

## **Excerpts from Chapter 781 (FY 2008-2010 Appropriation Act) Pertaining to the Education of Children in Foster Care**

### **Item 140. C. 26. Foster Children Education Payments**

a. An additional state payment is provided from the Lottery Proceeds Fund for the prior year's local operations costs, as determined by the Department of Education, for each pupil of school age as defined in § 22.1-1, Code of Virginia, not a resident of the school division providing his education (a) who has been placed in foster care or other custodial care within the geographical boundaries of such school division by a Virginia agency, whether state or local, which is authorized under the laws of this Commonwealth to place children; (b) who has been placed in an orphanage or children's home which exercises legal guardianship rights; or (c) who is a resident of Virginia and has been placed, not solely for school purposes, in a child-caring institution or group home.

b. This appropriation provides \$11,566,251 the first year and \$12,614,070 the second year from the Lottery Proceeds Fund to support children attending public school who have been placed in foster care or other such custodial care across jurisdictional lines, as provided by subsections A and B of § 22.1-101.1, Code of Virginia. To the extent these funds are not adequate to cover the full costs specified therein, the department is authorized to expend unobligated balances in this Item for this support.

## **Excerpts from the *Code of Virginia* Pertaining to the Education of Children in Foster Care**

### **§ 16.1-228. Definitions.**

When used in this chapter, unless the context otherwise requires:

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § [18.2-248](#);

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

3. Whose parents or other person responsible for his care abandons such child;
4. Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law;
5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian, or other person standing in loco parentis; or
6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § [55-79.2](#), with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § [9.1-902](#).

If a civil proceeding under this chapter is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § [16.1-283](#) and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means the place of residence of any natural person in which a child resides as a member of the household and in which he has been placed for the purposes of adoption or in which he has been legally adopted by another member of the household.

"Adult" means a person 18 years of age or older.

"Ancillary crime" or "ancillary charge" means any delinquent act committed by a juvenile as a part of the same act or transaction as, or which constitutes a part of a common scheme or plan with, a delinquent act which would be a felony if committed by an adult.

"Boot camp" means a short term secure or nonsecure juvenile residential facility with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline, and no less than six months of intensive aftercare.

"Child," "juvenile," or "minor" means a person less than 18 years of age.

"Child in need of services" means (i) a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14 whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of another person; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

However, to find that a child falls within these provisions, (i) the conduct complained of must present a clear and substantial danger to the child's life or health or to the life or health of another person, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success, and (iii) the school system has provided documentation that it has complied with the provisions of § [22.1-258](#); or

2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or placement authority, remains away from or deserts or abandons his family or lawful custodian on more than one occasion or escapes or remains away without proper authority from a residential care facility in which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § [63.2-100](#).

"The court" or the "juvenile court" or the "juvenile and domestic relations court" means the juvenile and domestic relations district court of each county or city.

"Delinquent act" means (i) an act designated a crime under the law of this Commonwealth, or an ordinance of any city, county, town or service district, or under federal law, (ii) a violation of § [18.2-308.7](#), or (iii) a violation of a court order as provided for in § [16.1-292](#), but shall not include an act other than a violation of § [18.2-308.7](#), which is otherwise lawful, but is designated a crime only if committed by a child. For purposes of §§ [16.1-241](#) and [16.1-278.9](#), the term shall include a refusal to take a blood or breath test in violation of § [18.2-268.2](#) or a similar ordinance of any county, city or town.

"Delinquent child" means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his 18th birthday, except where the jurisdiction of the juvenile court has been terminated under the provisions of § [16.1-269.6](#).

"Department" means the Department of Juvenile Justice and "Director" means the administrative head in charge thereof or such of his assistants and subordinates as are designated by him to discharge the duties imposed upon him under this law.

"Family abuse" means any act involving violence, force, or threat including, but not limited to, any forceful detention, which results in bodily injury or places one in reasonable apprehension of

bodily injury and which is committed by a person against such person's family or household member.

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § [63.2-100](#) or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board pursuant to § [16.1-293](#).

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older and who has been committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who was in foster care on his 18th birthday and has not yet reached the age of 21 years. Such services shall include counseling, education, housing, employment, and money management skills development and access to essential documents and other appropriate services to help children or persons prepare for self-sufficiency.

"Intake officer" means a juvenile probation officer appointed as such pursuant to the authority of this chapter.

"Jail" or "other facility designed for the detention of adults" means a local or regional correctional facility as defined in § [53.1-1](#), except those facilities utilized on a temporary basis as a court holding cell for a child incident to a court hearing or as a temporary lock-up room or ward incident to the transfer of a child to a juvenile facility.

