

Specific Educational Programs

Introduction: Ensuring Quality Education Through Special Programs

While the Standards of Quality emphasize the development of “essential basic skills that are necessary for success in school and for a productive life in the years beyond,” they also direct local school boards to provide a number of specific instructional programs designed to address the special educational needs of various student populations. Recognizing that college preparatory courses may not effectively prepare those students who plan to enter the workforce directly upon graduation, the Standards require school boards to provide career and vocational education programs. Disabled students are to be identified and enrolled in appropriate educational programs consistent with federal and state requirements. Also subject to early identification and appropriate placement are gifted pupils.¹ Providing special educational opportunities for these students may well reflect the Jeffersonian ideal that “free government rests, as does all progress, upon the broadest possible diffusion of knowledge, and that the Commonwealth should avail itself of those talents...by assuring the opportunity for their fullest development by an effective system of education.”²

Educational Programs for Gifted Students

In the United States, gifted education received special emphasis at the turn of the century and during the 1940s, presumably in response to industrialization and the war effort. Gifted students were typically offered accelerated programs through condensed curriculum, grade-skipping, and ability grouping. The last half of this century has witnessed a renewed interest in gifted education, as nuclear weapons and space technology have drawn attention to the need for improved curricula and training for math and science careers. Gifted programs shifted in focus to problem solving, creativity, and autonomous learning.³

Federal Initiatives

Acknowledging gifted and talented pupils as “a national resource vital to the future of the Nation and its security and well-being,” Congress enacted the first federal legislation specifically addressing gifted education in 1974, establishing an information clearinghouse for gifted education and a grant program to assist states. Subsequently, the 1978 Gifted and Talented Children's Act designated federal funds for gifted education. With the passage of the Jacob K. Javits Gifted and Talented Students Education Act of 1988, Congress authorized the issuance of grants to state and local education agencies and institutions of higher education for programs designed for gifted students, including training for instructional personnel, model programs and cooperative arrangements involving educators and the private sector, and research in the identification and education of gifted and talented students. The Act also directs the establishment of a National Center for Research and Development in the Education of Gifted and Talented

¹Va. Code § 22.1-253.13:1 A, D (1993 Supp.).

²Va. Constitution. Art. I, § 15 (1987).

³J. Gallagher and P. Weiss, *The Education of Gifted and Talented Students: A History and Prospectus* at 10-13, 16-17 (1979) [hereinafter referred to as Gallagher & Weiss].

Children and Youth. Deemed as priorities are the identification of gifted students who may not be found through "traditional assessment methods" and the improved capability of schools, through cooperative arrangements with agencies, higher education, and other organizations, to plan and conduct programs for gifted students.⁴

Gifted Education in Virginia

The Virginia General Assembly has long recognized gifted students as "among the greatest assets of the Commonwealth." In 1980, the legislature requested the House Education and Senate Education and Health Committees to "study the status and needs of programs for the gifted and talented children."⁵ Reaffirming its commitment to gifted and talented education, the 1981 Session requested the Board of Education to "consider seriously" the recommendations of a joint subcommittee which focused specifically on special training and development programs for teachers as well as funding issues.⁶ In 1986, the Governor's Commission on Excellence in Education acknowledged that "gifted students will make contributions to our state which far exceed their numbers" and urged increased state support for special schools and programs for gifted students.⁷

The State Board of Education, assisted by the State Advisory Committee for the Education of the Gifted, and the Department of Education have advanced special education for gifted students through regulations and the Virginia Plan for the Gifted. The initial *Virginia Plan for the Gifted*, approved by the Board of Education in 1980, was the first plan developed by the Department for gifted education in the Commonwealth's public schools. (For a comparison of state programs, see Table 1.)

⁴20 U.S.C.A. §§ 3062, 3064, 3065 (1990); *see also*, Note, "Legal Rights of Gifted Students: Special Education Law at the "Other End," 19 *Conn. L. Rev.* 143 at 149, 150 (Fall 1986).

⁵1980 Acts of Assembly, House Joint Resolution No.164.

⁶1981 Acts of Assembly, House Joint Resolution No. 288.

⁷Report of the Governor's Commission on Excellence in Education, *Excellence in Education A Plan for Virginia's Future* at 8 (October 1986) [hereinafter referred to as *Excellence in Education*].

