

CSA and Special Education Frequently Asked Questions

1. What children are included in the target population funded by the State Pool as it relates to special education?

The Code of Virginia identifies only a subset of special education students in the target population funded by the State Pool. This target population includes only those children/students who have been found eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) and who have an IEP and either 1) the IEP requires private school placement, or 2) the student has been placed into a residential program by another CSA participating agency.

By policy of the State Executive Council a student with an IEP may be considered to be in the target population, i.e., primary mandate type is special education, if the FAPT identifies that needs which arise from the student's disability threaten the student's ability to be maintained in the home, community or school.

2. What authority does the Code of Virginia give to FAPTs with regard to IEPs?

None. The development of IEPs for students eligible for educational services under the Individuals with Disabilities Education Act is controlled by federal law and state regulation. Only an IEP team can develop, revise and otherwise control the IEP. Federal and state laws and regulations governing special education do not permit another entity, other than a due process hearing officer or judge, to substitute its judgment for the IEP team.

Under Section 2.2-5209 of the Code of Virginia, a child and his family must be assessed by the FAPT in order for a child to be eligible for CSA-funded treatment services. These treatment services, however, are not the same services as the educational services contained in the IEP. Treatment services may often be needed in addition to the educational services funded through the IEP. IEPs therefore do not need FAPT team review, and their review by the FAPT team would violate federal IDEA law and regulations.

Referrals to FAPT and access to funds are governed at the local level through policies and procedures established by the CPMT. Under 2.2-5206 each community policy and management team shall:

- “develop interagency policies and procedures governing access to the state pool of funds by the eligible populations...” and
- “establish policies governing referrals and reviews of children and families to the family assessment and planning teams...”

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Local policies and procedures as developed by each CPMT must ensure compliance with federal law as well as state law and regulation so as not to compromise a school division's ability to fulfill its FAPE and IEP responsibilities to children with disabilities.

3. Can the CPMT deny funding of a private day or residential placement included in a student's IEP?

No. The funding stream that paid for private special education placements prior to the establishment of CSA was put into the State Pool Fund. Students with IEPs for private placements are included in the target population and both the state and each locality are required to appropriate sufficient funds for private special education placements.

Code of Virginia § 2.2-5211. "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 identified in subdivisions B 1, B 2 and B 3 and (ii) meet relevant federal mandates for the provision of these services."

Section B 1 (referenced above):

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

4. Can the CPMT restrict providers that may be utilized to provide special education services?

To a limited extent. A local school division is responsible for ensuring the provision of FAPE, including identification of the least restrictive environment and service providers, for children residing within its jurisdiction. The IEP team is required to select a provider based upon the needs of the child and the ability of the provider to implement the child's IEP. Restricting providers to those approved by the CPMT may not infringe upon the school division's ability to fulfill these responsibilities.

When an IEP team determines that there are multiple providers that can implement a child's IEP, the selection of provider may be governed by requirements established by the CPMT. However, if a child's IEP names a specific provider of services and/or if the IEP team determines that a single provider is uniquely able to implement the child's IEP, that provider must be utilized regardless of its status relative to licensure, contracting, CPMT approval, etc.

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5. Can the CPMT delay implementation of a child’s IEP (e.g., placement into a private day or residential program) pending authorization of funding, collection of data, or for any other reason?

No. Implementation of an IEP is governed by federal law and state regulation. No policy or practice may compromise a school division’s ability to fulfill IEP and FAPE responsibilities for its children with disabilities.

34 CFR § 300.323: “...Each public agency must ensure that-- ...As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.”

8 VAC 20-80-62: “Each local education agency shall ensure that an IEP: ...is implemented as soon as possible following the IEP meeting.”

6. Under what circumstances can mandated funds be utilized for wrap-around services to a student with an educational disability?

As established by policy of the State Executive Council, mandated funds may be utilized to provide wrap-around services to support a student with an educational disability, and/or the student’s family, when the FAPT identifies there are needs arising from the disability that threaten the student’s ability to be maintained in the home, community, or school. Wrap-around services may be provided to a student who is placed in a public school setting, a private day school, or being transitioned back to the community from an educational residential program.

