

Special Education in Virginia: The Basics

JOHN M. EISENBERG
ASSISTANT SUPERINTENDENT
FOR SPECIAL EDUCATION AND STUDENT SERVICES
VIRGINIA DEPARTMENT OF EDUCATION

NOVEMBER 29, 2017



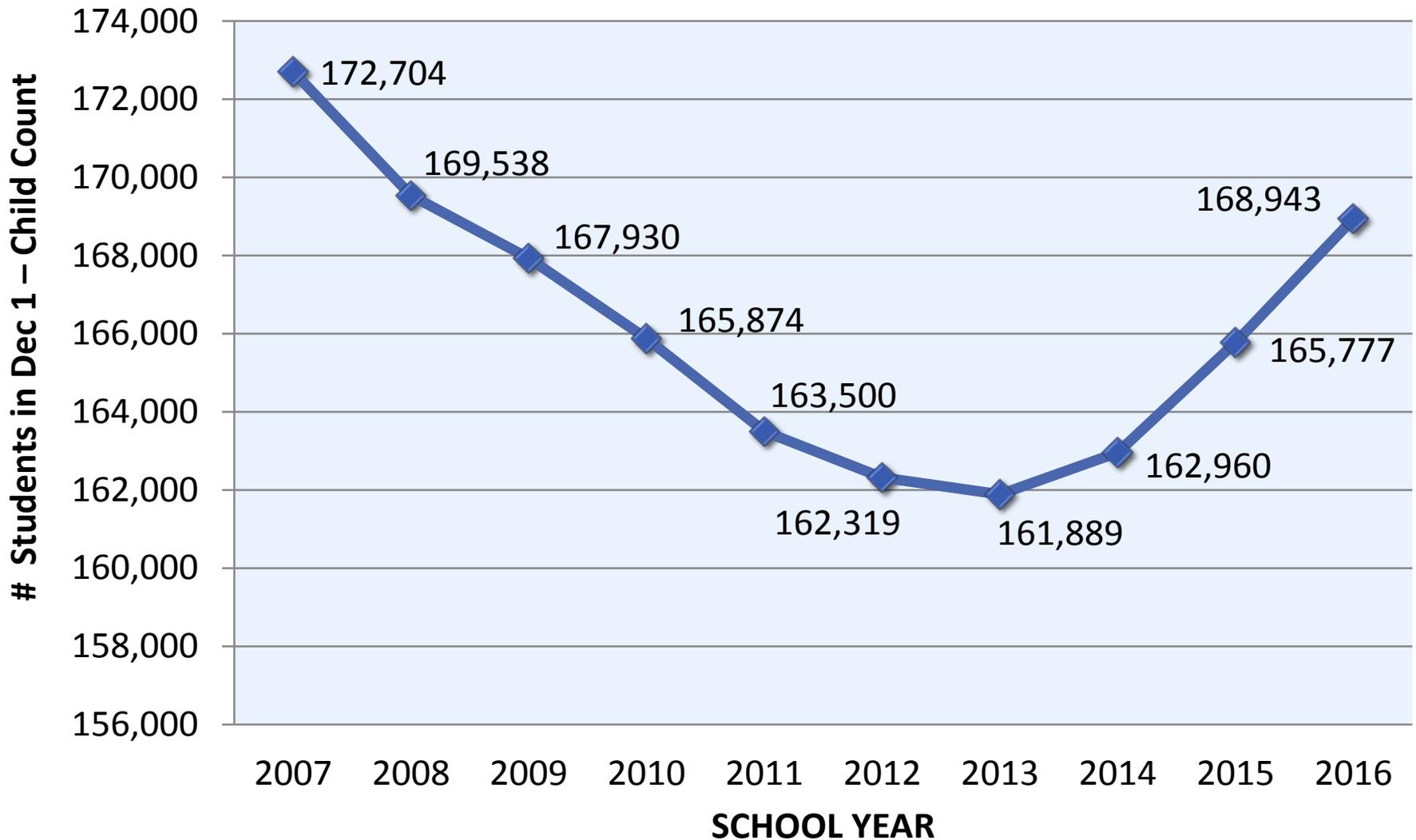
Our Mission

To provide children with disabilities with the knowledge and skills they need to live, learn, work and participate in communities of their choice with the maximum amount of independence as possible