"The judge" means the judge or the substitute judge of the juvenile and domestic relations district court of each county or city.

"This law" or "the law" means the Juvenile and Domestic Relations District Court Law embraced in this chapter.

"Legal custody" means (i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § [20-107.2](#).

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ [63.2-900](#) and [63.2-908](#) with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § [16.1-251](#) or [63.2-1517](#). A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

"Residual parental rights and responsibilities" means all rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including but not limited to the right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility for support.

"Secure facility" or "detention home" means a local, regional or state public or private locked residential facility that has construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody.

"Shelter care" means the temporary care of children in physically unrestricting facilities.

"State Board" means the State Board of Juvenile Justice.

"Status offender" means a child who commits an act prohibited by law which would not be criminal if committed by an adult.

"Status offense" means an act prohibited by law which would not be an offense if committed by an adult.

"Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of § [16.1-269.1](#) when committed by a juvenile 14 years of age or older.

(Code 1950, § 16.1-141; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1974, cc. 44, 45; 1977, c. 559; 1978, c. 605; 1979, c. 15; 1981, c. 491; 1984, c. 631; 1985, c. 260; 1986, cc. 281, 308; 1987, c. 632; 1988, c. 794; 1990, cc. 704, 769, 842; 1991, c. 534; 1992, cc. 742, 830, 886; 1993, cc. 435, 467, 494; 1994, cc. 859, 865, 949; 1996, cc. 755, 914; 1999, cc. 453, 665, 697, 721; 2002, cc. 810, 818; 2003, cc. 538, 547, 835; 2004, cc. 245, 753; 2006, c. 868; 2008, cc. 475, 483.)

**§ 22.1-3.4. Enrollment of certain children placed in foster care.**

June 12, 2009

A. Whenever a student has been placed in foster care by a local social services agency and the placing social services agency is unable to produce any of the documents required for enrollment pursuant to § [22.1-3.1](#), [22.1-270](#), or [22.1-271.2](#), the student shall immediately be enrolled; however, the person enrolling the student shall provide a written statement that, to the best of his knowledge, sets forth (i) the student's age (ii) compliance with the requirements of § [22.1-3.2](#), and (iii) that the student is in good health and is free from communicable or contagious disease.

B. The sending and receiving school divisions shall cooperate in facilitating the enrollment of any child placed in foster care across jurisdictional lines for the purpose of enhancing continuity of instruction. The sending school division and the receiving school division may agree to allow the child to continue to attend the school in which he was enrolled prior to the most recent foster care placement, upon the agreement of the placing social services agency that such attendance is in the best interest of the child.

C. In the event the student is allowed to continue to attend the school in which he was enrolled prior to the most recent foster care placement, the receiving school division shall be accorded foster children education payments pursuant to § [22.1-101.1](#); further, the receiving school division may enter into financial arrangements with the sending school division pursuant to subsection C of § [22.1-5](#). Under no circumstances shall a child placed in foster care be charged tuition regardless of whether such child is attending the school in which he was enrolled prior to the most recent foster care placement or attending a school in the receiving school division.

D. For the purposes of subsections A, B, and C:

"A child or student placed in foster care" means a pupil who is the subject of a foster care placement through an entrustment or commitment of such child to the local social services board or licensed child-placing agency pursuant to clause (ii) of the definition of "foster care placement" as set forth in § [63.2-100](#).

For the purposes of this section:

"Receiving school division" means the school division in which the residence of the student's foster care placement is located.

"Sending school division" means the school division in which the student last attended school.

E. Notwithstanding the provisions of subsections A, B, and C or § [22.1-3](#) or [22.1-5](#), no person of school age who is the subject of a foster care placement, as such term is defined in § [63.2-100](#), shall be charged tuition.

(2005, c. 343.)

**§ 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 child with disabilities and who is not a resident of such school division under the following conditions:

June 12, 2009

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 17 (§ [63.2-1700](#) et seq.) of Title 63.2 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 child with disabilities who is not a resident of such school division under the following conditions:

1. When the 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 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 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 17 (§ [63.2-1700](#) et seq.) of Title 63.2 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 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 17 (§ [63.2-1700](#) et seq.) of Title 63.2 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 Chapters 10 (§ [63.2-1000](#) et seq.) and 11 (§ [63.2-1100](#) et seq.) of Title 63.2. 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.

(1988, c. 101; 1992, cc. 837, 880; 1994, c. 854.)