TABLE 1
State Legislation on Gifted and Talented Programs and Number and Percentage of Students Receiving Services in Public Elementary and Secondary Schools, By State: 1989-90

State	State-mandated gifted and talented programs	Discretionary state-supported gifted and talented programs	Gifted and talented students receiving services	Gifted and talented students as a percent of enrollment ¹	State	State-mandated gifted and talented programs	Discretionary state-supported gifted and talented programs	Gifted and talented students receiving services	Gifted and talented students as a percent of enrollment ¹
1	2	3	4	5	1	2	3	4	5
Alabama	X		17,827	2.5	Montana		X	—	—
Alaska	X		4,577	4.2	Nebraska		X	² 25,000	9.2
Arizona			—	—	Nevada		X	6,389	3.4
Arkansas	X		31,519	7.2	New Hampshire			—	—
California		X	223,712	4.7	New Jersey		X	122,626	11.4
Colorado		X	—	—	New Mexico			—	—
Connecticut		³ X	—	—	New York		X	² 150,000	5.8
Delaware		X	5,025	5.1	North Carolina	X	X	67,119	6.2
Florida	X		61,458	3.4	North Dakota			1,151	1.0
Georgia	X		49,384	4.4	Ohio		X	65,486	3.7
Hawaii	X		8,863	5.2	Oklahoma	X		43,297	7.5
Idaho			—	—	Oregon	X	X	—	—
Illinois	X	X	² 141,537	7.9	Pennsylvania	X		80,386	4.9
Indiana		X	² 45,000	4.7	Rhode Island		X	² 5,674	4.2
Iowa	X	X	² 18,970	4.0	South Carolina	X		46,961	7.6
Kansas	X		13,096	3.0	South Dakota	X	X	4,825	3.8
Kentucky	X		² 31,825	5.0	Tennessee	X		15,600	1.9
Louisiana	X		² 19,000	2.4	Texas	X		206,583	6.2
Maine	X	X	² 15,785	—	Utah	X	X	—	—
Maryland		X	² 60,000	8.6	Vermont			—	—
Massachusetts			—	—	Virginia	X	X	101,579	10.3
Michigan		X	² 182,414	11.6	Washington		X	—	—
Minnesota		X	39,725	5.4	West Virginia	X		11,989	3.7
Mississippi	X	X	18,279	3.6	Wisconsin	X		—	—
Missouri		X	² 36,200	4.5	Wyoming		X	—	—

¹ Percent based on enrollment figures collected by the National Center for Education Statistics.

² Estimated by reporting state.

³ Legislation only mandates that gifted and talented students enrolled in public schools be identified.

X—indicates that legislation has been passed.

—Data not available.

NOTE—The District of Columbia was not included in the survey.

Source: U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics 1993* at 67 (October 1993).

The State Advisory Committee for the Education of the Gifted guides the Department and the Board “in the development of a comprehensive program for identified gifted students.” The Committee is comprised of teachers, parents, state and local education officials, and representatives of business, industry, and public and private education; members are appointed by the Board of Education for four-year terms.⁸ Within the Department of Education, the Office of Programs for the Gifted assists school divisions in the implementation of programs consistent with administrative requirements and the Standards of Quality. Today, all school divisions are involved in some way in the provision of special services for the Commonwealth's 100,000 identified gifted students.⁹

⁸Virginia Board of Education. *Regulations Governing the Educational Program for Gifted Students*, Preamble [hereinafter referred to as *Board Regulations*]; Virginia Department of Education. *The Virginia Plan for the Gifted* at iv (May 31, 1984); State Advisory Committee for the Education of the Gifted. *Seventh Annual Report 1* (December 1989) [hereinafter referred to as *SAC Report*].

⁹Virginia Department of Education, *Virginia Programs for the Gifted 1* (July 1989) [hereinafter referred to as *Virginia Programs*].

Standard I of the Standards of Quality requires local school divisions to offer a "differentiated" program to those students who have been screened and identified as "gifted." Pursuant to the Standards of Accreditation, Virginia's public schools must provide students identified as gifted with instructional programs taught by teachers with special training or experience in gifted education. Each school division must submit a plan for the education of gifted students; the plan must include a statement of goals and objectives, procedures for identification and placement, and a program design including curriculum goals and differentiated instruction for grades K through 12. The local plan must also contain assurances that testing and evaluation materials are "neither culturally nor racially discriminatory" and that they are "sensitive to language differences." A local advisory committee comprised of parents, teachers, and others advises the school board regarding gifted education needs and annually reviews the content and implementation of the local plan.¹⁰

