Attachment A

Superintendent’s Memo #212-21

August 6, 2021

# **Frequently Asked Questions (FAQ) Related to Students with Intensive Support Needs**

The purpose is to provide information to local educational agencies in response to concerns and questions brought to the attention of the Virginia Department of Education related to students with intensive support needs.

## **Explanation of regulations that govern these programs**

The Virginia General Assembly (GA) first appropriated funds to support Regional Special Education Tuition Reimbursement Programs (RTRP) in 1977. The GA recognized the potential benefit for regional cooperation and sharing of resources to serve students with low incidence disabilities because of the additional cost of serving such students. Moreover, the GA was aware that the lack of resources in individual local educational agencies (LEAs) to serve students with low incidence disabilities sometimes resulted in private day or residential placements and that Virginia state courts had ruled that full tuition for private placements must be at public expense. The provisions set forth in this new funding stream facilitated Virginia’s compliance with Public Law 94-142 *(The Education of Handicapped Students Act of 1973)* which required a free appropriate education for all students with disabilities at public expense and in the least restrictive environment. The funding for each RTRP was established based on an annual application to the Virginia Department of Education (VDOE), termed a rate package. These funds were provided to school divisions to offset the high cost of providing instructional and other services for students identified in low incidence disability categories. Even though special education and related services were provided through the entities known as regional programs, funds have always been provided directly to school divisions.

In 2015, the VDOE was directed to conduct a study of regional programs and the funding model used to provide funds to school divisions. In 2019, as a result of the study, the VDOE began to transition to the new equitable access based model versus the rate model. Under the new model, all school divisions have the opportunity to receive funds. Funds are provided to school divisions for Students with Intensive Support Needs (SISN) (formally funds designated for students receiving services through a regional program). Currently, all school divisions have the opportunity to submit a Students with Intensive Support Needs Application (SISNA) for these funds.

## **Compliance and Procedure**

1. **What are the roles and responsibilities of the LEA towards students receiving services through SISN?**

The LEA is responsible for all aspects of the student’s educational program, including the provision of a free appropriate public education (FAPE).

In some former regional programs, additional staff members were employed in order to provide services to identified students. In some cases, these staff may have been supervised through the regional program. If divisions continue to work with outside providers resourced by their funds, the LEA and these staff should collaborate, when appropriate, to develop the IEP and to complete any other special education processes required for the student. Regardless of the role and staff supervision, all activities shall be conducted under the LEA’s supervision.

1. **What is the role and responsibilities of the regional programs?**

The LEA and staff from the regional program should collaborate to define the role and responsibility of the regional program staff for each student receiving such services. This role may include, but is not limited to, providing service(s) outlined in the IEP, data collection, reporting student progress, collaborating with the LEA to develop Individualized Education Programs (IEP), and participation in IEP and other special education meetings.

1. **Who is responsible for writing the IEP and case management?**

The responsibility for writing an IEP rests solely within the purview of the LEA.[[1]](#footnote-1) Similarly, because the implementation of the IEP is the responsibility of the LEA, and generally, the function of the case manager is to write the IEP and ensure its implementation, the LEA is responsible for case management.[[2]](#footnote-2)

1. **Who is responsible for maintaining student data within student information systems including IEP development?**

The LEA is responsible for developing an IEP and maintaining student records in information systems. Given that regional programs are not LEAs, and therefore are not responsible for FAPE, they should not create their own IEP forms or maintain student records in lieu of the LEA.