Wrap-around services must be:

- non-residential services
- provided in the home or community setting (not in a school setting)
- delineated in the IFSP and approved by the FAPT

Comprehensive Services Act For At-Risk Youth and Families Policy Manual, Section 4.3.3a

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7. How is it determined whether a service for a student should be included in the student's IEP or written into an IFSP?

The IEP team is responsible for determining what services are necessary for the provision of a free appropriate public education (FAPE) and must therefore be included in the IEP. The FAPT team is responsible for determining what services are appropriate for inclusion in the IFSP.

Educational services are the special education and related services necessary for the provision of FAPE. Related services are defined by the IDEA as “supportive services as are required to assist a child with a disability to benefit from special education.” All special education and related services must be included in the IEP in order for the IEP team to document what services the child needs to benefit educationally.

When an IEP team identifies a problem with the child in the school environment that impacts the child's learning or that of others and determines that a service is needed for the child in the school environment to address that problem, the service is likely an educational service that should be included in the IEP. The facts that 1) the problem is occurring in the school environment and impacting the child's learning, and that 2) the service will be provided in the school environment, are strong evidence that the service is necessary for the provision of FAPE and falls within a school division's scope of responsibility.

Services that fall outside of the school division's scope of responsibility may be appropriate for inclusion in an IFSP. IFSP services are non-educational services which preserve the family unit and address the unique strengths and needs of the family and the child. Referral by the schools to CSA for multi-agency planning is appropriate when a student with a disability exhibits problems that extend beyond the school environment, requires the involvement of at least one agency outside of the schools, and/or requires services across multiple settings.

When a student with a disability is referred by the schools to CSA for planning around issues outside of the IEP, the multi-agency planning process is no different than for any other child referred to CSA. When a student with a disability requires both educational and non-educational services, the IFSP complements (i.e., wraps-around) the IEP to provide a seamless plan to address the needs of the child and family.

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8. Can the FAPT deny, terminate, or reduce wrap-around services to students with IEPs?

Yes. Services in the IFSP for students with disabilities are funded at the discretion of the FAPT. These services are not special education services and are not protected under the Individuals with Disabilities Education Act (IDEA). The FAPT is responsible for determining what services are appropriate for inclusion in the IFSP.

9. How do Utilization Management and Utilization Review requirements apply to IEP services?

Utilization review procedures are completed by the IEP team. UM staff may provide information and recommendations to an IEP team, however the IEP team is solely responsible for all determinations regarding services and placement.

Special education laws and regulations determine the frequency with which an IEP must be reviewed and the frequency with which progress must be reported; these requirements fulfill utilization review requirements under the CSA. The school division is responsible for at least annual review of a student's IEP. In addition, the school division is required to inform parents of the progress of the child toward the annual goals in the IEP as least as often as the parents of children without disabilities are informed of their children's progress. The purpose of an IEP review, thus utilization review, is to review the student's progress toward the annual goals on the IEP and "the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year." (*Regulations Governing Special Education Programs for Children with Disabilities in Virginia*)

Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-80-62, B.6: "Each local educational agency shall ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and to revise its provisions...."

10. How does the requirement for Intensive Care Coordination (ICC) apply to special education placements?

The Intensive Care Coordination initiative requires FAPTS to "identify children who are at risk of entering, or are placed in, residential care through the Comprehensive Services Act program who can be appropriately and effectively served in their homes, relatives' homes, family-like settings, and communities and coordinate services and develop a plan for returning the child to his home, relatives' home, family-like setting, or community." It is important to recognize that when

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children are at risk of, or are placed in, residential settings for special education services the need for that placement is driven by the child's educational need rather than issues specific to mental health or the home setting. Only the IEP team can make determinations about the child's educational need, services necessary for the provision of FAPE, and the appropriateness of a student's placement.

The FAPT may develop an IFSP to complement a student's IEP and to provide non-educational services, such as Intensive Care Coordination, that will support the goals and objectives of the IEP and support the child and/or the child's family in transition out of a residential program. FAPT teams must recognize, however, that all decisions regarding the child's continued placement and discharge must be made by the IEP team and must be based upon the student's educational needs and services identified in the IEP.

11. How does the Children's Services System Transformation initiative apply to special education and school personnel?

The Children's Services System Transformation is an initiative to improve the delivery of services to children and families across the state. The primary focus is the assurance that child and family serving practices are family-focused and community-based. The principles are consistent with those of the Comprehensive Services Act (child-centered, family-focused, and community-based) and are applicable to service planning for all children.

