

VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

CHAPTER 71

An Act to amend and reenact §§ 2.2-5211 and 2.2-5212 of the Code of Virginia, relating to Children's Services Act; special education programs.

[S 1313]

Approved March 11, 2021

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-5211 and 2.2-5212 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-5211. State pool of funds for community policy and management teams.

A. There is established a state pool of funds to be allocated to community policy and management teams in accordance with the appropriation act and appropriate state regulations. These funds, as made available by the General Assembly, shall be expended for public or private nonresidential or residential services for troubled youths and families. *However, funds for private special education services shall only be expended on private educational programs that are licensed by the Board of Education or an equivalent out-of-state licensing agency. Effective July 1, 2022, funds for private special education services shall only be expended on private educational programs that the Office of Children's Services certifies as having reported their tuition rates on a standard reporting template developed by the Office. The Office of Children's Services shall consult with private special education services providers in developing the standard reporting template for tuition rates.*

The purposes of this system of funding are to:

1. Place authority for making program and funding decisions at the community level;
2. Consolidate categorical agency funding and institute community responsibility for the provision of services;
3. Provide greater flexibility in the use of funds to purchase services based on the strengths and needs of children, youths, and families; and
4. Reduce disparity in accessing services and to reduce inadvertent fiscal incentives for serving children and youth according to differing required local match rates for funding streams.

B. The state pool shall consist of funds that serve the target populations identified in subdivisions 1 through 5 ~~of this subsection~~ 6 in the purchase of residential and nonresidential services for children and youth. References to funding sources and current placement authority for the targeted populations of children and youth are for the purpose of accounting for the funds in the pool. It is not intended that children and youth be categorized by individual funding streams in order to access services. The target population shall be the following:

1. 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;
2. Children and youth with disabilities placed by local social services agencies or the Department of Juvenile Justice in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such school is the appropriate placement while living in foster homes or child-caring facilities, previously funded by the Department of Education through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children;
3. Children and youth for whom foster care services, as defined by § 63.2-905, are being provided;
4. Children and youth placed by a juvenile and domestic relations district court, in accordance with the provisions of § 16.1-286, in a private or locally operated public facility or nonresidential program, or in a community or facility-based treatment program in accordance with the provisions of subsections B or C of § 16.1-284.1; ~~and~~
5. Children and youth committed to the Department of Juvenile Justice and placed by it in a private home or in a public or private facility in accordance with § 66-14; *and*
6. *Children and youth previously placed pursuant to subdivision 1 in approved private school educational programs for at least six months who will receive transitional services in a public school setting. State pool funds shall be allocated for no longer than 12 months for transitional services. Local agencies may contract with a private school education program provider to provide transition services in the public school.*

C. The General Assembly and the governing body of each county and city shall annually appropriate such sums of money as shall be sufficient to (i) provide special education services and foster care services for children and youth identified in subdivisions B 1, ~~B 2, and B 3,~~ and 6 and (ii) meet relevant federal mandates for the provision of these services. The community policy and management team shall anticipate to the best of its ability the number of children and youth for whom such services will be required and reserve funds from its state pool allocation to meet these needs. Nothing in this

section prohibits local governments from requiring parental or legal financial contributions, where not specifically prohibited by federal or state law or regulation, utilizing a standard sliding fee scale based upon ability to pay, as provided in the appropriation act.

D. When a community services board established pursuant to § 37.2-501, local school division, local social service agency, court service unit, or the Department of Juvenile Justice has referred a child and family to a family assessment and planning team and that team has recommended the proper level of treatment and services needed by that child and family and has determined the child's eligibility for funding for services through the state pool of funds, then the community services board, the local school division, local social services agency, court service unit, or Department of Juvenile Justice has met its fiscal responsibility for that child for the services funded through the pool. However, the community services board, the local school division, local social services agency, court service unit, or Department of Juvenile Justice shall continue to be responsible for providing services identified in individual family service plans that are within the agency's scope of responsibility and that are funded separately from the state pool.

Further, in any instance that an individual 18 through 21 years of age, inclusive, who is eligible for funding from the state pool and is properly defined as a school-aged child with disabilities pursuant to § 22.1-213 is placed by a local social services agency that has custody across jurisdictional lines in a group home in the Commonwealth and the individual's individualized education program (IEP), as prepared by the placing jurisdiction, indicates that a private day school placement is the appropriate educational program for such individual, the financial and legal responsibility for the individual's special education services and IEP shall remain, in compliance with the provisions of federal law, Article 2 (§ 22.1-213) of Chapter 13 of Title 22.1, and Board of Education regulations, the responsibility of the placing jurisdiction until the individual reaches the age of 21, inclusive, or is no longer eligible for special education services. The financial and legal responsibility for such special education services shall remain with the placing jurisdiction, unless the placing jurisdiction has transitioned all appropriate services with the individual.

E. In any matter properly before a court for which state pool funds are to be accessed, the court shall, prior to final disposition, and pursuant to §§ 2.2-5209 and 2.2-5212, refer the matter to the community policy and management team for assessment by a local family assessment and planning team authorized by policies of the community policy and management team for assessment to determine the recommended level of treatment and services needed by the child and family. The family assessment and planning team making the assessment shall make a report of the case or forward a copy of the individual family services plan to the court within 30 days of the court's written referral to the community policy and management team. The court shall consider the recommendations of the family assessment and planning team and the community policy and management team. If, prior to a final disposition by the court, the court is requested to consider a level of service not identified or recommended in the report submitted by the family assessment and planning team, the court shall request the community policy and management team to submit a second report characterizing comparable levels of service to the requested level of service. Notwithstanding the provisions of this subsection, the court may make any disposition as is authorized or required by law. Services ordered pursuant to a disposition rendered by the court pursuant to this section shall qualify for funding as appropriated under this section.

