

Private Special Education Concerns Related to the 2017 Virginia General Assembly Study to Manage the Quality and Costs of Private Day Educational Placements Funded Through the Children's Services Act

Report of the VAISEF Special Education Advisory Group
September 12, 2017

Executive Summary

The final version of the budget adopted by the 2017 Virginia General Assembly contained language directing the staff of the appropriate House Appropriations and Senate Finance subcommittees to facilitate a work group to “examine the options and determine the actions necessary to better manage the quality and costs of private day educational programs currently funded through the Children's Services Act.” This effort is being conducted under the oversight of the General Assembly's Joint Subcommittee for Health and Human Resources Oversight. As part of this study, the work group is charged with considering several options, including the following:

- Amending the CSA to transfer the state pool funding for students with disabilities in private day educational programs to the VDOE.

This concept was consistently opposed by a 2016 work group of stakeholders authorized by the General Assembly through budget language. However, the CSA State Executive Committee overruled that opposition and moved this option forward in the final report submitted to the General Assembly in the fall of 2016. The main opposition cited for this concept included:

- Potential loss of “sum-sufficiency” of these special education funds once they would be transferred to VDOE. This aspect of special education funding (as part of CSA) could potentially be shifted to local governments, having a potential chilling effect on special education services needed by this population.
- Beginning to carve out specific services from the CSA continuum will eventually lead to the dissolution of the CSA program, a unique and collaborative multi-disciplinary process to serve children and at-risk families, which is often viewed as a model service delivery system around the country.
- Many local school divisions do not want this responsibility, nor do they have the personnel, programmatic or physical infrastructure in place to effectively carry out this significantly increased state mandate, even with a shift in special education funds from CSA to VDOE.

In response to this new work group's ongoing study, the Virginia Association of Independent Specialized Education Facilities (VAISEF) created a Special Education Advisory Group to conduct its own analysis of the issue and make recommendations. A summary of their findings and recommendations follow.

VAISEF Findings:

- **The General Assembly decision 25 years ago to provide sum-sufficient funding for private day school placements was visionary.**
 - It is important that today's legislators remember their predecessors' visionary intent and purpose of the Children's Services Act — “to create a collaborative system of services and funding that is child-centered, family-focused and community-based when addressing the strengths and needs of troubled and at-risk youths and their families in the Commonwealth.”
 - Any shifting special education funding from the CSA to VDOE that would result in repealing sum-sufficient funding for private day placements completely guts the intent and purpose of the CSA, resulting in more children with disabilities not receiving FAPE, more children with disabilities being suspended or expelled from public school, and an increase in litigation.
 - Special education funding is a significant portion of the overall CSA budget. Carving out and transferring this funding to VDOE for use by public schools could begin the process of dismantling the very structure of CSA. The current CSA collaborative and multi-disciplinary structure would be lost, much to the detriment of those families who so desperately need the services.
- **Much time is spent expressing frustration concerning the costs of special education services, but there is not enough being done to show the positive outcomes resulting from that investment.**
 - VAISEF enthusiastically endorses the 2016 work group recommendation on gathering appropriate and evidenced-based outcome measures to be able to show the results of private special education as compared to similar services provided in public school settings.
 - In addition, it is recommended that Virginia review studies conducted in other states, such as Arizona, Massachusetts and New Jersey that show the cost effectiveness of providing special education services in the private setting versus the public setting.
- **Virginia's Regulations Governing Special Education Programs (8VAC20-81) already provide the tools necessary to manage the quality and costs of private day placements.**
 - VDOE has the authority to review local school jurisdictions' justification for placements and assist them with planning and implementing any necessary corrective actions. If a local school jurisdiction has placed a child in a private day school and does not believe the child should remain at that placement, they have the right to a hearing on whether the child should remain in that placement.

