

# VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

## CHAPTER 854

*An Act to amend and reenact § 2.1-757, as it is currently effective and as it may become effective, §§ 16.1-278.20, 22.1-7, 22.1-101.1, 22.1-209.2, 22.1-213, 22.1-214, as it is currently effective and as it may become effective, and §§ 22.1-215, 22.1-216, 22.1-218.1, 22.1-220, 22.1-221, 22.1-254.1, and 32.1-69.1 of the Code of Virginia, relating to children with disabilities.*

[S 461]

Approved April 20, 1994

**Be it enacted by the General Assembly of Virginia:**

**1. That § 2.1-757, as it is currently effective and as it may become effective, §§ 16.1-278.20, 22.1-7, 22.1-101.1, 22.1-209.2, 22.1-213, 22.1-214, as it is currently effective and as it may become effective, and §§ 22.1-215, 22.1-216, 22.1-218.1, 22.1-220, 22.1-221, 22.1-254.1, and 32.1-69.1 of the Code of Virginia are amended and reenacted as follows:**

§ 2.1-757. State pool of funds.

A. Effective July 1, 1993, there is established a state pool of funds to be allocated to community policy and management teams in accordance with the appropriations 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.

The purposes of this system of funding are:

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

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

1. Children placed for purposes of special education in approved private school educational programs, previously funded by the Department of Education through private tuition assistance;

2. ~~Handicapped~~ *Children with disabilities* placed by local social services agencies or the Department of Youth and Family Services 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 for whom foster care services, as defined by § 63.1-55.8, are being provided to prevent foster care placements, and children entrusted to local social service agencies by their parents or guardians or committed to the agencies by any court of competent jurisdiction for purposes of placement in suitable family homes, child-caring institutions, residential facilities or independent living arrangements, as authorized by § 63.1-56;

4. Children 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; and

5. Children committed to the Department of Youth and Family Services and placed by it in a private home or in a public or private facility in accordance with § 66-14.

C. The General Assembly and the governing body of each county and city shall annually appropriate such sums of money as shall be sufficient (i) to provide special education services and foster care services for children identified in subdivisions B 1, B 2 and B 3 of this section and (ii) to 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 for whom such services will be required and reserve funds from its state pool allocation to meet these needs.

D. When a community services board established pursuant to § 37.1-195, local school division, local social service agency, court service unit, or the Department of Youth and Family Services 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 Youth and Family

Services has met its fiscal responsibility for that child for the services funded through the pool. Each agency shall continue to be responsible for providing services identified in individual family service plans which are within the agency's scope of responsibility and which are funded separately from the state pool.

E. In any matter properly before a court wherein the family assessment and planning team has recommended a level of treatment and services needed by the child and family, the court shall consider the recommendations of the family assessment and planning team. However, the court may make such other disposition as is authorized or required by law, and services ordered pursuant to such disposition shall qualify for funding under this section.

§ 2.1-757. (Delayed effective date) State pool of funds.

A. Effective July 1, 1993, there is established a state pool of funds to be allocated to community policy and management teams in accordance with the appropriations 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.

The purposes of this system of funding are:

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

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

1. Children placed for purposes of special education in approved private school educational programs, previously funded by the Department of Education through private tuition assistance;
2. ~~Handicapped~~ *Children with disabilities* placed by local social services agencies or the Department of Youth and Family Services 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 for whom foster care services, as defined by § 63.1-55.8, are being provided to prevent foster care placements, and children entrusted to local social service agencies by their parents or guardians or committed to the agencies by any court of competent jurisdiction for purposes of placement in suitable family homes, child-caring institutions, residential facilities or independent living arrangements, as authorized by § 63.1-56;
4. Children placed by a family court, in accordance with the provisions of § 16.1-286, in a private or locally operated public facility or nonresidential program; and
5. Children committed to the Department of Youth and Family Services and placed by it in a private home or in a public or private facility in accordance with § 66-14.

C. The General Assembly and the governing body of each county and city shall annually appropriate such sums of money as shall be sufficient (i) to provide special education services and foster care services for children identified in subdivisions B 1, B 2 and B 3 of this section and (ii) to 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 for whom such services will be required and reserve funds from its state pool allocation to meet these needs.

D. When a community services board established pursuant to § 37.1-195, local school division, local social service agency, court service unit, or the Department of Youth and Family Services 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 Youth and Family Services has met its fiscal responsibility for that child for the services funded through the pool. Each agency shall continue to be responsible for providing services identified in individual family service plans which are within the agency's scope of responsibility and which are funded separately from the state pool.