**§ 63.2-100. (Effective October 1, 2002) Definitions.**

As used in this title, unless the context requires a different meaning:

"Abused or neglected child" means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § [18.2-248](#);
2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child, who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit the provisions of § [16.1-278.4](#);
3. Whose parents or other person responsible for his care abandons such child;
4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law;
5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis; or

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § [55-79.2](#), with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § [9.1-902](#).

If a civil proceeding under this title is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § [16.1-283](#) and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

"Adult day care center" means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more aged, infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage. Included in this definition are any two or more places, establishments or institutions owned, operated or controlled by a single entity and providing such supplementary care and protection to a combined total of four or more aged, infirm or disabled adults.

"Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults.

"Adult neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being.

"Adult protective services" means services provided by the local department that are necessary to protect an adult from abuse, neglect or exploitation.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least a moderate level of assistance with activities of daily living.

"Assisted living facility" means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § [22.1-214](#), when such facility is licensed by the Department as a children's residential facility under Chapter 17 (§ [63.2-1700](#) et seq.) of this title, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

"Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive these benefits except for excess income.

"Birth family" or "birth sibling" means the child's biological family or biological sibling.

"Birth parent" means the child's biological parent and, for purposes of adoptive placement, means parent(s) by previous adoption.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

"Child day center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Child-placing agency" means any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § [63.2-1819](#) or a local board that places children in foster homes or adoptive homes pursuant to §§ [63.2-900](#), [63.2-903](#), and [63.2-1221](#). Officers,

employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child-protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or collect child support, or child and spousal support.

"Child-welfare agency" means a child day center, child-placing agency, children's residential facility, family day home, family day system, or independent foster home.

"Children's residential facility" means any facility, child-caring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for full-time care, maintenance, protection and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care. Children's residential facility shall not include:

1. A licensed or accredited educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;
2. An establishment required to be licensed as a summer camp by § [35.1-18](#); and
3. A licensed or accredited hospital legally maintained as such.

"Commissioner" means the Commissioner of the Department, his designee or authorized representative.

"Department" means the State Department of Social Services.

"Department of Health and Human Services" means the Department of Health and Human Services of the United States government or any department or agency thereof that may hereafter be designated as the agency to administer the Social Security Act, as amended.

"Disposable income" means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

"Energy assistance" means benefits to assist low-income households with their home heating and cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance with § [63.2-805](#), or provided under the Virginia Energy Assistance Program established pursuant to the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving six through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the community policy and management team where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"General relief" means money payments and other forms of relief made to those persons mentioned in § [63.2-802](#) in accordance with the regulations of the Board and reimbursable in accordance with § [63.2-401](#).

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § [16.1-278.2](#), subdivision 6 of § [16.1-278.4](#), or subdivision A 13 of § [16.1-278.8](#).

"Independent living" means a planned program of services designed to assist a child aged 16 and over and persons who are former foster care children between the ages of 18 and 21 in transitioning from foster care to self sufficiency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who was in foster care on his 18th birthday and has not yet reached the age of 21 years. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Kinship care" means the full-time care, nurturing, and protection of children by relatives.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Local director" means the director or his designated representative of the local department of the city or county.

"Merit system plan" means those regulations adopted by the Board in the development and operation of a system of personnel administration meeting requirements of the federal Office of Personnel Management.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care; and general relief.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for a home and community-based waiver program, including an

independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of assisted living facilities, or any hospital that has contracted with the Department of Medical Assistance Services to perform nursing facility pre-admission screenings.

"Registered family day home" means any family day home that has met the standards for voluntary registration for such homes pursuant to regulations adopted by the Board and that has obtained a certificate of registration from the Commissioner.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. The definition of "residential living care" includes the services provided by independent living facilities that voluntarily become licensed.

"Social services" means foster care, adoption, adoption assistance, adult services, adult protective services, child-protective services, domestic violence services, or any other services program implemented in accordance with regulations adopted by the Board.

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § [2.2-4001](#).

"Temporary Assistance for Needy Families" or "TANF" means the program administered by the Department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the Temporary Assistance for Needy Families program for families in which both natural or adoptive parents of a child reside in the home and neither parent is exempt from the Virginia Initiative for Employment Not Welfare (VIEW) participation under § [63.2-609](#).

"Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social Security Act, as amended, and administered by the Department through which foster care is provided on behalf of qualifying children.