Commonwealth of VA

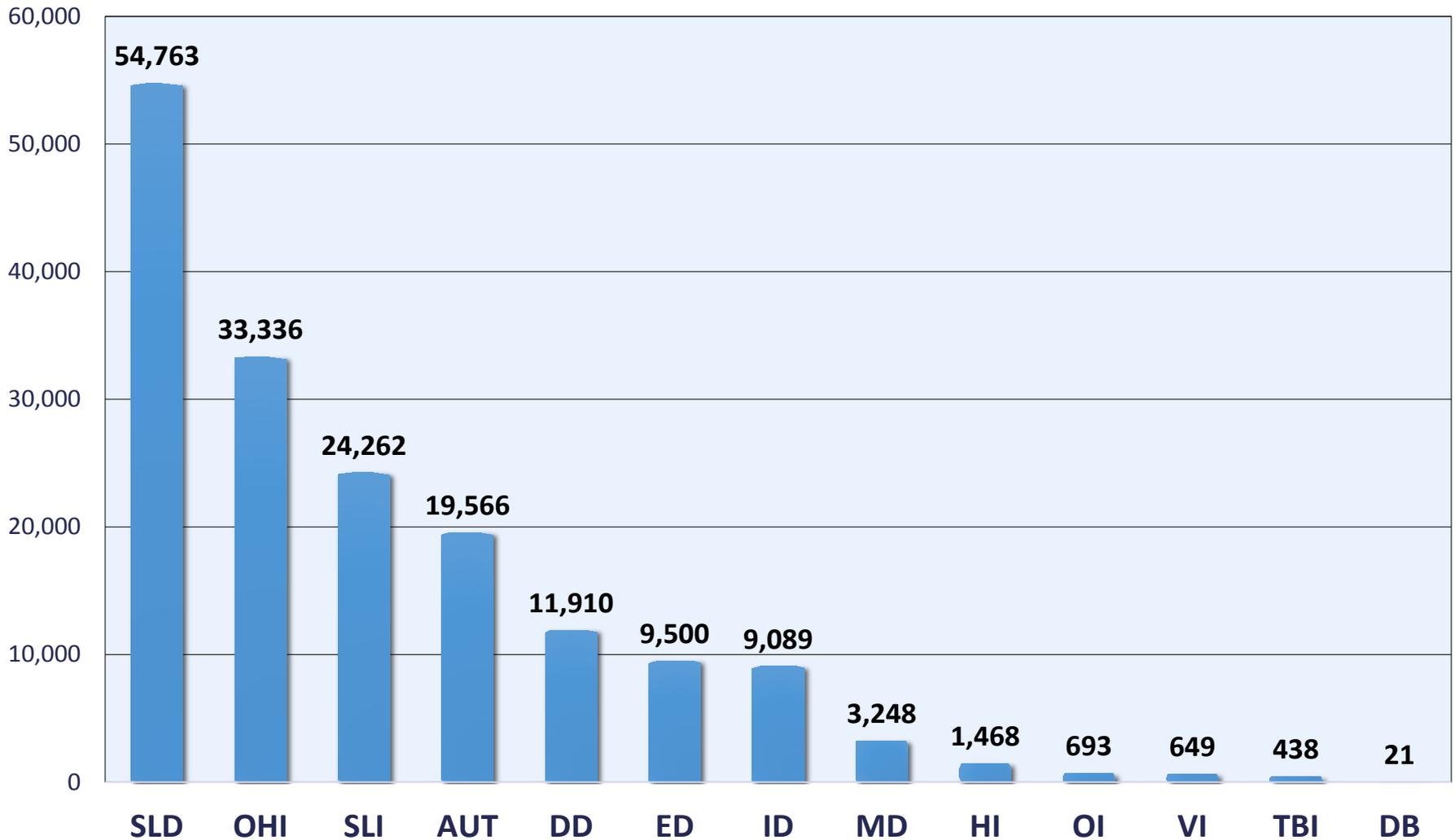
- 132 school divisions
 - Locally appointed or elected school boards
- Over 2,100 individual schools
 - Site based management
- 1,288,481 public school students
- 168,943 students with disabilities
 - Represents 13% of the overall school population