E. In any matter properly before a court wherein the family assessment and planning team has recommended a level of treatment and services needed by the child and family, the court shall consider the recommendations of the family assessment and planning team. However, the court may make such other disposition as is authorized or required by law, and services ordered pursuant to such disposition

shall qualify for funding under this section.

§ 16.1-278.20. (Delayed effective date) Other cases generally.

A. Dispositions in suits for divorce, annulment or affirmation of marriage, separate maintenance, or for equitable distribution based on a foreign decree shall be governed by the provisions of Title 20.

B. Dispositions in cases of adoptions shall be governed by the provisions in Title 63.1.

C. Disposition of the issue of a change of name that is incident to a suit for annulment or affirmation of a marriage, divorce or adoption or ancillary to any other action in the family court shall be governed by the provisions of § 8.01-217.

D. Dispositions regarding records of birth shall be governed by the provisions of Title 32.1.

E. Dispositions regarding review of school board actions pursuant to § 22.1-87 shall be governed by the provisions of that section.

F. Dispositions of proceedings regarding special education for ~~handicapped~~ children *with disabilities* pursuant to §§ 22.1-214 and 22.1-214.1 shall be governed by the provisions of those sections.

§ 22.1-7. Responsibility of each state board, agency and institution having children in residence or in custody.

Each state board, state agency and state institution having children in residence or in custody shall have responsibility for providing for the education and training to such children which is at least comparable to that which would be provided to such children in the public school system. Such board, agency or institution may provide such education and training either directly with its own facilities and personnel in cooperation with the Board of Education or under contract with a school division or any other public or private nonsectarian school, agency or institution. The Board of Education shall supervise the education and training provided to school-age residents in state mental retardation facilities and provide for and direct the education for school-age residents in state mental health facilities in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services. The Board shall prescribe standards and regulations for all such education and training provided directly by a state board, state agency or state institution. Each state board, state agency or state institution providing such education and training shall submit annually its program therefor to the Board of Education for approval in accordance with regulations of the Board. If any child in the custody of any state board, state agency or state institution is a ~~handicapped~~ child *with disabilities* as defined in § 22.1-213 and such board, agency or institution must contract with a private nonsectarian school to provide special education as defined in § 22.1-213 for such child, the state board, state agency or state institution may proceed as a guardian pursuant to the provisions of § 22.1-218 A.

§ 22.1-101.1. Increase of funds for certain nonresident students; how increase computed and paid; billing of out-of-state placing agencies or persons.

A. To the extent such funds are appropriated by the General Assembly, a school division shall be reimbursed for the cost of educating a child who is not a ~~handicapped~~ child *with disabilities* and who is not a resident of such school division under the following conditions:

1. When such child has been placed in foster care or other custodial care within the geographical boundaries of the school division by a Virginia agency, whether state or local, which is authorized under the laws of this Commonwealth to place children;

2. When such child has been placed within the geographical boundaries of the school division in an orphanage or children's home which exercises legal guardianship rights; or

3. When such child, who is a resident of Virginia, has been placed, not solely for school purposes, in a child-caring institution or group home licensed under the provisions of Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 which is located within the geographical boundaries of the school division.

B. To the extent such funds are appropriated by the General Assembly, a school division shall be reimbursed for the cost of educating a ~~handicapped~~ child *with disabilities* who is not a resident of such school division under the following conditions:

1. When the ~~handicapped~~ child *with disabilities* has been placed in foster care or other custodial care within the geographical boundaries of the school division by a Virginia agency, whether state or local, which is authorized under the laws of this Commonwealth to place children;

2. When such ~~handicapped~~ child *with disabilities* has been placed within the geographical boundaries of the school division in an orphanage or children's home which exercises legal guardianship rights; or

3. When such ~~handicapped~~ child *with disabilities*, who is a resident of Virginia, has been placed, not solely for school purposes, in a child-caring institution or group home licensed under the provisions of Chapter 10 of Title 63.1 which is located within the geographical boundaries of the school division.

C. Each school division shall keep an accurate record of the number of days which any child, identified in subsection A or B above, was enrolled in its public schools, the required local expenditure per child, the handicapping condition, if applicable, the placing agency or person and the jurisdiction from which the child was sent. Each school division shall certify this information to the Board of Education by July 1 following the end of the school year in order to receive proper reimbursement. No school division shall charge tuition to any such child.