Given that the planning of educational services and determination of placements for students with IEPs is governed by federal law and state regulations, the System Transformation initiative will not change the way in which special education services are planned, funded, or implemented. FAPTs are encouraged to recognize the advantages of multi-agency planning for students with IEPs for non-educational services that may be included in an IFSP to provide a seamless plan of services to address the needs of the child and family.

12. Can the CPMT require the schools to utilize a Medicaid eligible provider for an IEP placement?

To a limited extent. When all is equal between a Medicaid and a non-Medicaid facility, CSA may require placement into the Medicaid facility. If there is not a Medicaid facility that is able to meet the child's needs, i.e., to implement the child's IEP, placement into a non-Medicaid facility is appropriate and allowable. Children are not to be placed outside of their community in order to access Medicaid funding.

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Given that the IEP team holds responsibility to determine an appropriate placement to meet the needs of a student as specified in the IEP, it is thus the IEP team that must make the determination regarding the ability of a Medicaid facility to implement a student's IEP.

13. Can the CPMT access Medicaid funding for related services on a child's IEP (e.g., speech therapy, occupational therapy, physical therapy) when the child is in a private day or residential placement?

If the private provider is an approved Medicaid provider for the services it may be possible to utilize Medicaid funding for related services. It must be recognized, however, that Medicaid funding for such services is based on specific DMAS criteria that differ significantly from the criteria utilized in determining the child's educational need for such services.

Related services must be provided to a child in accordance with the frequency and duration specified on the IEP. It is not uncommon for this frequency and duration to exceed DMAS criteria and, thus, to exceed the availability of Medicaid funding for the services.

14. Can the IEP be changed to remove services and put them on an IFSP?

If the services are no longer necessary for the provision of a free appropriate public education, yes. However, changes to the IEP must be based upon the needs of the child and must be made by the IEP team. The team must ensure that a service currently in the IEP is no longer necessary for the provision of a free appropriate public education before that service may be removed from the IEP. Removal of services from the IEP may not be done for fiscal reasons, e.g., to access funding. Omission of services from the IEP when those services are necessary to provide a free appropriate public education would constitute a violation of a student's rights under the IDEA.

15. Why are residential IEP services not subject to the increased local match rate for residential services?

Residential IEP services are reported under the service categories "Congregate Care Educational Services" and are subject to the match rate originally calculated for each local government. This assures compliance with federal prohibition against fiscal incentive or disincentive for placement of students with disabilities.

34 CFR § 300.114: "A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP."

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16. When may the parent of a student with an IEP be charged a co-pay for services funded by CSA?

A co-pay for services may be charged to a parent for services on an IFSP. IFSP services are non-educational services and are thus not protected under the student's right to a free appropriate public education.

No co-pay may be charged to a parent when services are on a student's IEP as these services are based upon the student's right to a free appropriate public education.

17. Who is responsible for funding educational services when a student with an IEP is placed for non-educational reasons by his/her parent into a residential program? *NOTE: A placement made in accordance with a signed Parental Agreement is a CSA placement – not a parent placement.*

The local school division of the parent's legal residence is responsible for the provision of FAPE when a child with an IEP is placed into a residential program for non-educational reasons by his/her parent. The IEP team in the school division of legal residence is responsible to determine the services necessary to provide FAPE to the student while placed in the non-educational placement. *NOTE: There is no obligation to provide or fund educational services to students who do not have IEPs and who are placed into residential programs by their parents.*

When students are placed for non-educational reasons, it is not uncommon that they were previously served in the public schools. Thus it is not uncommon that the IEP team may determine public school services continue to be the appropriate level of service for the student while in the non-educational placement. The local school division is responsible for the provision and funding of all public school services. The responsible school division may pay tuition to the local school division in which the residential program is located, may hire a homebound or itinerant teacher, etc. The CPMT of the child's legal residence continues to be responsible for funding services if the IEP identifies that the child's educational needs require services outside of a public school setting, e.g., a private day or private residential program.

VAC 20-80-40 (Regulations Governing Special Education Programs for Children with Disabilities in Virginia): "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: (c) 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."