(Code 1950, §§ 63-101, 63-222, 63-232, 63-347, 63-351; 1954, cc. 259, 290, 489; 1956, cc. 300, 641; 1960, cc. 331, 390; 1962, cc. 297, 603; 1966, c. 423; 1968, cc. 578, 585, §§ 63.1-87, 63.1-172, 63.1-195, 63.1-220; 1970, c. 721; 1972, cc. 73, 540, 718; 1973, c. 227; 1974, cc. 44, 45, 413, 415, § 63.1-250; 1975, cc. 287, 299, 311, 341, 437, 507, 524, 528, 596, §§ 63.1-238.1, 63.1-248.2; 1976, cc. 357, 649; 1977, cc. 105, 241, 532, 547, 559, 567, 634, 645, §§ 63.1-55.2, 63.1-55.8; 1978, cc. 536, 730, 749, 750; 1979, c. 483; 1980, cc. 40, 284; 1981, cc. 75, 123, 359; 1983, c. 66; 1984, cc. 74, 76, 498, 535, 781; 1985, cc. 17, 285, 384, 488, 518; 1986, cc. 80, 281, 308, 437, 594; 1987, cc. 627, 650, 681; 1988, c. 906; 1989, cc. 307, 647; 1990, c. 760; 1991, cc. 534, 595, 651, 694; 1992 c. 356, § 63.1-194.1; 1993, cc. 730, 742, 957, 993, § 63.1-196.001; 1994, cc. 107, 837, 865, 940; 1995, cc. 401, 520, 649, 772, 826; 1997, cc. 796, 895; 1998, cc. 115, 126, 397, 552, 727, 850; 1999, c. 454; 2000, cc. 61, 290, 500, 830, 845, 1058, § 63.1-219.7; 2002, c. 747; 2003, c. 467; 2004, cc. 70, 196, 245, 753, 814; 2006, c. 868; 2007, cc. 479, 597; 2008, cc. 475, 483.)

**§ 63.2-900. Accepting children for placement in homes, facilities, etc., by local boards.**

A. Pursuant to § [63.2-319](#), a local board shall have the right to accept for placement in suitable family homes, children's residential facilities or independent living arrangements, subject to the supervision of the Commissioner and in accordance with regulations adopted by the Board, such persons under 18 years of age as may be entrusted to it by the parent, parents or guardian, committed by any court of competent jurisdiction, or placed through an agreement between it and the parent, parents or guardians where legal custody remains with the parent, parents, or guardians.

The Board shall adopt regulations for the provision of foster care services by local boards, which shall be directed toward the prevention of unnecessary foster care placements and towards the immediate care of and permanent planning for children in the custody of or placed by local boards and that shall achieve, as quickly as practicable, permanent placements for such children. The Board shall also approve in foster care policy the language of the agreement required in § [63.2-902](#). The agreement shall include at a minimum a Code of Ethics and mutual responsibilities for all parties to the agreement. The local board shall first seek out kinship care options to keep children out of foster care and as a placement option for those children in foster care, if it is in the child's best interest, pursuant to § [63.2-900.1](#).

The local board shall, in accordance with the regulations adopted by the Board and in accordance with the entrustment agreement or other order by which such person is entrusted or committed to its care, have custody and control of the person so entrusted or committed to it until he is lawfully discharged, has been adopted or has attained his majority.

Whenever a local board places a child where legal custody remains with the parent, parents or guardians, the board shall enter into an agreement with the parent, parents or guardians. The agreement shall specify the responsibilities of each for the care and control of the child.

The local board shall have authority to place for adoption, and to consent to the adoption of, any child properly committed or entrusted to its care when the order of commitment or entrustment agreement between the parent or parents and the agency provides for the termination of all parental rights and responsibilities with respect to the child for the purpose of placing and consenting to the adoption of the child.

The local board shall also have the right to accept temporary custody of any person under 18 years of age taken into custody pursuant to subdivision B of § [16.1-246](#) or [63.2-1517](#). The placement of a child in a foster home, whether within or without the Commonwealth, shall not be for the purpose of adoption unless the placement agreement between the foster parents and the local board specifically so stipulates.

B. Prior to the approval of any family for placement of a child, a home study shall be completed as prescribed in regulations adopted by the Board.

C. Prior to placing any such child in any foster home or children's residential facility, the local board shall enter into a written agreement with the foster parents, pursuant to § [63.2-902](#), or other appropriate custodian setting forth therein the conditions under which the child is so placed pursuant to § [63.2-902](#). However, if a child is placed in a children's residential facility licensed as a temporary emergency shelter, and a verbal agreement for placement is secured within eight

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hours of the child's arrival at the facility, the written agreement does not need to be entered into prior to placement, but shall be completed and signed by the local board and the facility representative within 24 hours of the child's arrival or by the end of the next business day after the child's arrival.