- **Private special education schools save Virginia money because they are staffed with trained professionals who are able to educate students who might otherwise ultimately be expelled from public school.**
 - Private day schools provide essential services to localities that cannot provide it themselves. For less populated school districts, it is nearly impossible to have a classroom to meet the needs and respond to the behaviors of the populations we serve. In a public school, these students may be more likely to be suspended or expelled for such behavior, greatly diminishing their chances to have the potential to eventually live independent lives.
- **Private non-profit special education schools offset costs with private philanthropy funding.**
 - Our non-profit private schools make an additional investment in the services they provide with significant private philanthropy funding, over and above what the CSA pays for these services. Public schools do not have the same access to these types of funds to augment these types of services. With their budgets already stretched thin, it is doubtful that public schools could provide a similar level of quality from the amount “saved” by not spending CSA dollars in private day placements.
- **Virginia’s current funding structure for providing an appropriate education to children with disabilities is a model that will be followed by other states as a result of the United States Supreme Court’s decision in *Endrew F. v. Douglas County*.**
 - As a result of this holding, public schools around the country that previously relied upon a lower standard will now be in a position of having to truly educate their students with disabilities or find a private day school that is capable of doing so. Because other states do not have an adequate funding structure in place to ensure compliance with this higher standard, they are ultimately going to look at Virginia as a model of how to follow federal law and provide FAPE to a child who is unable to receive that right in a public school setting.
- **Decreasing funding for private educational placements will result in increased litigation.**
 - If the funding from the state is significantly reduced because sum sufficiency is lost, a majority of the jurisdictions will not have the resources necessary to adhere to federal law and place a student in a private day school to receive FAPE. More parents will pursue their right to seek a decision on placement in the federal or state courts if the administrative due process hearing does not rule in their favor.
 - Anything that disincentivizes placements in private day school settings increases the likelihood of parents/guardians making unilateral placements without the input and benefit of the CSA process; and pursuing litigation against local school jurisdictions for retroactive payment of those services.

- Failure of jurisdictions to appropriately place a student with special needs risks a Department of Justice comprehensive investigation of special education services and failure to provide FAPE to its students.
- **More study and analysis must be given to understanding what is driving costs and placements in private special education day schools.**
 - Much attention and concern has been directed at the increase in costs and placements in private special education day schools over the last few years. There has been an increase in the number of children with significant special needs, especially in the case of autism, in recent years. This has increased the need for placements outside of the already overtaxed public school system. While some school divisions have developed innovative approaches to serving this population and should have the ability to build on those efforts, many other school divisions (especially in rural areas) simply would not have the physical, programmatic or personnel infrastructure available to replicate what is being done at the private school level, even with the proposed shift in CSA funding.
- **Efforts to bring cost and decision-making into “alignment” at the local level must be considered carefully to avoid decisions being made solely for financial reasons.**
 - There has been considerable discussion concerning cost and decision-making “alignment” into the CSA at the local level. One of the biggest criticisms heard has been the idea that IEP decisions are made on special education placements without input from CSA, who then must “write the check” to pay for the services. It is critically important to remember that making placement decisions based upon cost is unlawful. Moreover, to do so loses sight of what is in the best interest of the child. Federal law speaks clearly on this issue and the sum-sufficiency provisions of CSA were established for these very reasons.
- **More thorough understanding must be gained by decision-makers on the true nature and scope of private special education services.**
 - We are concerned that decision-makers may not have a full understanding of the nature and scope of the special education services provided in the private sector. A greater understanding must be gained of the difference between trying to serve these same children in the public setting, versus the specialized care and education that is given by private educators trained to teach these children and schools established and devoted to the sole mission of serving these students and their families.
- **The future of the CSA should be determined through a comprehensive study conducted by JLARC.**
 - The proposed shift of special education funding from the CSA to the VDOE is a decision that could impact the very core mission and future existence of the CSA. The CSA has served the Commonwealth well over nearly a quarter of a century and is unique across the country. The future of such a system merits a comprehensive JLARC level study and VAISEF strongly recommends such a study be undertaken.