State Child Count Trends



Disability Categories

2016



2 Year Comparison

Disability Category	2015	2016	Difference
ID	9,054	9,089	35
HI	1,511	1,468	-43
SLI	24,537	24,262	-275
VI	656	649	-7
ED	9,425	9,500	75
OI	747	693	-54
OHI	32,354	33,336	<u>982</u>
SLD	54,222	54,763	<u>541</u>
DB	25	21	-4
MD	3,290	3,248	-42
AUT	18,256	19,566	<u>1,310</u>
TBI	409	438	29
DD	11,291	11,910	<u>619</u>
	165,777	168,943	3,166

Federal and State Regulations

- Individuals with Disabilities Education Improvement Act (IDEA)
- Regulations Governing Special Education Programs for Children with Disabilities in Virginia, January 25, 2010 (Virginia Regulations)

What is Special Education?

- Specially designed instruction,
- No cost to the parent,
- Meets the unique needs of a child with a disability in all settings (classroom, home, hospitals, institutions, etc.)

Key Components of Special Education

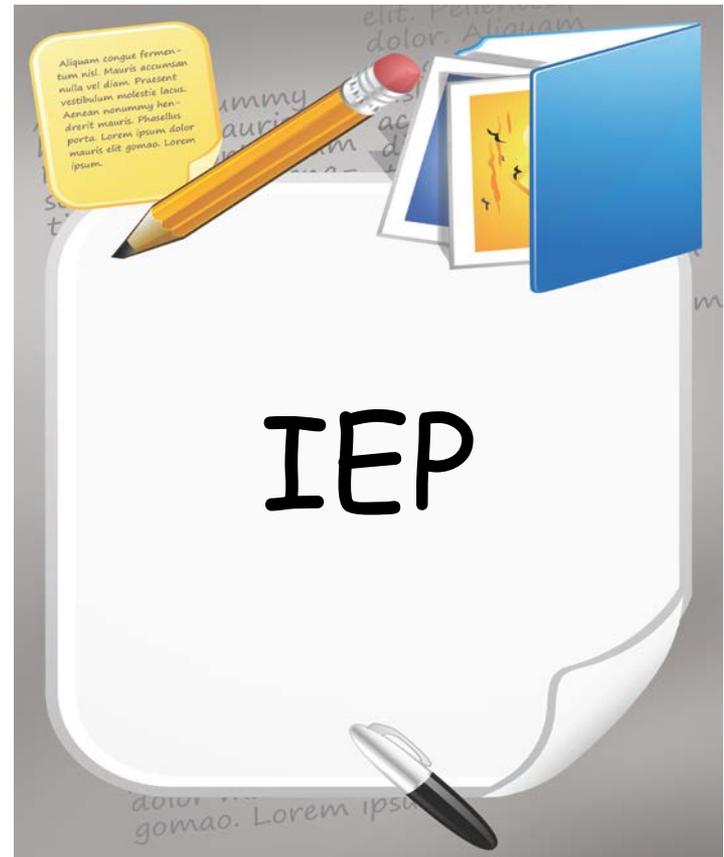
IEP - Individualized Education Program

LRE - Least Restrictive Environment

FAPE - Free Appropriate Public Education

IEP

- Written statement for a child with a disability
- Developed, reviewed, revised in a team meeting
- Specifies needs
- Specifies special education and related services
- Requires parent consent



IEP Elements

- Present Levels of Academic and Functional Performance
- Required Considerations
- Measurable Annual Goals
- Progress Reporting
- Participation in State Assessments
- Accommodations and Modifications
- Services
- Transition Services, where applicable

Continuum of Placements

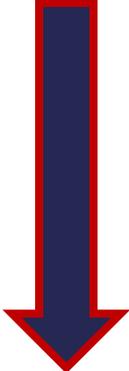
As the final matter in IEP development, the team must look at a continuum of educational placements and select the placement that constitutes the student's least restrictive environment (LRE)

Least Restrictive Environment (LRE)

Removed only from public school when nature or severity of disability cannot be achieved satisfactorily in public school.