D. Within 72 hours of placing a child of school age in a foster care placement, as defined in § [63.2-100](#), the local social services agency making such placement shall, in writing, (i) notify the principal of the school in which the student is to be enrolled and the superintendent of the relevant school division or his designee of such placement, and (ii) inform the principal of the status of the parental rights.

If the documents required for enrollment of the foster child pursuant to § [22.1-3.1](#), [22.1-270](#) or [22.1-271.2](#), are not immediately available upon taking the child into custody, the placing social services agency shall obtain and produce or otherwise ensure compliance with such requirements for the foster child within 30 days after the child's enrollment.

(Code 1950, § 63-73; 1952, c. 409; 1960, c. 331; 1968, cc. 466, 578, § 63.1-56; 1975, cc. 248, 406; 1977, cc. 559, 562, 634, 645; 1978, c. 734; 1984, c. 734; 1986, c. 281; 1991, c. 34; 1994, c. 865; 1999, c. 889; 2002, c. 747; 2004, c. 70; 2005, cc. 343, 653; 2006, c. 360; 2008, cc. 241, 308.)

#### **§ 63.2-908. Permanent foster care placement.**

A. Permanent foster care placement means the place in which a child has been placed pursuant to the provisions of §§ [63.2-900](#), [63.2-903](#) and this section with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § [16.1-251](#) or § [63.2-1517](#). A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

B. A local department or a licensed child-placing agency shall have authority pursuant to a court order to place a child over whom it has legal custody in a permanent foster care placement where the child shall remain until attaining majority or thereafter, until the age of twenty-one years, if such placement is a requisite to providing funds for the care of such child, so long as the child is a participant in an educational, treatment or training program approved pursuant to regulations of the Board. No such child shall be removed from the physical custody of the foster parents in the permanent care placement except upon order of the court or pursuant to § [16.1-251](#) or § [63.2-1517](#). The department or agency so placing a child shall retain legal custody of the child. A court shall not order that a child be placed in permanent foster care unless it finds that (i) diligent efforts have been made by the local department to place the child with his natural parents and such efforts have been unsuccessful, and (ii) diligent efforts have been made by the local department to place the child for adoption and such efforts have been unsuccessful or adoption is not a reasonable alternative for a long-term placement for the child under the circumstances.

C. Unless modified by the court order, the foster parent in the permanent foster care placement shall have the authority to consent to surgery, entrance into the armed services, marriage,

application for a motor vehicle and driver's license, application for admission into college and any other such activities that require parental consent and shall have the responsibility for informing the placing department or agency of any such actions.

D. Any child placed in a permanent foster care placement by a local department shall, with the cooperation of the foster parents with whom the permanent foster care placement has been made, receive the same services and benefits as any other child in foster care pursuant to §§ [63.2-319](#), [63.2-900](#) and [63.2-903](#) and any other applicable provisions of law.

E. The Board shall establish minimum standards for the utilization, supervision and evaluation of permanent foster care placements.

F. The rate of payment for permanent foster care placements by a local department shall be in accordance with standards and rates established by the Board. The rate of payment for such placements by other licensed child-placing agencies shall be in accordance with standards and rates established by the individual agency.

G. If the child has a continuing involvement with his natural parents, the natural parents should be involved in the planning for a permanent placement. The court order placing the child in a permanent placement shall include a specification of the nature and frequency of visiting arrangements with the natural parents.

H. Any change in the placement of a child in permanent foster care or the responsibilities of the foster parents for that child shall be made only by order of the court which ordered the placement pursuant to a petition filed by the foster parents, local department, licensed child-placing agency or other appropriate party.

(1977, c. 559, § 63.1-206.1; 1978, c. 671; 1984, c. 70; 2002, c. 747.)

## Sections of Board of Education Regulations Referenced in this Memorandum

### **8VAC20-80-110. State funds for local school divisions.**

A. State funds to assist local school divisions with the cost of providing special education and related services for children with disabilities shall be provided through the Virginia Department of Education's appropriation as provided in this section.

B. Children with disabilities enrolled in programs operated by a local school board:

1. Public school programs. In addition to the funds received for each pupil from state basic aid, local school divisions shall receive payment to support the state share of the number of special education teachers and paraprofessionals required by the Standards of Quality (§ [22.1-253.13:1](#) et seq. of the Code of Virginia).

2. Homebound instruction. Subject to availability, local school divisions shall receive funds to assist with the cost of educating students who are temporarily confined for medical or psychological reasons. Such students may continue to be counted in the average daily membership (ADM) while receiving homebound instruction. In addition, costs will be reimbursed based on the composite index, the hourly rate paid to homebound teachers by the local educational agency, and the number of instructional hours delivered. Reimbursement will be made in the year following delivery of instruction.

