

# Virginia Department of Education

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## FREQUENTLY ASKED QUESTIONS

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### 014-11 PARENTAL PLACEMENT OF A STUDENT WITH A DISABILITY IN A RESIDENTIAL FACILITY

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#### **When a parent unilaterally places a student with a disability in a residential facility, what is the school division's responsibility?**

The school division's responsibilities differ depending on the reason for the placement. If the parent places for educational reasons, then the student is treated as any other parentally placed private school student, and the parent is deemed to have waived the student's right to a free appropriate public education (FAPE). In such cases, the school division where the residential facility is located would be responsible for child find activities and for the provision of any available appropriate equitable services under an Individualized Services Plan. (8 VAC 20-81-150 C)

If the parent places for non-educational reasons, then the school division of the parent's residence continues to have FAPE responsibility. This conclusion is based on several rulings involving Virginia school divisions and the VDOE, including a due process decision and an Office for Civil Rights decision. The decision makers in these cases reasoned that in contrast to the parental educational placement, when students are placed in a residential facility due to non-educational and often emergency factors, such as extreme behavioral, mental health, medical or substance abuse crises, the parents have not made a decision to waive FAPE, as they do when they place for educational reasons. Therefore, when placed for non-educational reasons, the student maintains his or her FAPE entitlement. This mandate was memorialized in Virginia's 2002 special education regulations and incorporated in the current regulations at 8 VAC 20-81-30 E.3. (see also 8 VAC 20-81-30 B.9)

While it is important for a school division to understand that it maintains responsibility in these cases, it is equally important that it understand the scope of this responsibility. In short, the school division's responsibility is limited to providing the child's educational services, and because it retains this responsibility, the IEP team, not the residential facility, determines what is necessary to provide FAPE.

**Practice Tip:** To ensure that school divisions consider all relevant factors and appropriately document the situation, we recommend that a school division take the following steps:

1. When the school division learns that a student has been placed in a residential facility by a parent for non-educational reasons, it should promptly convene an IEP team meeting. The team's first inquiry should be whether the student's needs have changed such that he or she now requires a residential placement for *educational* reasons.
  - a. If the IEP team determines that a change in placement is appropriate for educational reasons, then the IEP team amends the child's IEP to reflect that change. In cases where private placement is determined appropriate, school divisions should secure funding through CSA (Comprehensive Services Act) for the private educational services in the IEP.

- b. If the IEP team determines that its placement remains educationally appropriate, the IEP should be amended to state that the placement remains appropriate; however, it is functionally unavailable because the child is currently at a residential facility for non-educational reasons. The IEP team then proceeds to determine how it will deliver the student's FAPE (special education and related services).<sup>[1](#)</sup>
  - c. While some facilities provide "scholarships" to students who have been placed for non-educational reasons, the facility's provision of a "scholarship" does not diminish or eliminate the school division's FAPE-responsibility for the child.
  - d. The school division may elect to provide the services through an itinerant teacher, by contracting with the school division where the facility is located, by purchasing the appropriate educational services from the facility, or by some other means.
2. The IEP should also be amended to reflect:
    - a. The school division is providing educational services in the new setting as a result of the functional unavailability of the previous placement, and that, when the child returns to the LEA, he or she will return to the previous placement unless the IEP team determines otherwise.
    - b. The school division is sharing the student's present levels of performance information, goals and other pertinent IEP information to assist the private facility in understanding the child's educational needs.<sup>[2](#)</sup>
    - c. The IEP team's decision about the level and nature of services, as well as the determination of how these services are to be provided through an itinerant teacher, by contracting with the locality where the facility is located, or by purchasing the appropriate educational services from the facility, or by some other means.
  3. Finally, school divisions may wish to talk to parents about options that may be available for addressing the student's medical and/or behavioral issues through the CSA process, since parents may be unaware of the availability of these resources. If local CPMT policies do not allow parent referrals to the FAPT, the school division needs to consider referring the child/family to the FAPT.

<sup>[1](#)</sup> Free appropriate public education means special education and related services. 34 CFR 300.17; 8 VAC 20-81-10.

<sup>[2](#)</sup> Of course, this assumes that the school division has been authorized by the parent to share this information with the private facility.

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