D. When a child who is not a resident of Virginia, whether ~~handicapped~~ *disabled* or not, has been placed by an out-of-state agency or a person who is the resident of another state in foster care or other

custodial care or in a child-caring institution or group home licensed under the provisions of Chapter 10 of Title 63.1 located within the geographical boundaries of the school division, the school division shall not be reimbursed for the cost of educating such child from funds appropriated by the General Assembly. The school division in which such child has been enrolled shall bill the sending agency or person for the cost of the education of such child as provided in subsection C of § 22.1-5.

The costs of the support and maintenance of the child shall include the cost of the education provided by the school division; therefore, the sending agency or person shall have the financial responsibility for the educational costs for the child pursuant to Article V of the Interstate Compact on the Placement of Children as set forth in Chapter 10.1 (§ 63.1-219.1 et seq.) of Title 63.1. Upon receiving the bill for the educational costs from the school division, the sending agency or person shall reimburse the billing school division for providing the education of the child. Pursuant to Article III of the Interstate Compact on the Placement of Children, no sending agency or person shall send, bring, or cause to be sent or brought into this Commonwealth any child for placement unless the sending agency or person has complied with this section by honoring the financial responsibility for the educational cost as billed by a local school division.

§ 22.1-209.2. Programs and teachers in regional detention homes, certain local detention homes and state agencies and institutions.

The Board of Education shall prepare and supervise the implementation in the regional detention homes and those local detention homes having teachers whose salaries were being funded by the Commonwealth on January 1, 1984, a program designed to educate and train the children detained in the homes. In addition, the Board shall supervise those programs of evaluation, education and training provided to school-age children by the Department of Health, the Department of Mental Health, Mental Retardation and Substance Abuse Services, the children's teaching hospital associated with the Medical College of Hampton Roads, the Medical College of Virginia Hospitals, and the University of Virginia Hospitals pursuant to the Board's standards and regulations as required by § 22.1-7.

The Board shall promulgate such rules and regulations as may be necessary to conform these programs with the applicable federal and state laws and regulations including, but not limited to, teacher-student ratios and special education requirements for ~~handicapped~~ children *with disabilities*. The education programs in the relevant detention homes and state agencies and institutions shall be approved by the Board and the Board shall prepare a budget for these educational programs which shall be solely supported by such general funds as are appropriated by the General Assembly for this purpose.

The Board of Education shall enter into contracts with the relevant state agency or institution or detention facility or the local school divisions in which the state agencies or institutions or the regional detention homes and the relevant local detention homes are located for the hiring and supervision of teachers.

In any case in which the Board enters into a contract with the relevant state agency or institution, the Department of Personnel and Training shall establish salary schedules for the teachers which are competitive with those in effect for the school divisions in which the agency or institution is located.

§ 22.1-213. Definitions.

As used in this article:

"~~Handicapped~~ Children *with disabilities*" means those persons (i) who are aged two to twenty-one, inclusive, having reached the age of two by the date specified in § 22.1-254, (ii) who are mentally retarded, physically ~~handicapped disabled~~, seriously emotionally disturbed, speech impaired, hearing impaired, visually impaired, multiple ~~handicapped disabled~~, other health impaired including autistic or who have a specific learning disability or who are otherwise ~~handicapped disabled~~ as defined by the Board of Education and (iii) who because of such impairments need special education.

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a ~~handicapped disabled~~ child to benefit from special education, including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

"Special education" means specially designed instruction at no cost to the parent, to meet the unique needs of a ~~handicapped disabled~~ child, including classroom instruction, home instruction, instruction provided in hospitals and institutions, instruction in physical education and instruction in vocational education.

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. The term does not include children who have learning problems which are primarily the result of visual, hearing or motor handicaps, of mental retardation, or of environmental, cultural or economic disadvantage.

§ 22.1-214. Board to prepare special education program for ~~handicapped~~ children *with disabilities*.

A. The Board of Education shall prepare and supervise the implementation by each school division of a program of special education designed to educate and train ~~handicapped~~ children *with disabilities*

between the ages defined in § 22.1-213 and may prepare and place in operation such program for such individuals of other ages. The program developed by the Board of Education shall be designed to ensure that all ~~handicapped~~ children *with disabilities* have available to them a free and appropriate education, including specially designed instruction to meet the unique needs of such children. The program shall require (i) that the hearing of each ~~handicapped disabled~~ child be tested prior to placement in a special education program and (ii) that a complete audiological assessment, including tests which will assess inner and middle ear functioning, be performed on each child who is hearing impaired or who fails the test required in (i) hereof. The school boards of the several school divisions, the Department for the Visually Handicapped, the Department for the Deaf and Hard-of-Hearing, the Department of Health and other state and local agencies which can or may be able to assist in providing educational and related services shall assist and cooperate with the Board of Education in the development of such program.