3. Transportation. Local school divisions that transport children with disabilities, aged two to 21, inclusive, on approved school buses or on public transit buses to public schools or approved private schools, pursuant to their IEPs, are reimbursed in accordance with pupil transportation regulations ([8VAC20-70-10](#) et seq.).

C. Children with disabilities enrolled in regional special education programs:

1. Reimbursement is available for a portion of the tuition costs based on the local composite index computed as specified by the Virginia Appropriation Act. Rates will be approved following procedures established by the Virginia Board of Education. Regional special education programs operated by a joint board and the Woodrow Wilson Rehabilitation Center are eligible to receive reimbursement. Reimbursement is available to programs offering services to children who have one or more of the following disabilities:

- a. Severe disability;
- b. Emotional disturbance;
- c. Autism;
- d. Multiple disabilities;
- e. Deafness;
- f. Hearing impairment, including deafness;
- g. Deaf-blindness; or

h. Traumatic brain injury.

2. Such reimbursement shall be in lieu of the state per pupil basic aid otherwise available for each child.

D. Children with disabilities receiving special education and related services in regional or local jails. Local school divisions will be reimbursed for the instructional costs of providing required special education and related services to children with disabilities in regional or local jails.

E. Funds under the Comprehensive Services Act for At-Risk Youth and Families.

1. Funds are available under the Comprehensive Services Act to support the cost of:

a. Special education and related services for children with disabilities whose IEPs specify private day or private residential placement;

b. Certain nonspecial education services for children with disabilities whose Comprehensive Services Act team identifies that such services are necessary to maintain the child in a less restrictive special education setting, in accordance with Comprehensive Services Act requirements; and

c. Special education and related services for children with disabilities who are placed by a Comprehensive Services Act team in a private residential placement for noneducational reasons.

2. Local school divisions shall be responsible for payment of transportation expenses associated with implementing the child's IEP.

3. Comprehensive Services Act reimbursement requirements shall be applicable.

4. When a parent unilaterally places a child with a disability in an approved private nonsectarian school for children with disabilities, the local school division shall not be responsible for the cost of the placement. If a hearing officer or court determines that such placement, rather than the IEP proposed by the local school division, is appropriate and no appeal is perfected from that decision, the local school division is responsible for placement and funds are available under the Comprehensive Services Act to support the costs.

F. Reimbursement for educating children with disabilities receiving foster care or noncustodial foster care across geographic boundaries and educated in the local school division shall be made in accordance with procedures established by the Virginia Department of Education.

Statutory Authority

§§ [22.1-16](#) and [22.1-214](#) of the Code of Virginia and the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

Historical Notes

Derived from VR270-01-0007 § 4.2, eff. August 21, 1986; amended, Virginia Register Volume 6, Issue 11, eff. July 1, 1990; Volume 7, Issue 20, eff. July 31, 1991; Volume 10, Issue 5, eff. January 1, 1994; Volume 17, Issue 5, eff. January 1, 2001.

**8VAC20-80-40. Responsibility of local school divisions and state-operated programs.**

A. The requirements set forth in this chapter are applicable to local school divisions and state-operated programs providing education and related services for children with disabilities and are developed in accordance with state and federal laws and regulations.

B. Each local school division shall ensure that all children with disabilities, aged two to 21, inclusive, residing in that school division have a right to a free appropriate public education, including:

1. Children with disabilities who are migrant;
2. Children with disabilities who are homeless;
3. Children with disabilities who are in need of special education and related services, even though they are advancing from grade to grade;
4. Children with disabilities who are served in a charter school in accordance with the Code of Virginia;
5. Children with disabilities who have been suspended or expelled from school, in accordance with this chapter;
6. Children with disabilities who are incarcerated for 10 or more days in a regional or local jail in its jurisdiction, with the exception of those provisions identified in 8VAC20-80-62;
7. Children with disabilities who are residents of the school division and who are on house arrest, as ordered by a court of competent jurisdiction; services shall be provided at a mutually agreed upon location;
8. Children with disabilities who are in foster care and residents of Virginia, but not residents of the school division, under the following conditions:
  - a. The child has been placed in foster care or other custodial care within the geographical boundaries of the school division, placed by a Virginia agency, whether state or local, that is authorized by the Code of Virginia to place children;
  - b. The child 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 of the Code of Virginia that is located within the geographical boundaries of the school division; and
  - c. If the child's individualized education program prescribes placement in a private day or residential special education facility, the responsibility for a free and appropriate public education shall transfer to the local school division that is the participant in the Community Policy and Management Team of the locality that has responsibility for the child under the Comprehensive Services Act for At-Risk Youth and Families (§[2.2-5200](#) et seq. of the Code of Virginia);

