

# As Virginia routes more students with disabilities to private schools, costs are soaring

By **Kate Masters** - November 19, 2020



(Getty Images)

Virginia places more students with disabilities outside their local public schools than 37 other states — a trend that’s dramatically increased spending on specialized private schools over the past decade.

The nonresidential programs — more commonly known as [private day schools](#) — have been a source of frustration for lawmakers over the past several years as more and more state spending has gone toward the cost-intensive model. Costs have more than doubled from fiscal 2010 to fiscal 2019, soaring from \$81 million to \$186 million.

It’s led to numerous efforts within the state’s General Assembly, including an [unsuccessful bill in the 2020 legislative session](#) that would have directed the Virginia Department of Education to launch a pilot program aimed at transitioning some private day students back to public schools. The past two budget cycles have also included funding for studies to examine private day tuition rates.

The continuing scrutiny prompted lawmakers on the Joint Legislative Audit & Review Commission to order a study of the programs, which are ostensibly geared toward students with more severe behavioral or learning disabilities that prevent them from being served by their local public schools.

But the JLARC study, presented on Tuesday, found that Virginia's funding policies don't encourage public schools to develop their own capacity to serve higher-need students. At the same time, the reported number of children with more severe disabilities has increased — leading to growing enrollment at private day schools and soaring state costs, which more than doubled between 2010 and 2019.

“Compared to other states and its federal goal, Virginia places a lot of children in out-of-school placements, which is primarily made up of students in private day school” said Stefanie Papps, a senior legislative analyst for JLARC. “According to the special education directors we interviewed, [teams] are sometimes forced to place a child in private day school because their district lacks the resources or the capacity to serve the child in the public school setting.”

Understanding how and why Virginia devotes state spending to specialized private schools requires some background knowledge on its Children's Services Act program, first created in 1992 as a way to merge and streamline multiple state agencies that provide services to at-risk children — including those in foster care and those with disabilities.

Under the program, which has its own dedicated funding in the state budget, children are separated into “mandated” and “non-mandated” categories depending on their level of need. The “mandated group” includes children in foster care, children at risk of being placed in foster care and children whose individualized education program, or IEP — a document developed by public schools for students with disabilities — calls for placement at a private day school.

Children's Services Act funding is considered “sum-sufficient” for children in the mandated category, which means that both the state and local governments — which provide varying degrees of matching funds for the program — are required to cover approved services even if the cost goes above what they budgeted. And tuition for private day schools in Virginia comes from CSA funding, even though program administrators have no oversight or authority to approve or deny a student's placement there.

The lack of CSA control has led to frustration among local program coordinators, according to the report, which noted that “county boards of supervisors and city councils frequently hold the CSA program responsible for the financial implications of private day school placements, but the CSA program does not make the placement decision and cannot legally change it.”

An even bigger issue is a wrinkle in state law that prohibits CSA dollars from going to special education programs in public schools. Until 2010, local divisions sometimes used the funding for services aimed at transitioning students from private day programs back to public school, including transportation or one-on-

one classroom aides. But in 2010 and 2011, VDOE issued two memos clarifying that CSA funds couldn't go toward any service within public education.

“Once that prohibition went into effect is when you started to see a notable increase in enrollment in private day special education schools,” said Bill Elwood, executive director of the Virginia Association of Independent Specialized Education Facilities. Instead of drawing from CSA funds, public school divisions rely on local support combined with state and federal special education dollars, which have been gradually decreasing over the past several years. In most localities, it's also local governments – not school divisions themselves – that pay the match rate for private day school tuition.

As a result, districts have plenty of motivation to place students out of school and little impetus to develop their own services for children with more intensive disabilities. JLARC found that students are placed in private day schools at younger ages than they were 10 years ago, increasing the average length of stay – and the cost.

“Even if a school division can serve a student in an alternative in-house program for less than the cost of a private day school, localities do not save money because the state provides less funding for special education than it does for private day school placements,” the report reads. Under expectations set by the U.S. Department of Education, Virginia should be placing 2.5 percent of students or fewer in out-of-school placements. Currently, the state's rate is almost double that.

