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SENATE BILL NO. 1313

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on January 21, 2021)

(Patrons Prior to Substitute—Senators Mason, Stuart [SB 1099], and Peake [SB 1114])

A BILL 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.

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 Department of Education.*

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 6 of this subsection 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

60 social service agency, court service unit, or the Department of Juvenile Justice has referred a child and
61 family to a family assessment and planning team and that team has recommended the proper level of
62 treatment and services needed by that child and family and has determined the child's eligibility for
63 funding for services through the state pool of funds, then the community services board, the local school
64 division, local social services agency, court service unit, or Department of Juvenile Justice has met its
65 fiscal responsibility for that child for the services funded through the pool. However, the community
66 services board, the local school division, local social services agency, court service unit, or Department
67 of Juvenile Justice shall continue to be responsible for providing services identified in individual family
68 service plans that are within the agency's scope of responsibility and that are funded separately from the
69 state pool.

70 Further, in any instance that an individual 18 through 21 years of age, inclusive, who is eligible for
71 funding from the state pool and is properly defined as a school-aged child with disabilities pursuant to
72 § 22.1-213 is placed by a local social services agency that has custody across jurisdictional lines in a
73 group home in the Commonwealth and the individual's individualized education program (IEP), as
74 prepared by the placing jurisdiction, indicates that a private day school placement is the appropriate
75 educational program for such individual, the financial and legal responsibility for the individual's special
76 education services and IEP shall remain, in compliance with the provisions of federal law, Article 2
77 (§ 22.1-213) of Chapter 13 of Title 22.1, and Board of Education regulations, the responsibility of the
78 placing jurisdiction until the individual reaches the age of 21, inclusive, or is no longer eligible for
79 special education services. The financial and legal responsibility for such special education services shall
80 remain with the placing jurisdiction, unless the placing jurisdiction has transitioned all appropriate
81 services with the individual.

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

98 F. As used in this section, "transitional services" includes adequate staffing to meet the needs of the
99 children, training or professional development to support students with significant disabilities or
100 intensive support needs, an environment that is specific to the child, and individualized programming for
101 the child such as speech therapy, occupational therapy, behavioral health services, and applied behavior
102 analysis or other services necessary for such transition over the 12-month period as identified in the
103 child's individualized education program.

104 **§ 2.2-5212. Eligibility for state pool of funds.**

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

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

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

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

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

117 2. The child or youth has emotional or behavior problems, or both, and currently is in, or is at
118 imminent risk of entering, purchased residential care. In addition, the child or youth requires services or
119 resources that are beyond normal agency services or routine collaborative processes across agencies, and
120 requires coordinated services by at least two agencies.

121 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, 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 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. Work Group stakeholders shall include representatives of the Department of Education; the Office of Children's Services; at least three private special education day school service providers, including at least one director of a private special education day school; local school districts, including at least one local Special Education Director; local governments; licensed behavioral analyst service providers; and organizations engaged in advocacy for the autism community. The Work Group shall also include at least one parent of a child with an individualized education program currently enrolled in a private special education day program and may include up to two legislative members, including the legislative members of the Children's Services Act State Executive Council, with such legislative members requesting the Secretary of Education for an opportunity to participate. The Work Group's plan shall include details on how to administer the transferred funding so that it (i) ensures funds for services for students with the most severe disabilities who are at risk of being placed in an out-of-school placement or are in an out-of-school placement, (ii) is equally accessible to all school divisions, and (iii) minimizes the fiscal impact of the new funding policy on localities. This plan shall further include the development of a standardized reporting process, template, and reporting requirement for private special education day school tuition rates to ensure that tuition rates can be accurately compared across schools and over time. Such plan shall also offer a review and analysis of different models of delivering special education and private 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. This plan and further recommendations shall be submitted to the Chairmen of the House Committee on Appropriations and Senate Committee on Finance and Appropriations by November 1, 2021, and shall include draft legislation and amendments to the general appropriation act that would allow the General Assembly to accomplish the plan's recommendations.