or
- educated in a separate schools.

The majority of students with students with disabilities are educated in the regular class more than 80% of the day. She stated that this is a compliance-based indicator. Ms. Hollins noted that students educated in regional programs were considered to be educated in the public school setting but may have lower participation rates in the regular class setting.

Ms. Hollins stated that her Office was currently reviewing compliance indicators from the regional special education programs. Two of the eleven programs have submitted information so far but she stated that programs varied significantly across the Commonwealth.

Advisory Group Discussion

Findings/Recommendations

The Advisory Group reviewed the draft recommendations prepared by Commission staff. Ms. Atkinson noted that these discussion points and recommendations were a starting place and that a subsequent Advisory Group meeting would be held to continue refining the recommendations.

The discussion points and recommendations presented to the Advisory Group, along with the draft

recommendations reflecting the Advisory Group's discussion, can be accessed on the Commission's webpage under the June 15 Advisory Group meeting tab.

The recommendations and Advisory Group's discussion are outlined below. Language with "strikethrough" is because a majority of the Advisory Group membership requested Commission on Youth staff to remove the draft recommendation.

Finding #1 – There are challenges with using CSA state pool funds wrap-around services to maintain LRE.

- ~~1. Request the SEC revisit the 2011 *Clarification on Use of CSA Funds Under the Special Education Mandate* to include services provided by public school employees outside of the public school setting that include highly qualified/licensed special education professionals with certain minimum licensing standards.~~
2. Request the SEC develop a policy for piloting the use of Intensive Care Coordination for the specific purpose of maintaining a child with an IEP in their home school when the child's disability impedes educating him/or her in the regular class setting, even with the use of supplementary aids and services. (*Keep this Recommendation for discussion purposes.*)
3. Establish a policy ensuring active case management for all families and students using CSA funds, regardless of IEP status such as requiring families meet with the CSA family assessment and planning team (FAPT) at least annually. (*Keep this Recommendation for discussion purposes.*)
4. Take no action.
5. Other options discussed by the Advisory Group:

New option discussed by the Advisory Group – *Support CSA state pool funds for wrap-around services for students with disabilities that 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.*

Finding #2 – Virginia's existing special education state funding structure does not adequately meet the needs and increasing numbers of hard-to-serve, special education students.

1. Request JLARG/VDOE study Virginia's special education funding formula and make recommendations ~~which include additional~~ *which address both capacity building and funding levels to address for students who are hard-to-serve and expensive students while encouraging which encourages* school divisions to creatively educate students with disabilities in the LRE.
2. Take no action.
3. Other options?

Finding #3 – The Utilization and Costs of Private Placements for Special Education Students in Virginia has Increased Significantly.

- ~~1. Establish a more formal process for involving CSA/FAPT in IEP meetings when the child's needs place them at risk of out-of-school placement so that available services/supports can be identified.~~
2. ~~Require~~ *Move* school divisions' provide the local match for CSA for *the local share of the* Educational Congregate Care *item* and for *the* Special Education Private Day Home Placement *item* in lieu of the budget from the locality's General Government *section of the local budget to the school board's budget.*
3. ~~Request VML/VACO develop strategies for local government officials to employ to better manage the "cost shifting" effect of placing a child into a private placement by linking the local match to school boards' budgets.~~

4. Evaluate the feasibility of moving mandated educational funding included in the CSA budget to VDOE so that LEAs can administer and track these funds. *(Keep option for discussion purposes.)*
5. Take no action.
6. Other options?

Finding #4 – Virginia’s regional special education programs allow select school divisions to serve students in a less restrictive environment but the existing structure needs to be re-evaluated.

1. Request the VDOE to conduct a study on Virginia’s regional special education programs and report findings and recommendations to the Commission on Youth prior to the 2017-2016 General Assembly Session. *(Appeared to be consensus among the Advisory Group in favor of this Recommendation.)*
2. Introduce legislation/budget language requiring Virginia’s regional programs to annually report to the Virginia Department of Education information about student achievement, accountability ratings, attendance, disciplinary practices, program completion, and transition to LRE. *(Keep this Recommendation for discussion purposes.)*
3. Take no action.
4. Other options?

Finding #5 – There is no available data about the effectiveness of CSA-funded private day and residential programs.

1. Request that VDOE include identified outcome measures in its web-based directory of private day and residential providers. *(Appeared to be consensus among the Advisory Group in favor of this Recommendation.)*
2. Require private special education facilities be included on the VDOE school report card system and that programs report information on student achievement, accountability ratings, attendance, disciplinary practices, program completion, and transition to LRE. *(Appeared to be consensus among the Advisory Group in favor of this Recommendation.)*
3. Take no action.
4. Other options?

Finding #6 – Virginia’s parent consent provisions exceed federal regulations and may hinder serving students with disabilities in the least restrictive environment.

1. Amend Virginia’s *Regulations Governing Special Education Programs for Children with Disabilities* to allow school divisions to modify a child’s IEP without parental consent after an independent educational evaluation shows that that the child may receive “some educational benefit” in the least restrictive environment. *(Keep this Recommendation for discussion purposes.)*
2. Amend Virginia’s *Regulations Governing Special Education Programs for Children with Disabilities* based upon Kansas’ policy which allows school divisions to modify a child’s IEP requiring parental consent only when making a change of 25% or more of a special education service or before making a change to a more restrictive or less restrictive educational environment for more than 25% of the school day. *(Keep this Recommendation for discussion purposes.)*
3. Take no action.
4. Other options?

Comments – The Advisory Group noted that the independent educational evaluation included in Recommendation 1 also requires parental consent and may not be the best method to accomplish this goal. A majority of the Advisory Group opposed Recommendations 1 and 2. Several members of the Advisory Group requested that Recommendations 1 and 2 not be removed to encourage further

discussion of this issue.

Adjournment and Next Steps

Delegate Bell thanked the members for their participation and the meaningful discussion. He understood there were many concerns and that the Commission would continue its work on this serious topic. The goal was Ms. Atkinson thanked everyone for their participation, and stated that staff would send the Advisory Group the revised recommendations and post them to the Commission's website. Ms. Atkinson requested the Advisory Group members to send other solutions if they had any ideas. The recommendations, and discussion from the Advisory Group meeting, would be shared with the Commission on Youth at the meeting scheduled for September 8 at 10:00 a.m. in House Room C at the General Assembly Building. Ms. Atkinson stated that all meetings are open to the public. Public comment would also be received and the Commission would then vote on the proposed recommendations. Ms. Atkinson thanked everyone for their involvement. The meeting was adjourned at approximately 4:00 p.m.