Beyond budget concerns, there's a question of whether private day schools are always the best choice for students in Virginia. According to JLARC, out-of-school placements are considered much more restrictive for children with disabilities because it prevents them from interacting with “non-disabled peers.” Sen. Janet Howell, D-Fairfax, asked Tuesday whether the state's high placement rates – and CSA funding limitations – could potentially violate a federal law that requires students to be placed in their “regular educational environment” unless it's vital for their academic progress.

Data suggests some students may be placed in private day schools even when it's not truly necessary. Between fiscal 2017 and 2019, JLARC found that 10 percent of students – 350 total – did not have any moderate or severe needs ratings on three core sections of a state assessment tool for children in the CSA program.

And while the agency found that the schools are largely effective for students, there are also broader questions of transparency within the industry. JLARC analysts found that tuition increases accounted for 25 percent of the state's rising spending on the programs. But the report also concluded that it's often difficult to compare fees throughout the state.



While 19 programs operated at a loss and 19 others reported yearly profit margins between zero and 10 percent — on par with other private schools across the country — 23 schools reported profit margins between 11 to 15 percent. Another four said they made 16 percent or more a year. And the exact cost of tuition ranges widely across Virginia, from \$22,000 a year at some schools to \$97,000 a year at others.

Papps, the legislative analyst, said tuition rates at private day schools “are generally reflective of what it costs to deliver intensive services.” But while the state’s Office of Children’s Services — the administrative arm of the CSA — keeps an online directory of private day school providers and fees, it doesn’t validate the information that’s submitted. A previous effort to study tuition rates was delayed, and largely stymied, by schools’ refusal to cooperate.

“When the study was released, it did not contain enough information to implement a rate setting process because too few private day schools had submitted information,” the agency said of the 2019 report.

Beyond the opaque rate-setting, JLARC found that at least 12 students in 2019 were enrolled in private day schools that weren’t licensed by the Virginia Department of Education. More than a third of the state’s programs haven’t been accredited by any third-party oversight agency.

Performance data on private day schools for the 2020-21 school year, set to be published by VDOE for the first time, will also be much less comprehensive than the information provided for public schools. The first-ever report will consist of four performance measures, including parent satisfaction, student progress relative to the goals in their IEPs and the percentage of students who return to public school. But it won’t include teacher quality, school accreditation status or data on career and technical education — all components that are reported yearly for Virginia public schools.

The reports also won’t include information on incidents of restraint and seclusion — controversial disciplinary techniques that some parents feel have [already been misused in local public schools](#). JLARC noted that state regulations for the measures are more “comprehensive and detailed” for public schools than they are for private day programs.

Whether lawmakers take action to reform private day school placements in 2021 — an abbreviated session that the state House of Delegates [plans to hold virtually](#) — is still unclear. Del. Joseph McNamara, R-Roanoke, has refiled his bill for a pilot program aimed at transitioning some students back to public school. And JLARC issued 18 recommendations for the CSA program, including amending state law to allow CSA dollars to go toward special education services in public schools.

Another potential change is transferring funding for private day school tuitions to the Virginia Education Department, an agency that, while more directly involved in placements, [has had its own problems with special education oversight](#).

Elwood said private day providers do have questions about some of the proposals, “mainly just because of the scope of what is being contemplated,” he said in a Wednesday email. While many would support the use of CSA dollars for transitional services, he said there could be issues if a significant portion of the funding was redirected toward public school services that tried to replicate the private day model – one that supports small class sizes, high staff-to-student ratios, and children with more severe learning or behavioral disabilities.

“That would be concerning, not to mention much more costly to the state,” Elwood said. There are also concerns that the General Assembly might remove the sum-sufficiency requirements of the program, which he said could prevent students from receiving recommended services if they were deemed too costly.

“It is vitally important that all stakeholders, especially those who provide the services, be part of the planning, conceptualization and implementation of this all along the way,” he said. “There is just too much at stake for the future of the program and for the lives of these children and their families.”

#### Kate Masters

Kate grew up in Northern Virginia before moving to the Midwest, earning her degree in journalism from the University of Missouri. She spent a year covering gun violence and public health for The Trace in Boston before joining The Frederick News-Post in Frederick County, Md. While at the News-Post, she won awards in feature writing and breaking news from the Maryland-Delaware-DC Press Association, including a best in show for her coverage of the local opioid epidemic. Most recently, she covered state and county politics for the Bethesda Beat in Montgomery County, Md.

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# The state says it's fixing special education oversight in Virginia. Advocates wonder if it will be enough.