Least Restrictive Environment (LRE) Continuum of Options:

Level	Setting
<p data-bbox="253 505 736 562">Least Restrictive</p>  <p data-bbox="253 1129 736 1186">Most Restrictive</p>	<ul style="list-style-type: none"> • Regular school building: regular classroom with accommodations and/or support services
	<ul style="list-style-type: none"> • Regular school building: regular classroom with itinerant services or resource room services (pull-out)
	<ul style="list-style-type: none"> • Regular school building: full-time self-contained special education class
	<ul style="list-style-type: none"> • Full-time self-contained class in a separate public facility
	<ul style="list-style-type: none"> • Private day school
	<ul style="list-style-type: none"> • Home based
	<ul style="list-style-type: none"> • Public or private residential program

This Process Should Lead to FAPE

- Rowley standard – some educational benefit
 - Endrew F. Supreme Court Case
- More than minimal
- Not required to maximize benefit

FAPE

- Provided at public expense, public supervision and direction, without cost to parent;
- Meets the standards of the Virginia Board of Education;
- Appropriate preschool, elementary, middle or secondary school
- Provided in conformity with an IEP

Eligibility for Special Education

Continues to require that:

1. The student has a disability
2. There is an adverse educational impact
3. There is a need for specially designed instruction

Disability Criteria in Virginia

Each Disability Category Includes:

- The federal definition
- Virginia specific criteria
- Disability specific exclusions
- Documentation of educational impact
- Documentation of need for specially designed instruction

Eligibility for Special Education

- Eligibility is based on the presence of a disability, not on possible benefit from services.
- Must meet state and federal criteria
- Not tied to ability to pay or medical prescription

Virginia Eligibility Criteria

- For any disability area the team must provide documentation that:
 - Meets the federal definition
 - Addresses all exclusionary criteria
 - Lack of instruction in reading or math or LEP
 - Provided high quality instruction
 - Addresses all required components
 - Observation in learning environment
 - Hearing Screening
 - Any 'disability specific' criteria

See Guidance on Evaluation and Eligibility (2009) or Virginia Regulations

Disability Categories

1. Specific Learning Disabilities
2. Speech Language Impairments
3. Other Health Impairment
4. Autism
5. Emotional Disabilities
6. Developmental Delay
7. Intellectual Disability
8. Hearing Impaired
9. Visually Impaired
10. Deaf-Blind
11. Traumatic Brain Injury
12. Multiple Disability

Update on Virginia's Special Education Regional Tuition Reimbursement Program (RTRP)

Background

Summary

11 Regional Programs

- 59 out of 132 School Divisions participate
- 4,900 Students Claimed out of 168,943
 - 2.9% of students with disabilities (SWD) in public schools
 - 11% increase since 2005
- Only can claim certain disability categories:
 - Autism, Emotional Disabilities, Multiple Disability, Hearing Impaired, Traumatic Brain Injury, Deaf-Blindness
 - 222% Increase in autism since 2005

Growth in annual appropriation

- \$16,355,694 increase since 2005

Background

Virginia's Special Education Regional Reimbursement Programs

- Authorized by Virginia's General Assembly in 1977
- P.L. 94-142 (Federal Special Education Law)

Original Purpose: to provide a mechanism for school divisions to cooperate and share resources to serve children with low incidence disabilities where there is not enough children in one division to create a classroom or program

Requirements 1 of 3

The LEAs were authorized to form regional programs by meeting the requirements for operating a joint program consistent with:

- *Board of Education Regulations Governing Jointly Owned and Operated Schools and Jointly Operated Programs* and related *Code of Virginia* provisions
- Required that each program be governed by a joint board constituted of a school board member from each participating LEA
- Required to have a director
- Further, one LEA was to serve as the fiscal agent for the program