9. Children with disabilities who are placed in a private residential placement by a Comprehensive Services Act team. The local school division that is part of the Comprehensive Services Act team that places the child in the private residential placement for noneducational reasons shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in the residential placement;

10. Children with disabilities who are placed for noneducational reasons and are not physically present in the school division, but whose parent or parents continue to reside in the local school division in accordance with [§22.1-3](#) of the Code of Virginia.

a. For the purpose of determining residency, the residence of the child with a disability shall be determined as follows:

(1) If placed for noneducational reasons in a nursing facility, a long stay hospital, or an intermediate care facility for the mentally retarded under funding from the Virginia Department of Medical Assistance Services, the child is a resident of the division where the parent or parents reside, unless the child is in a state-operated program;

(2) If placed for noneducational reasons in a group home by a community services board, a court service unit, or a court of competent jurisdiction, the child is a resident of the division where the parent or parents reside, unless the child is in a state-operated program;

(3) If aged 18 or older, placed for noneducational reasons in a nursing facility, a long stay hospital, or an intermediate care facility for the mentally retarded under funding from the Virginia Department of Medical Assistance Services, and who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child with a disability is in a state-operated program; and

(4) If aged 18 or older, placed for noneducational reasons in a group home by a community services board and who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child with a disability is in a state-operated program.

b. If there is a dispute between local school divisions regarding the parent's, parents', or legal guardian's residence, the local school division of the parent's, parents', or legal guardian's last known place of residence is responsible until such dispute is resolved or the parent's, parents', or legal guardian's residence is established in another local school division;

11. Children with disabilities, aged 18 or older, who have not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to make decisions and who reside in the school division, unless the adult child is in a state-operated program. The adult child's residence shall be the fixed home to which the adult child will return following a temporary absence and at which the adult child intends to stay. No adult child shall have more than one residence at a time; and

12. Children with disabilities, aged 18 or older, who have been declared incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a

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guardian to make decisions and guardian resides in the school division, unless the adult child with a disability is in a state-operated program. The adult child's residence shall be the fixed home to which the adult child will return following a temporary absence and at which the adult child with a disability intends to stay. No adult child with a disability shall have more than one residence at a time.

C. Each state-operated program shall ensure that all children with disabilities, aged two to 21, inclusive, in that institution have the right to a free appropriate public education.

#### Statutory Authority

[§22.1-16](#) of the Code of Virginia.

#### Historical Notes

Derived from VR270-01-0007 §3.1, eff. August 21, 1986; amended, Virginia Register Volume 6, Issue 11, eff. July 1, 1990; Volume 7, Issue 20, eff. July 31, 1991; Volume 10, Issue 5, eff. January 1, 1994; Volume 17, Issue 5, eff. January 1, 2001; Errata, 17:8 VA.R. 1217 January 1, 2001.

Amended, Virginia Register Volume 18, Issue 12, eff. March 27, 2002.

#### Effect of Amendment

The March 27, 2002 amendment, in paragraph B 9, substituted "that the child's IEP team develops an IEP appropriate for the child's needs while the child is in the residential placement" for ", to the extent reasonable, a free appropriate public education".

#### Editor's Note

In subparagraph B 8 c of this section as amended in March, 2002, the name and Code of Virginia reference to the Comprehensive Services Act for At-Risk Youth and Families was updated, pursuant to the revision authority of the Virginia Code Commission.

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Standard of review 10

### 1. Construction

The headings used in a regulation do not dictate the meaning of the regulation's provisions. *White et al. v. School Board of Henrico County*, 2001, 2001 WL 766784. *Jones v. Div. of Child Support Enforcement*, 1994, 450 S.E.2d 172, 19 Va.App. 184.ϕg;;;;;1ϕg

### 2. Compliance, generally

Courts apply a two-part test for determining whether a school has complied with the requirements of the IDEA in providing a student with a free appropriate education: (1) whether the school complied with the procedural requirements of the Act; and (2) whether the individualized educational program (IEP) developed by the school was reasonably calculated to enable the child to receive educational benefits. *White v. School Bd. of Henrico County*, 2001, 36 Va.App. 137, 549 S.E.2d 16.ϕg2001581878;5;;549;711;16ϕg

### 3. Free appropriate education

IDEA's "free appropriate education" must be provided at public expense and under public supervision, meet the state's educational standards, approximate the grade levels used in the state's regular education, and comport with the child's individualized educational program (IEP). *White v. School Bd. of Henrico County*, 2001, 36 Va.App. 137, 549 S.E.2d 16.ϕg2001581878;21;;549;711;16ϕg