B. The Board of Education shall prescribe procedures to afford due process to ~~handicapped~~ children *with disabilities* and their parents or guardians and to school divisions in resolving disputes as to program placements, individualized education programs, tuition eligibility and other matters as defined in state or federal statutes or regulations.

C. The Board of Education may provide for final decisions to be made by a hearing officer. The parents and the school division shall have the right to be represented by legal counsel or other representative before such hearing officer without being in violation of the provisions of § 54.1-3904.

D. Any party aggrieved by the findings and decision made pursuant to the procedures prescribed pursuant to subsections B and C of this section may bring a civil action in the circuit court for the jurisdiction in which the school division is located. In any such action the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.

E. Whenever the Board of Education, in its discretion, determines that a school division fails to establish and maintain programs of free and appropriate public education which comply with regulations established by the Board, the Board may withhold all special education moneys from the school division and may use the payments which would have been available to such school division to provide special education, directly or by contract, to eligible ~~handicapped~~ children *with disabilities* in such manner as the Board considers appropriate.

F. The Board of Education shall supervise educational programs for ~~handicapped~~ children *with disabilities* by other public agencies and shall ensure that the identification, evaluation and placement of ~~handicapped~~ children *with disabilities* and youth in education programs by other public agencies, as appropriate, are consistent with the provisions of the Board of Education's special education regulations.

G. The Board of Education shall prescribe regulations to provide a range of assessment procedures for the evaluation of ~~handicapped~~ children *with disabilities*. These regulations shall include provision for parents to participate, if they so request, in the consideration of the assessment components to be used. However, such regulations shall not require any local school board to exceed the requirements of federal law or regulations for the identification and evaluation of ~~handicapped~~ children *with disabilities*.

§ 22.1-214. (Delayed effective date) Board to prepare special education program for children with disabilities.

A. The Board of Education shall prepare and supervise the implementation by each school division of a program of special education designed to educate and train ~~handicapped~~ children *with disabilities* between the ages defined in § 22.1-213 and may prepare and place in operation such program for such individuals of other ages. The program developed by the Board of Education shall be designed to ensure that all ~~handicapped~~ children *with disabilities* have available to them a free and appropriate education, including specially designed instruction to meet the unique needs of such children. The program shall require (i) that the hearing of each ~~handicapped disabled~~ child be tested prior to placement in a special education program and (ii) that a complete audiological assessment, including tests which will assess inner and middle ear functioning, be performed on each child who is hearing impaired or who fails the test required in (i) hereof. The school boards of the several school divisions, the Department for the Visually Handicapped, the Department for the Deaf and Hard-of-Hearing, the Department of Health and other state and local agencies which can or may be able to assist in providing educational and related services shall assist and cooperate with the Board of Education in the development of such program.

B. The Board of Education shall prescribe procedures to afford due process to ~~handicapped~~ children *with disabilities* and their parents or guardians and to school divisions in resolving disputes as to program placements, individualized education programs, tuition eligibility and other matters as defined in state or federal statutes or regulations.

C. The Board of Education may provide for final decisions to be made by a hearing officer. The parents and the school division shall have the right to be represented by legal counsel or other representative before such hearing officer without being in violation of the provisions of § 54.1-3904.

D. Any party aggrieved by the findings and decision made pursuant to the procedures prescribed pursuant to subsections B and C of this section may bring a civil action in the family court for the jurisdiction in which the school division is located. In any such action the court shall receive the records

of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.

E. Whenever the Board of Education, in its discretion, determines that a school division fails to establish and maintain programs of free and appropriate public education which comply with regulations established by the Board, the Board may withhold all special education moneys from the school division and may use the payments which would have been available to such school division to provide special education, directly or by contract, to eligible ~~handicapped~~ *disabled* children in such manner as the Board considers appropriate.

F. The Board of Education shall supervise educational programs for ~~handicapped~~ children *with disabilities* by other public agencies and shall ensure that the identification, evaluation and placement of ~~handicapped~~ children *with disabilities* and youth in education programs by other public agencies, as appropriate, are consistent with the provisions of the Board of Education's special education regulations.