Requirements 2 of 3

The funding for each Regional Tuition Reimbursement Program (RTRP) was established based on an annual application to the Virginia Department of Education (VDOE) termed a rate package. (Source of Funding: State Lottery)

- Rate package established fees for special education and related services
- Each rate package was to include:
 - A proposed budget based on projected revenues and expenses, and a description of the program(s) being offered including the disabilities served. Composite Index is applied during the reimbursement process.
- The rate packages were reviewed by an independent financial management/consulting firm to determine appropriateness of rates submitted.

Requirements 3 of 3

Authorized reimbursable disability categories under RTRPs:

- Emotional Disabilities
- Autism
- Multiple Disabilities
- Hearing Impaired
- Deaf/Blindness
- Traumatic Brain Injury

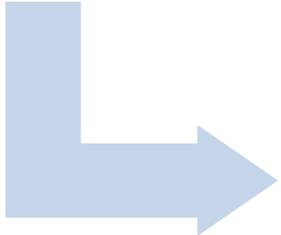
SOQ Funding & RTRPs

- Students claimed in RTRPs receive reimbursement funds in lieu of the Standards of Quality (SOQ)
- Funding for the SOQ is provided through the following accounts, mostly on a per pupil basis: ADM
 - Basic Aid (incl. health care)
 - Special Education
 - Career and Technical Education
 - Prevention, Intervention, and Remediation
 - Gifted Education
 - English as a Second Language
 - Fringe Benefits for funded instructional positions (VRS, Soc. Sec., Group Life)
 - Sales Tax (1.125 percent for public education)
 - Textbooks