F. As used in this section, "transitional services" includes services delivered in a public school setting directly to students with significant disabilities or intensive support needs to facilitate their transition back to public school after having been served in a private special education day school or residential facility for at least six months. "Transitional services" includes one-on-one aides, speech therapy, occupational therapy, behavioral health services, counseling, applied behavior analysis, specially designed instruction delivered directly to the student, or other services needed to facilitate such transition that are delivered directly to the student in their public school over the 12-month period as identified in the child's individualized education program.

§ 2.2-5212. Eligibility for state pool of funds.

A. In order to be eligible for funding for services through the state pool of funds, a youth, or family with a child, shall meet one or more of the criteria specified in subdivisions 1 through 4 and shall be determined through the use of a uniform assessment instrument and process and by policies of the community policy and management team to have access to these funds.

1. The child or youth has emotional or behavior problems that:

a. Have persisted over a significant period of time or, though only in evidence for a short period of time, are of such a critical nature that intervention is warranted;

b. Are significantly disabling and are present in several community settings, such as at home, in school, or with peers; and

c. Require services or resources that are unavailable or inaccessible, or that are beyond the normal agency services or routine collaborative processes across agencies, or require coordinated interventions by at least two agencies.

2. The child or youth has emotional or behavior problems, or both, and currently is in, or is at

imminent risk of entering, purchased residential care. In addition, the child or youth requires services or resources that are beyond normal agency services or routine collaborative processes across agencies, and requires coordinated services by at least two agencies.

3. The child or youth requires placement for purposes of special education in approved private school educational programs *or for transitional services as set forth in subdivision B 6 of § 2.2-5211*.

4. The child or youth requires foster care services as defined in § 63.2-905.

B. For purposes of determining eligibility for the state pool of funds, "child" or "youth" means (i) a person younger than 18 years of age or (ii) any individual through 21 years of age who is otherwise eligible for mandated services of the participating state agencies including special education and foster care services.

2. That the Secretary of Education and the Secretary of Health and Human Resources or their designees, in conjunction with the Office of Children's Services and the Department of Education, shall establish a work group (the Work Group) with appropriate stakeholders to develop a detailed plan to (i) direct the transfer of Children's Services Act funds currently reserved for children requiring an educational placement in a private special education day school or residential facility to the Department of Education, (ii) provide recommendations on the use of Children's Services Act funds to pay for services delivered directly to students with disabilities in public school to enable those who are at risk of out-of-school placements to remain in a public school setting, and (iii) provide recommendations on the most effective use of Children's Services Act funds to transition students from out-of-school placements to public school. Work Group stakeholders shall include representatives of (a) the Department of Education and the Office of Children's Services; (b) three private special education day school service providers, including at least one director of a private special education day school; (c) local school districts, including at least one local special education director; (d) local governments, including at least one Children's Services Act Coordinator; (e) licensed behavioral analyst service providers and other evidence-based behavioral services providers; (f) organizations engaged in advocacy for students with disabilities, including at least one for the autism spectrum community; (g) the House Committee on Appropriations and the Senate Committee on Finance and Appropriations; and (h) other stakeholders deemed necessary by the Secretaries of Education and Health and Human Resources. The Work Group shall also include one parent of a child with an individualized education program currently enrolled in a private special education day program and one parent of child with an individualized education program currently enrolled in a public special education program. Both legislative members of the State Executive Council for Children's Services shall be invited to participate in the Work Group. The Work Group's plan shall include details on how the Virginia Department of Education should administer the transferred funding so that it (1) is prioritized for students with the most severe disabilities who are at risk of being placed in an out-of-school placement or who are in an out-of-school placement and (2) is equally accessible to all school divisions. The Work Group's plan shall also provide recommendations for minimizing the fiscal impact of the new funding policy on localities and consider the local fiscal impacts of using current Children's Services Act match rates versus the Local Composite Index. The Work Group's plan shall also offer a review and analysis of different models of delivering special education and private special education day school services, including a review of specialty regional schools, in-school delivery of services by private special education program providers, and in-school delivery of services by the school division. The Work Group shall (A) collect data from Virginia schools that have delivered special education services to students with severe disabilities within the public school setting as well as from Virginia school divisions that have used Children's Services Act funds to pay for transition services, (B) use the data to identify the types of services and supports that have allowed children with severe disabilities to be successful in the public school setting and avoid an out-of-school placement, and (C) provide recommendations for the types of direct services and supports that should be provided to students in the public school setting using Children's Services Act funds. The Work Group shall also consider whether the transitional services, as defined in § 2.2-5211 of the Code of Virginia, as amended by this act, are appropriate direct services to be covered; determine whether the criteria for students to qualify for such funding are appropriate; and make recommendations for modifying the definition or criteria, if necessary. The Work Group shall specifically evaluate whether or not Children's Services Act funding should be expanded to include ongoing support for students with disabilities following the 12-month transition period. The Work Group may solicit proposals from local school divisions for programs that would identify the resources, services, and supports required by each student in the local school divisions who is educated in a private special education day school and how redirecting federal, state, and local funds, including funds provided pursuant to the Children's Services Act, could allow some students to transition from the private school setting to the public school setting. The Work Group may recommend any proposal determined to be feasible for consideration by the General Assembly. The Work Group's preliminary findings shall be submitted to the Chairmen of the House Committee on Appropriations and the Senate

Committee on Finance and Appropriations by November 1, 2021; and a final plan and recommendations shall be submitted by November 1, 2022, which shall include draft legislation and amendments to the general appropriation act that would allow the General Assembly to accomplish the plan's recommendations.