By **Kate Masters** - November 2, 2020

*The Virginia Department of Education is headquartered in the James Monroe Building in Richmond. (Scott Elmquist/ Style Weekly)*

The Virginia Department of Education is quietly implementing changes in response to a federal report that found [serious deficiencies](#) in how the agency monitors and enforces compliance with special education law.

In a [memo](#) circulated to local school districts last month, state Superintendent James Lane wrote that the agency was revising its policies and procedures to implement “required actions” laid out in the [June letter](#) from the U.S. Department of Education’s Office of Special Education Programs.

That report found VDOE was, in many ways, failing to ensure that local school divisions were complying with the [Individuals with Disabilities Education Act](#), a 1975 federal law that ensures a “free appropriate public education” to students with disabilities. It outlined more than half a dozen directives to “ensure that all of [the state’s] LEAs” — local educational agencies — were in compliance with the law.

VDOE contested multiple aspects of the report in a [10-page letter](#) from Samantha Hollins, the assistant superintendent of special education and student services — a response that was met with [vehement disagreement](#) by more than a dozen parents of special education students in Virginia. The agency was legally mandated to provide the federal government with a corrective plan, but VDOE spokesman

Charles Pyle declined to confirm whether the department still disagreed with many of the federal agency's conclusions.

"As discussed above, VDOE is addressing the findings of the monitoring letter," he wrote in an email on Thursday.

But advocates said it's still unclear whether the policies outlined in the memo — which largely address internal processes within VDOE — will substantially change how parents experience Virginia's special education complaint process. In July, multiple families told the Mercury the process was — at best — "unfriendly to parents." At its worst, one parent described the state response as "hell."

"I'm not sure how much difference this may make to parents who are on the ground on the front end of this process," said Rachael Deane, legal director of the Legal Aid Justice Center's [JustChildren program](#). "I think what advocates are wondering now is what VDOE is actually doing to address the imbalance of power between school divisions and parents when special education challenges arise."

Part of Lane's three-page memo outlines "general supervision and monitoring procedures" that VDOE "has established and will continue to implement" over local school divisions. Those include on-site comprehensive reviews at schools identified through the department's own risk assessment data, according to the document, and a regular monitoring schedule for all school divisions that will require them to self-assess their compliance with special education laws. Even schools that report complete compliance will be "randomly selected for a desk/on-site monitoring visit to verify" those self reports, according to the memo.

Pyle did not identify which of the four listed monitoring policies were new, writing that the memo "describes existing policies and procedures as well as new ones being implemented beginning in the 2020-2021 school year." The Mercury requested a phone interview with a VDOE official to discuss the changes, to which Pyle responded that "Dr. Hollins is not available this week."

Deane said many of the listed procedures appeared to be clarifying the state's review process. "It's obviously putting local divisions on notice," she said.

One of the key findings in the federal report was a lack of general supervision by VDOE, which only conducts on-site monitoring at 3 to 4.5 percent of the state's hundreds of local schools every year.

"The state must revise its general supervision and monitoring system to include procedures and practices that are reasonably designed, as appropriate, to consider and address credible allegations of LEA noncompliance in a timely manner," federal officials wrote in June.



In addition to random inspections for schools who report 100 percent compliance with special education laws, Lane wrote that violations identified “by any means” would lead to an official notification letter and require schools to develop a corrective action plan. Noncompliance must be closed within a year of the department notifying the district, according to the memo.

But Cheryl Poe, a special education advocate based in Norfolk, said there were still clear problems with allowing local districts to self-assess their adherence with the law and base on-site inspections off performance data which — in many cases — schools provide.

“You’re asking the person who has been accused of being noncompliant to investigate themselves,” she added. “Like, how does that work?”

Pyle also sent the Mercury an [updated guidance document](#) for due process hearings — one of the official mechanisms for resolving disputes between parents and school systems over special education services. In June, OSEP wrote that the state had no system in place for ensuring that school systems met federally mandated timelines for scheduling meetings, which in most cases are required to be held at least 15 days after complaints are received.

The federal agency also reviewed 26 hearing decisions on VDOE’s website and found that “none...included a factual description” of whether the timeline was met.