Actions to Date

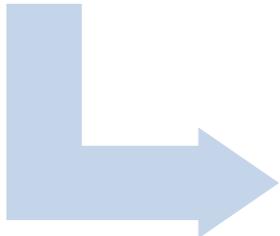
2015

- Initial study of 11 RTRPs



2016

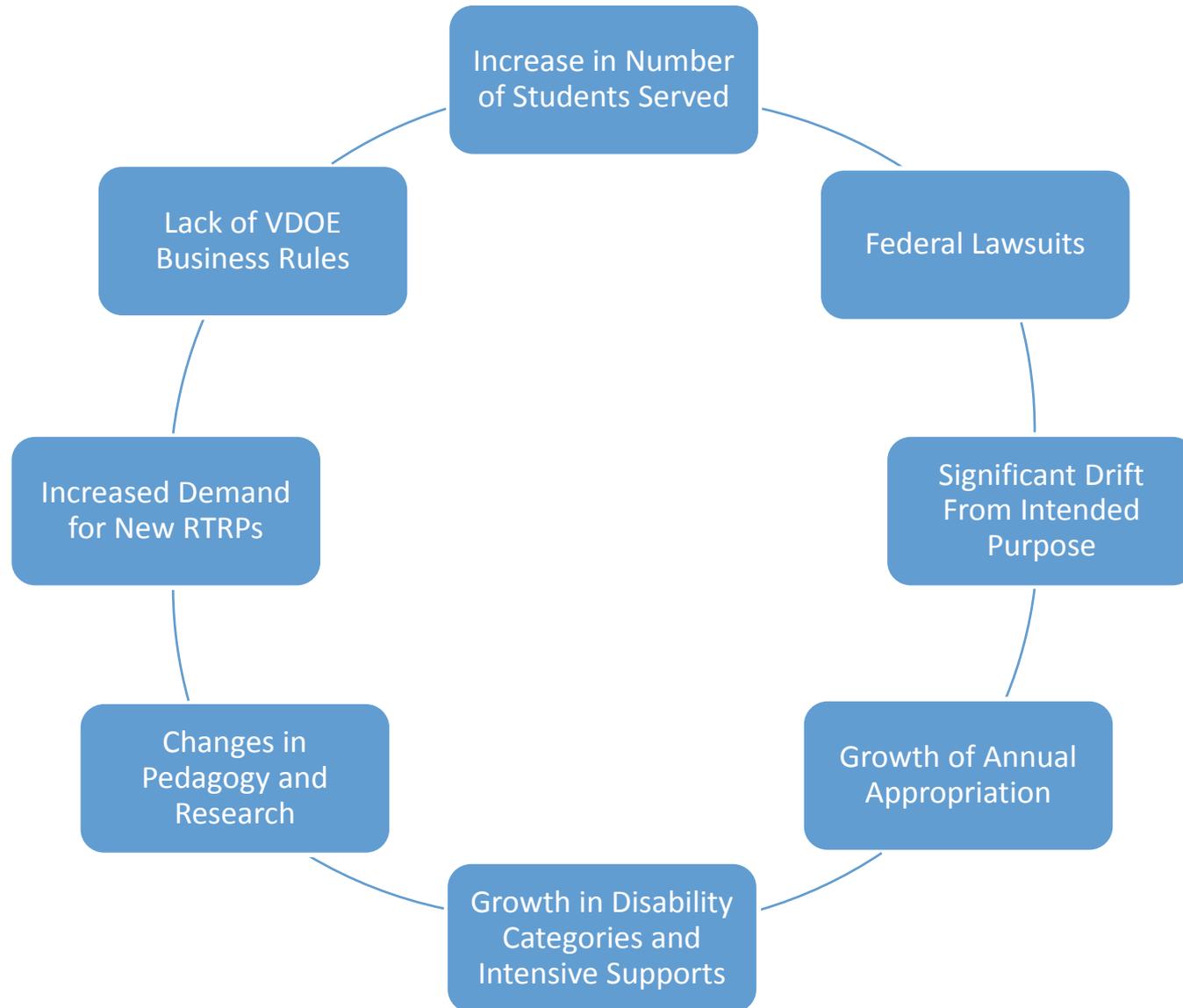
- Options for reform
– Equity Model



2017

- Reform of Current Model and Details for Transition

Issues Identified During Study



Disparity in Current Model

The VDOE has identified additional issues with current recipients of funds:

There is a disparity of distribution of funds across current recipients:

- 1 division received 30 percent of the \$84 million
- 5 of 59 recipients receive 55 percent of the total
- 15 of 59 recipients receive 76 percent of the total

Disparity in Current Model

continued...

- Wide variability in the 59 current recipients by the percentage of SWD on Special Education Child Count claimed under RTRP
 - Statewide average is 6 percent
 - Range is from <1 percent to 20 percent
- Range is skewed by Northern Virginia Regional Program
 - Prince William: 18 percent
 - Manassas Park: 20 percent
 - Manassas City: 12 percent
 - Spotsylvania: 2 percent
 - Statewide average would be 4 percent without NOVA

Disparity

The following are the four most common categories for use of funds by current recipients, as reported on the Annual School Report (ASR):

Instruction:

- State RTRP average: 86 percent
- Range of 70 percent to 97 percent

Administration/Attendance/Health Services:

- State RTRP average: 11 percent
- Range of 1 percent to 23 percent
- For comparison – VDOE is restricted to using 2 percent with IDEA

Operation and Maintenance Services:

- State RTRP average: 2 percent
- Range of <1 percent to 14 percent

Technology:

- State RTRP average: 1 percent
- with a range of <1 percent to 3 percent

**These expenditures are not consistently reported across all 11 Programs*

Note:

8 of the 11 Regional Programs either start the fiscal year or end the fiscal year with a Fund Balance

Additional Issues

The VDOE has further identified additional issues with increasing number of claims submitted and increased dollar amounts for those claims

- The increase in First Semester 2016 claims exceeded the Appropriation
 - Increased claims were generated by 38 current recipients for a total of \$1.4 million overage
 - Two recipients accounted for 70 percent of the total increase
- The VDOE was faced with the possibility of prorating all claims submitted
- Department of Planning and Budget was able to fund the gap
- Highlights the need for stronger policies and procedures

Short-Term Priority: Changes to existing system

Changes to Existing Model

Short-term (3 years): The VDOE will focus on needed policy and procedural changes