G. The Board of Education shall prescribe regulations to provide a range of assessment procedures for the evaluation of ~~handicapped~~ *disabled* children. These regulations shall include provision for parents to participate, if they so request, in the consideration of the assessment components to be used. However, such regulations shall not require any local school board to exceed the requirements of federal law or regulations for the identification and evaluation of ~~handicapped~~ children *with disabilities*.

§ 22.1-215. School divisions to provide special education; plan to be submitted to Board.

Each school division shall provide free and appropriate education, including special education, for the ~~handicapped~~ children *with disabilities* residing within its jurisdiction in accordance with regulations of the Board of Education.

For the purposes of this section, "~~handicapped~~ children *with disabilities*, residing within its jurisdiction" shall include: (i) those individuals of school age identified as appropriate to be placed in public school programs, who are residing in a state institution operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services located within the school division, or (ii) those individuals of school age who are Virginia residents and are placed and living in a foster care home or child-caring institution or group home located within the school division and licensed under the provisions of Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 as result of being in the custody of a local department of social services or welfare or being privately placed, not solely for school purposes.

The Board of Education shall promulgate regulations to identify those children placed within facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services who are eligible to be appropriately placed in public school programs.

The cost of the education provided to children residing in the state institutions, who are appropriate to place within the public schools, shall remain the responsibility of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

The cost of the education provided to children who are not residents of the Commonwealth and are placed and living in a foster care home or child-caring institution or group home located within the school division and licensed under the provisions of Chapter 10 of Title 63.1 shall be billed to the sending agency or person by the school division as provided in subsection C of § 22.1-5. No school division shall refuse to educate any such child or charge tuition to any such child.

Each school division shall submit annually to the Board of Education by such date as the Board shall specify a plan acceptable to the Board for such education for the year following and a report indicating the extent to which the plan required by law for the preceding year has been implemented.

§ 22.1-216. Use of public or private facilities and personnel under contract for special education.

A school board may provide special education for ~~handicapped~~ children *with disabilities* either directly with its own facilities and personnel or under contract with another school division or divisions or any other public or private nonsectarian school, agency or institution approved by the Board of Education.

§ 22.1-218.1. Duty to process placements through the Interstate Compact on the Placement of Children.

In order to protect the interests of the Commonwealth and local governments and provide for the safety and welfare of ~~handicapped~~ children *with disabilities*, all placements of ~~handicapped~~ children *with disabilities* facilitated by a school division in an out-of-state special education facility shall be processed through the Interstate Compact on the Placement of Children as provided in Chapter 10.1 (§ 63.1-219.1 et seq.) of Title 63.1.

§ 22.1-220. Power of counties, cities and towns to appropriate and expend funds for education of children.

The governing body of any county, city or town is hereby authorized and empowered to appropriate and expend funds of the county, city or town in furtherance of the education of ~~handicapped~~ children *with disabilities*, residing in such county, city or town who attend Woodrow Wilson Rehabilitation Center or public or private, nonsectarian schools, whether within or without the county, city or town and whether within or without the Commonwealth.

§ 22.1-221. Transportation of children with disabilities attending public or private special education

programs.

A. Each ~~handicapped~~ *disabled* child enrolled in and attending a special education program provided by the school division pursuant to any of the provisions of § 22.1-216 or § 22.1-218 shall be entitled to transportation to and from such school or class at no cost if such transportation is necessary to enable such child to obtain the benefit of educational programs and opportunities.

B. A school board may, in lieu of providing transportation on an approved school bus, allot funds to pay the reasonable cost of special arrangement transportation. The Board of Education shall reimburse the school board sixty percent of such cost if funds therefor are available.

C. Costs for operating approved school buses while used exclusively for transporting ~~handicapped~~ children *with disabilities* shall be reimbursed according to the regulations promulgated by the Board of Education from such state funds as are appropriated for this purpose.

§ 22.1-254.1. Declaration of policy; requirements for home instruction of children.