The new documents “detail the procedures put in place to ensure that timelines are met in accordance with federal and state laws as well as fulfilling the required actions in the DMS letter from the U. S. Department of Education,” Pyle wrote on Thursday. He did not respond to a question on whether future hearing decisions posted on the VDOE website would detail whether the resolution meetings took place within the mandated schedule.

Multiple families and advocates told the Mercury it was common for the state to grant extensions giving school systems additional time to respond to complaints without offering the same option to parents. Deane said it spoke to broader concerns about inequities within the process of submitting and resolving special education complaints — an arduous process that often requires parents to hire lawyers or advocates familiar with federal and state laws.

“VDOE has not always done a good job of investigating complaints, and so the remedies ordered are often without teeth,” she added. “I think that has been a frustration to many parents. The remedy is often, ‘Well, have another meeting,’ which puts parents back in the same situation that gave rise to the complaint in the first place.”



Based on the memo alone, it's unclear whether VDOE is in the process of correcting one of the major findings in the report and a consistent complaint from parents — that the agency doesn't have a system in place for addressing potential violations outside its formal complaint process, which often involves kicking grievances back to the local school system. Federal officials detailed multiple instances when families or advocates attempted to copy department leaders on emails or, in one case, reached out directly to request that an issue be resolved independently.

“Completely ignoring credible allegations of noncompliance,” the OSEP wrote, “is not a reasonable method of exercising the State’s general supervisory responsibilities.” The Mercury asked Pyle if VDOE was developing any new policies to ensure that complaints made outside the formal process were addressed by the agency.

“The changes being put in place, and the policies, procedures and practices being updated, are described in the Superintendent’s Memo provided and are publicly available,” he responded.

The memo does detail two specific changes to address some of the federal findings. One is language clarifying that any mediator provided for special education disputes “is not an employee of any LEA or the VDOE.” Federal regulations require the state to provide independent mediators, but the OSEP report found that the state’s own mediation coordinator regularly sat in on sessions between parents and staff as part of the formal arbitration process.

Hollins disputed the finding in her letter, writing that the coordinator only attended sessions as a silent “quality control measure” to observe new mediators. But one parent provided the Mercury with a 2018 mediation agreement between her and Fairfax County Public Schools that listed the state’s coordinator, Art Stewart, as the only mediator for the session.

Lane wrote that VDOE had also “worked with OSEP to clarify guidance concerning the provision of an Independent Educational Evaluation (IEE),” which assesses a student for potential learning disabilities. Schools are required to provide evaluations to parents under the federal Child Find law, which tasks them with identifying and screening students with potential disabilities and providing them with services, if necessary.

But they’re also required to pay for independent evaluations if a parent disagrees with their results, unless they can prove that a student was assessed appropriately.

Federal investigators found that many school systems only agreed to provide independent evaluations for areas they had already assessed. For example, Poe said, if a school did not evaluate a student for hearing disabilities, but parents

requested an independent evaluation to determine if hearing played a role in their child's learning difficulties, schools sometimes refused to pay for that component of the evaluation on the grounds that they had not determined the assessment to be necessary.

"I think that the correction of the terminology for IEEs was one area they did a good job with," Poe added.

The memo removes the word "component" from state regulations and clarifies that any evaluation or re-evaluation of a student must be "sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified."

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## Virginia public schools are seeing an early drop in enrollment. It could put millions in state funding at risk.

By **Kate Masters** - September 18, 2020



*Goochland public schools opened last month under a fully virtual plan, with only a few students with limited internet access at home reporting to school buildings. (NBC12 via Goochland County Public Schools)*

Since the start of the school year in August, Radford City Schools have lost around 75 students compared to enrollment counts last May, according to district Superintendent Robert Graham. Across the state in Middlesex County, public schools are down roughly 47 students, said Superintendent Pete Gretz.

Attendance at King William County Public Schools has dropped about 150 students, according to Superintendent David White. Those districts are far from alone. An early survey by the Virginia Association of School Superintendents – which captured responses from 113 of the state’s 133 divisions – found that public schools are facing an enrollment loss of 35,000 students so far this year.

Collectively, that drop represents a prospective loss of \$146 million in basic aid funding from the state, which is based on student attendance counts – known as “[average daily membership](#)” – in September and March, said VASS Executive Director Ben Kiser. If the cuts go through, schools say they’ll be forced to make tough decisions on everything from operations to staff.