- Eligibility Checklist (Intensity Support Needs)
- The VDOE developed policies and procedures
- Reimbursement Process
- Budget Application/Justification
- Application Procedures (28 new requests)
- Data Procedures
- Code/regulatory adjustments

Transition Process

1. Shift from a Regional Program Model to providing funds for students with intensive support needs
2. Potentially, all 132 school divisions could be eligible in the future
3. Eligibility for funds
 - Based on a Intensive Support Needs Criteria
 - Remove disability category requirements
 - Cap the eligibility at five percent of each divisions special education population
4. Eliminate the rate package requirements
 - Traditional budget application and review
 - Restrict the allowable use of funds
5. Eliminate regional board requirements
6. Change reimbursement cycle
7. *Code of Virginia* or regulatory changes
8. Add back in ADM – or supplement with other state funding: Long-Term (2021)

Changes to Existing Model

Authority:

- (8VAC 20-81-250c) State Special Education Regulations
 - Subject to availability, reimbursement may be made available for a portion of the costs associated with placement of children with disabilities in public regional special education programs pursuant to polices and procedures established by the Superintendent of Public Instruction or designee
 - Such reimbursement shall be in lieu of other state education funding available for each child

Changes to Existing Model

continued...

Proposed Timeframe for Short-Term Changes:

2017-2018:

- Pilot use of new Application/Budget
- Pilot use of new eligibility criteria
- Implement new policies and procedures for distribution and use of funds
- Begin transition discussion about funding and develop individualized division financial transition plans

2018-2019:

- Full implementation, new Application/Budget, and new Policies and Procedures
- Implement individualized division financial transition plans
- Phase in new divisions

2019-2020:

- Implement individualized division financial transition plans
- Phase in new divisions

2020-2021:

- Finalize individualized division financial transition plans
- Propose new Equity Model

Application/Budget Process

New Application with Criteria/Checklist will be a shorter, more streamlined document with specific information on:

- Programs/Services to be provided are aligned to costs;
- Number of students and disability type;
- Staffing needs;
- Location of services provided;
- Partnership/Collaboration;
- Costs related to the above;
- Audit Controls; and
- Assurance the funds received will be used for services to students who meet the criteria developed by VDOE

New School Divisions

- The VDOE has received 28 requests from new LEAs to be considered eligible to receive funds
- Two new Regional Programs have been approved by VDOE (Northern Neck and Richmond area Region One Consortium)
 - 18 Divisions
- The VDOE will work with these two programs and existing programs to include them in receipt of funds for the 2017-2018 school year

Transition Draft Example

2016-2017 Current	2017-2018 Goal	2018-2019 Goal	2019-2020 Goal	Final GOAL
17.8% of Sped Population claimed	11% of Sped population claimed	8%	5%	Goal:
1,911 claims	1,200 claims	900 claims goal	538 claims goal	5%
\$24,626,771	-711 student claims reduction	-300 student claims reduction	-362 student claims reduction	538 Claims
	-\$6,400,000 reduction in RTRP funds	-\$6,400,000 reduction in RTRP funds	-\$6,400,000 reduction in RTRP funds	\$5,360,947 total amount able to claim
	+\$4,167,171 SOQ funds	+1,758,300 SOQ funds	+2,121,682 SOQ Funds	Total SOQ Gain: \$8,047,153
	Net Loss: \$2,232,829	Net Loss: \$4,641,700	Net Loss: \$4,278,318	Total Net RTRP Loss: \$11,152,847

- Students exiting the RTRP funding system will go back into the general state SOQ/ADM funding system.