### 4. Disability

High school student was "socially maladjusted," within meaning of exception to coverage under IDEA, in view of evidence that student suffered only conduct disorder and displayed disregard for social demands or expectations. *Springer v. Fairfax County School Bd.*, 1998, 134 F.3d 659.ϕg1998038449;2;;134;506;659ϕg

### 5. Emotional disturbance

Fact that child is socially maladjusted is not by itself conclusive evidence that child is seriously emotionally disturbed, within meaning of IDEA. *Springer v. Fairfax County School Bd.*, 1998, 134 F.3d 659.ϕg1998038449;3;;134;506;659ϕg

High school student did not suffer independent serious emotional disturbance in addition to being socially maladjusted that would qualify student for special education services, under IDEA; three psychologists concluded that student was not seriously emotionally disturbed, student was able to maintain interpersonal relationships with teachers and peers, student did not show signs of pervasive depression, and, even if student exhibited some characteristics of serious emotional disturbance, there was no causal link between characteristics and alleged educational

difficulties. Springer v. Fairfax County School Bd., 1998, 134 F.3d 659.çg1998038449;4;;134;506;659çg

#### 6. Private schooling

Evidence in proceedings on request by parents of learning-disabled student for reimbursement for cost of student's education at private school supported finding that IDEA individualized educational program (IEP) developed by county board of education would have enabled student to benefit educationally, and that board thus complied with requirement that state provide student with "free appropriate public education"; although student could not read at grade level, evidence showed that he received educational benefits from county program and that proposed IEPs offered by board would have continued to provide him with educational benefits in least restrictive environment, and, unlike program at private school, IEP proposed by board offered student opportunity to interact with regular education students. White v. School Bd. of Henrico County, 2001, 36 Va.App. 137, 549 S.E.2d 16.çg2001581878;19;;549;711;16çg

#### 7. Procedural violations

Record did not support claim by learning-disabled student's parents that county school board predetermined student's placement prior to sixth and seventh grade individualized educational program (IEP) development meetings by drafting proposed IEP before meeting; IDEA permitted board to bring draft IEP to meetings for purposes of discussion, and draft IEP provided a starting point for discussion and nothing more. White v. School Bd. of Henrico County, 2001, 36 Va.App. 137, 549 S.E.2d 16.çg2001581878;15;;549;711;16çg

While procedural violations alone may under certain circumstances constitute a failure to provide an appropriate education under IDEA, each case must be reviewed in the context of the particular facts presented. White v. School Bd. of Henrico County, 2001, 36 Va.App. 137, 549 S.E.2d 16.çg2001581878;6;;549;711;16çg

#### 8. Evidence

Testimony of psychiatrist was not "additional evidence" under IDEA, and district court's exclusion of evidence was not abuse of discretion in student's action for reimbursement of private school tuition, because psychiatrist was available to testify in administrative proceedings. Springer v. Fairfax County School Bd., 1998, 134 F.3d 659.çg1998038449;5;;134;506;659çg

In action under IDEA, provision allowing "additional evidence" in district court does not authorize witnesses at trial to repeat or embellish their prior administrative hearing testimony, and exclusion of testimony from all who did, or could have, testify at administrative hearing was appropriate limit in many cases. Springer v. Fairfax County School Bd., 1998, 134 F.3d 659.çg1998038449;6;;134;506;659çg

#### 9. Review--In general

Courts apply a two-part test for determining whether a school has complied with the requirements of the IDEA in providing a student with a free appropriate education: (1) whether the school complied with the procedural requirements of the Act; and (2) whether the individualized educational program (IEP) developed by the school was reasonably calculated to

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enable the child to receive educational benefits. *White v. School Bd. of Henrico County*, 2001, 36 Va.App. 137, 549 S.E.2d 16.ϕg2001581878;5;;549;711;16ϕg

An IDEA individualized educational program (IEP) will not be set aside on the basis of procedural violations absent some rational basis to believe that such procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits. *White v. School Bd. of Henrico County*, 2001, 36 Va.App. 137, 549 S.E.2d 16.ϕg2001581878;7;;549;711;16ϕg

10. ---- Standard of review

In interpreting regulation making student eligible for special education services if student suffers from "serious emotional disturbance," district courts are required to give deference to state and local education authorities whose primary duty it is to administer IDEA. *Springer v. Fairfax County School Bd.*, 1998, 134 F.3d 659.ϕg1998038449;1;;134;506;659ϕg