“If we don’t see significant improvement, then that’s a significant loss of potential revenue,” he added. “And if the General Assembly makes budget decisions based on current data, we worry they’ll have long-lasting impacts not only this budget year, but possibly the next biennium.”

As schools across Virginia grapple with the ongoing COVID-19 pandemic, the early loss of students is just another challenge in an increasingly dire financial landscape. Kiser said school administrators were already concerned over a projected decline in sales tax revenue — one percent of which flows back to local districts — that could result in a total reduction of \$95 million for schools across the state.

Earlier this year, legislators also passed [budget language](#) setting stricter requirements on how local divisions use state lottery funds — a significant part of their operating budgets. The new mandate requires that at least 40 percent of that funding is used for “nonrecurring” school costs such as construction, renovations, or new technology by the second year of the state’s biennial spending plan.

“This was a change from previous years and we feel that schools need maximum flexibility in how Lottery funds are used during this crisis,” VASS legislative liaison Tom Smith wrote in an email Wednesday. And while more than \$214 million in federal CARES Act funding has been directed to Virginia’s public schools — not including the money that went directly to localities — many administrators said most of those funds have been used for new expenses related to the pandemic.

“Our first installment, we used that to reimburse for meal distribution in the spring and summer,” White said. “A lot of it went to temperature monitoring devices, personal protective equipment, Wifi access spots, devices for teachers — things like that.”

“These are basically one-time funds,” he added. “They’re not going to supplant anything. They’re not going to be here next year.”

That’s left administrators increasingly worried about costs. Kiser said the superintendents’ association is currently advocating for state lawmakers to head off the potential loss of funding, either during the ongoing special session or when the General Assembly reconvenes in January. Keith Perrigan, president of the state’s Coalition of Small and Rural Schools, said one option is using last year’s enrollment counts to calculate state aid if schools continue to see a decline in students this March.

Currently, though, there’s no clear path forward. Earlier this month, a Senate committee [killed a bill](#) from Sen. Frank Ruff, R-Mecklenburg, that would have allowed just that during any state of emergency that disrupted in-person learning. A fiscal impact statement from the state’s Department of Planning and Budget said the legislation could “artificially inflat[e]” average daily membership for “school divisions with historically declining enrollment or reduced enrollment for reasons unrelated to the declared state of emergency.”



But Kiser said the concern for most districts is that students will re-enroll in public school after the pandemic. Some divisions, like Middlesex, are operating remotely, which makes counting attendance even more of a challenge. Gretz said his district is currently measuring enrollment by tracking how many students are logging onto its online learning platform – an imperfect method for a rural county.

“Thirty-nine percent of our students did not have access to broadband before all this started,” he added. “So, there could be some students who we haven’t totally resolved that for.”

Graham, in Radford, said his staff have been following up with families who haven’t been attending classes with the school division, which is currently rotating in groups of students for face-to-face instruction several days a week. About 15 students moved out of the district before the start of the school year, but another 30 or 40 are currently homeschooling, he added.

Both he and White said part of the enrollment loss was linked to families who didn’t feel comfortable sending their children back to campus. But Graham also said multiple students have transferred to private schools in the area, many of which chose to fully reopen their campuses.

“Some families want their children to be 100 percent in-person, and private schools – at least the one in our area – have made that promise,” White added. “They’re saying that kids can come to school in-person all five days a week.”

But when public schools resume their normal schedules, administrators are expecting many of those students to re-enroll – exacerbating existing budget struggles if funding levels are reduced based on attendance counts during the pandemic. White said he’s already emailed school administrators and warned them to stop all discretionary spending, even on items such as paper, which isn’t as much of a necessity this year.

“We’re gonna hold off on some of those supplies because we have to be very prudent in our expenditures moving forward,” he said. “We want to get a better idea, come budget season, of where we stand so we can maintain our faculty and staff.”

Losing employees has become a very real concern for many districts if state funding decreases. Earlier this week, Graham sent an email to Virginia Superintendent James Lane and his local representatives, Del. Chris Hurst, D-Montgomery, and Sen. Ben Chafin, R-Russell, urging them to keep considering possible solutions. Kiser said that with 80 to 85 percent of school expenses tied up in staffing, budget cuts often have a direct impact on employees.



“We do not want to make reductions,” Graham added. “Our teachers are working their butts off right now, and we cannot send the message that even with all that work, we might have to furlough them.”

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