Intensity Support Needs Checklist

See handout

- Developed in collaboration with staff from the Virginia Commonwealth University and VDOE subject matter experts
 - Autism Center of Excellence
 - Center for Transition Innovations
- Presented to stakeholder groups for feedback and revisions
 - Current RTRP recipients and non-recipients

Transition Funding Model Details

Using this Formula would likely result in the following:

- The VDOE will develop a “Transition Plan” for ALL divisions as part of any change
- This Transition Plan will be part of a division’s future Application/Budget request for funds
- The Plan accounts for a division’s Maintenance of Effort requirement

Addendum

Commission on Youth Action

Approved the following:

- The VDOE should finalize and implement the new Policies and Procedures to address the disparity in existing funding;
- The VDOE should implement the new Application/Budget for 2018-2019;
- The VDOE should implement the new Intensive Support Needs Eligibility Criteria; and
- The VDOE should begin working with current RTRP recipients to implement Transition Plans.

Proposed Regulatory Changes

The VDOE would need sponsored legislation for the modification of the following:

State Special Education Regulations 8VAC20-81-30:

Regional special education programs. (§ 22.1-218 of the *Code of Virginia*; Jointly Owned and Operated Schools and Jointly Operated Programs (8VAC20-280))

1. If it becomes necessary for local school divisions to develop regional programs to serve children with disabilities residing within their jurisdiction, such regional programs shall be provided in accordance with the least restrictive environment requirements specified in 8VAC20-81-130.
2. If local school divisions elect to participate in an approved regional program for the provision of special education and related services for certain children with disabilities, a joint board shall be established to manage and control the jointly owned or operated program, center, or school. Establishment of the joint board and administration of the jointly / owned and operated program shall be conducted in accordance with the Virginia Board of Education regulations governing such programs.
3. Each joint board shall appoint a qualified director who shall be the administrative head of the regional program.

Proposed Regulatory Changes

The VDOE would need sponsored legislation for the modification of the following:

State Special Education Regulations 8VAC20-81-240. Eligibility for Funding:

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

(Virginia Appropriation Act; 22.1-218 of the Code of Virginia)

1. Subject to availability, reimbursement may be made available for a portion of the costs associated with placement of children with disabilities in public regional special education programs pursuant to policies and procedures established by the Superintendent of Public Instruction or designee.

Long-Term Reforms

Allow for a three year cycle to reform current system

- Report back to COY
 - What worked
 - What did not work
 - Potential additional funding needs
 - Potential *Code* or regulatory changes needed
 - Shifts in populations/needs

Eligibility Criteria for Students with Intensive Support Needs

<i>Mandatory Requirements:</i>	
<input type="checkbox"/>	The student has a current IEP
<input type="checkbox"/>	Does the student receive special education services for (85%) or more of the school day (85% percent special education services reflects the amount of special education service received and does not equate to the student's actual placement)
STUDENT MUST HAVE (3) OR MORE OF THE FOLLOWING:	
<input type="checkbox"/>	The student demonstrates significant cognitive disabilities which impact access to the general curriculum
<input type="checkbox"/>	The student's present level of performance indicates the need for extensive, direct instruction and/or intervention to meet behavioral needs
<input type="checkbox"/>	The student's present level of performance indicates the need for extensive, direct instruction and/or intervention in curricular areas such as personal management, recreation and leisure, vocational, communication, social competence and/or motor skills
<input type="checkbox"/>	The student's present level of performance indicates the need for intensive, frequent, and individualized instruction in a variety of settings to ensure appropriate interaction and achievement
<input type="checkbox"/>	The student's behavior presents significant risk to his or her own or other's health or safety
<input type="checkbox"/>	The student's medical conditions or personal care needs present significant risk to his or her own or others health or safety.
<input type="checkbox"/>	Despite extensive individualized supports and instruction, the student is currently making no or minimal progress toward their IEP goals
<input type="checkbox"/>	The student has a current Functional Behavior Assessment and Behavior Intervention Plan that has been implemented for at least one month
<input type="checkbox"/>	The student requires significant assistive technology to access instruction and educational environments
<input type="checkbox"/>	The student has demonstrated a pattern of requiring intensive supports to assist the student during an isolated or occasional episode related to the behavior(s) or medical condition described in the present level of performance
<input type="checkbox"/>	The student requires frequent and intensive related services and supports to make progress on academic, functional and behavioral goals
<input type="checkbox"/>	The student has significant sensory impairment that requires extensive support and/or Assistive Technology