1. **Is Parent consent needed for a student to receive services through Regional Programs or SISN funds?**

The *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* require that an IEP be implemented as soon as possible following parental consent to the IEP.[[3]](#footnote-3) Thus, any changes to the IEP must receive consent from the Parent. The VDOE recognizes that some students’ IEPs may include the name of the regional program as a service administrator or provider. In such instances, the LEA will need to obtain parental consent to remove the regional program’s name from the IEP or to transfer a student from a regional program to a substantially similar service provider. However, if the regional program’s name is not formally written in the IEP, then an LEA is not required to provide the name of the regional program moving forward.[[4]](#footnote-4) If an LEA decides to move a Student from a regional program to a substantially similar service provider, parental consent is not required as long as such a change is only a change in location. However, if removing the Student from the regional program would substantially or materially alter the student’s current educational program in any way, parental consent must be obtained.[[5]](#footnote-5)

## **Placement and Data Collection**

1. **Should students receiving services through the former regional program model be enrolled in the LEA?**

Yes. All students receiving special education services, regardless of any service delivery model, must be enrolled in the LEA of residence. This has been a long-established requirement.

1. **Is a regional program considered a placement option?**

No. The IEP Team makes the individual placement decision for each student, consistent with federal and state least restrictive environment (LRE) requirements. The IEP Teams should carefully consider all placement options and determine the student’s least restrictive environment on an individual basis. The receipt of services provided through the SISNA funding model is not a placement. There are school divisions that provide services in a separate special education setting; in those limited cases, the IEP should correctly reflect this placement. Students with Intensive Support Needs receive services through their IEP either in regular school buildings or, as noted, in a few situations, in a separate special education site. The legally responsible divisions report the correct placement option on their December 1 Child Count.

1. **If a student is receiving services through a regional program in another LEA, which LEA is responsible for the IEP?**

The division that is legally responsible for ensuring FAPE is responsible for all aspects of the provision of FAPE. A regional program is not a legally responsible school division.

1. **Must the LEA ensure these students are included in all Student Record Collections?**

Yes. All students receiving special education services, regardless of any service delivery model, must be included in all data submissions reported by the legally responsible division.

1. **Are students served through a regional Partnership included in a division’s SPP/APR data?**

Yes. All students receiving special education services, including those with intensive support needs, must be included in all data submissions; therefore, are included in the division’s SPP/APR.

## **Finance**

1. **Who is responsible for determining the costs for the services cost analysis for the SISNA?**

The legally responsible LEAs are responsible for determining the costs associated with providing services to a student with intensive support needs. School divisions are responsible for creating a services cost analysis for the students included in the SISNA.

1. **Are LEAs required to establish a Partnership with another or other divisions, in order to be eligible to receive funds?**

Yes. An LEA must establish a partnership with at least one other LEA. Since this is a requirement, the VDOE requires the LEAs to develop a Memorandum of Understanding (MOU). Assistance is available from the VDOE as to how extensive the MOU needs to be.

## **Communication**

1. **How will the changes in practice be communicated to LEAs?**

Information and technical assistance related to the change in the funding process has been addressed in multiple prior communications to all LEAs over the course of the transition. Information applicable to all LEAs will continue to be disseminated to all LEAs. LEAs with more specific questions unique to their partnership will receive specific assistance from the appropriate office within the VDOE’s Department of Special Education and Student Services.

1. **Will this communication include guidance to assist with the logistics of transitioning students to the LEA’s active portion of their Student Information System?**

This is a local decision. The LEA is encouraged to work with their Technology Department to facilitate this process. Because there are only a very few divisions that had the regional program help maintain individual student data, assistance from VDOE will be provided to those divisions on a case by case basis as needed.

1. 8VAC20-81-110.A. [↑](#footnote-ref-1)
2. Id. [↑](#footnote-ref-2)
3. 8VAC20-81-110.B.2.d. [↑](#footnote-ref-3)
4. While special education regulations do require the IEP to state the location of the services provided, the name of the school is not required. This means that generally stating that the services will be provided in a public comprehensive high school or a private facility is sufficient as long as it is clear in the IEP that the chosen location will be able to meet the student’s needs. *A.K. v. Alexandria City Sch. Bd.*, [47 IDELR 245](https://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=47+IDELR+245) (4th Cir. 2007). [↑](#footnote-ref-4)
5. *Letter to Green*, 22 IDELR 639 (February 8, 1995). [↑](#footnote-ref-5)