A. When the requirements of this section have been satisfied, instruction of children by their parents in their home is an acceptable alternative form of education under the policy of the Commonwealth of Virginia. Any parent of any child who will have reached the fifth birthday on or before September 30 of any school year and who has not passed the eighteenth birthday may elect to provide home instruction in lieu of school attendance if he (i) holds a baccalaureate degree in any subject from an accredited institution of higher education; or (ii) is a teacher of qualifications prescribed by the Board of Education; or (iii) has enrolled the child or children in a correspondence course approved by the Superintendent of Public Instruction; or (iv) provides a program of study or curriculum which, in the judgment of the division superintendent, includes the standards of learning objectives adopted by the Board of Education for language arts and mathematics and provides evidence that the parent is able to provide an adequate education for the child.

B. Any parent who elects to provide home instruction in lieu of school attendance shall annually notify the division superintendent in August of his intention to so instruct the child and provide a description of the curriculum to be followed for the coming year and evidence of having met one of the criteria for providing home instruction as required by subsection A of this section. Any parent who moves into a school division after the school year has begun shall notify the division superintendent of his intention to provide home instruction as soon as practicable and shall comply with the requirements of this section within thirty days of such notice. The division superintendent shall notify the Superintendent of Public Instruction of the number of students in the school division receiving home instruction.

C. The parent who elects to provide home instruction shall provide the division superintendent by August 1 following the school year in which the child has received home instruction with either (i) evidence that the child has attained a composite score in or above the fourth stanine on a battery of achievement tests which have been approved by the Board of Education for use in the public schools or (ii) an evaluation or assessment which, in the judgment of the division superintendent, indicates that the child is achieving an adequate level of educational growth and progress.

In the event that evidence of progress as required in this subsection is not provided by the parent, the home instruction program for that child may be placed on probation for one year. Parents shall file with the division superintendent evidence of their ability to provide an adequate education for their child in compliance with subsection A of this section and a remediation plan for the probationary year which indicates their program is designed to address any educational deficiency. Upon acceptance of such evidence and plan by the division superintendent, the home instruction may continue for one probationary year. If the remediation plan and evidence are not accepted or the required evidence of progress is not provided by August 1 following the probationary year, home instruction shall cease and the parent shall make other arrangements for the education of the child which comply with § 22.1-254. The requirements of subsection C (i) shall not apply to children who are under the age of six as of September 30 of the school year.

D. For purposes of this section, "parent" means the biological parent or adoptive parent, guardian or other person having control or charge of a child.

Nothing in this section shall prohibit a pupil and his parents from obtaining an excuse from school attendance by reason of bona fide religious training or belief pursuant to § 22.1-257.

E. Any party aggrieved by a decision of the division superintendent may appeal his decision within thirty days to an independent hearing officer. The independent hearing officer shall be chosen from the list maintained by the Executive Secretary of the Supreme Court for hearing appeals of the placements of ~~handicapped~~ children *with disabilities*. The costs of the hearing shall be apportioned among the parties by the hearing officer in a manner consistent with his findings.

§ 32.1-69.1. Virginia Congenital Anomalies Reporting and Education System.

A. In order to collect data to evaluate the possible causes of birth defects, improve the diagnosis and treatment of birth defects and establish a mechanism for informing the parents of children identified as having birth defects and their physicians about the health resources available to aid such children, the Commissioner shall establish and maintain a Virginia Congenital Anomalies Reporting and Education System using data from birth certificates filed with the State Registrar of Vital Records and data

obtained from hospital medical records. The chief administrative officer of every hospital, as defined in § 32.1-123, shall make or cause to be made a report to the Commissioner of any person under two years of age diagnosed as having a congenital anomaly. This report shall include information on the parent's service in Vietnam, the duration of the service and possible exposure to Agent Orange through its development, testing or use. The Commissioner may appoint an advisory committee to assist in the design and implementation of this reporting and education system with representation from relevant groups including, but not limited to, physicians, geneticists, personnel of appropriate state agencies, ~~handicapped~~ persons *with disabilities* and the parents of ~~handicapped~~ children *with disabilities*.

B. With the assistance of the advisory committee, the Board shall promulgate such regulations as may be necessary to implement this reporting and education system. These regulations may include determinations of specific genetic disorders to be monitored, the scope of the information to be collected, appropriate mechanisms for follow-up, relationships between the reporting and education system and other agencies and mechanisms for review and evaluation of the activities of the system. The reporting and education system may collect the name, address, sex, race, and any other information, determined to be pertinent by the Board, regarding persons reported to have birth defects.

**2. That wherever the terms, "handicapped children," "handicapped child," "handicapped students," or "handicapped student" are used in the laws of Virginia, these terms shall be deemed to "children with disabilities," "child with disabilities," "disabled children," or "disabled child."**