Because gifted education is required by the Standards of Quality, the Commonwealth and local school divisions share responsibility for funding these programs. Basic operation costs for each school division include the provision of gifted education. Local school divisions must spend, as part of the required local expenditure to meet the Standards of Quality, the established per pupil cost for gifted education on approved programs for the gifted. The Department of Education disburses to local divisions payments to support the state share of one full-time instructional position in gifted education per 1,000 students in average daily membership.¹¹

Defining "Giftedness"

Inextricably linked to the provision of these programs is the difficult question of defining "giftedness." In Virginia, gifted students are currently identified as "those students in kindergarten through grade 12 whose abilities and potential for accomplishment are so outstanding that they require special programs to meet their educational needs." These students are identified by professionals on the basis of general intellectual and specific academic ability; visual, performing, and practical arts abilities; psychosocial ability; and creative and productive thinking ability.¹² While some experts have recommended the use of absolute admissions standards,¹³ multifaceted selection processes have been also been praised, based on the idea that "academic talent is found in every segment of society, at every socioeconomic level, and in every community in the state."¹⁴

Regional programs

The Commonwealth supports a number of regional programs for academically gifted students. Centers located in Fairfax, Hampton, Lynchburg, and Roanoke offer full-and half-day

¹⁰Va. Code § 22.1-253.13:1(1993); Virginia Department of Education, *Standards and Regulations for Public Schools in Virginia at 19* (1993) [hereinafter referred to as *Standards and Regulations*]; *Board Regulations, supra* note 17, §§ 2.3, 2.5, and 2.6.

¹¹1993 Acts of Assembly, c. 994, § 146, Item 135(A)(3); Item 135(C)(4).

¹²*Board Regulations, supra* note 17, § 1.2.

¹³Stanley, *supra* note 35, at 771.

¹⁴Eilber, *supra* note 11, at 774.

programs which may involve students in college courses, independent studies, and mentorships with local professionals. Course offerings vary at each center. While these programs have provided valuable educational opportunities, their effectiveness may be limited due to transportation and geographic constraints.¹⁵

Governor's Schools

Perhaps one of the best known services offered for gifted students in the Commonwealth is the Governor's Schools program, first established in 1973 by Governor Linwood Holton. Supported by legislative appropriation, the program includes a total of 33 summer residential schools, summer regional schools, and academic year schools and is administered by the Department of Education Programs for the Gifted) cooperatively with local school divisions, colleges, and universities. Each summer residential school focuses on one special area of interest, such as visual and performing arts, humanities, science, technology, or mentorships. A local nomination and state committee selection process determines which rising high school juniors and seniors may attend these schools. Summer regional schools, often designed by groups of school divisions, offer day programs for elementary and middle school students. Summer residential and regional programs are funded by the Department of Education through a legislative appropriation. Regional academic year programs provide special studies in science, mathematics, technology, and the arts for high school students. The remainder of the student's instruction may be provided by the student's home school or by the Governor's School. These programs receive funding from the Department of Education and participating school divisions. Additional contributions to Governor's Schools are made by local school divisions, institutions of higher education, foundations, and communities.¹⁶

The addition of the new Southside Virginia Regional Governor's School for Global Economics and Technology and the Central Shenandoah Valley Regional Governor's School in Fall 1993 brings the total number of academic year Governor's Schools to nine. The Southside Governor's School offers an especially unique educational alternative, as it will incorporate six college campus sites as well as computers and satellite down-links to deliver educational services.¹⁷

In 1993-94, the Commonwealth will provide nearly \$4 million in general funds for Governor's Schools. These funds are to include payments for the state share of magnet school operations, based on the composite index. The 1993-94 Appropriation Act stipulates that these payments are not designed to support capital outlay or fixed equipment costs for existing or proposed magnet schools; these payments may, however, support the purchase of instructional equipment, contingent upon certification by the Superintendent of Public Instruction that participating school divisions have committed an equal amount. Finally, the budget precludes the

¹⁵*Virginia Programs, supra* note 18, at 2; Jennings, Hoed & Associates, *Report to Virginia Board of Education of the Feasibility Study Exploring Private Sector Interest and Support for Residential School for the Gifted* at 39, 40 (January 15, 1990) [hereinafter referred to as *Consultant's Report*].

¹⁶Virginia Department of Education, *Programs for the Gifted, Virginia Governor's Schools* at introduction, 3.7 [hereinafter referred to as *Governor's Schools*]. See also, *Virginia Programs, supra* note 18, at 2.

¹⁷P. Stallsmith, "Governor's school is unique network," *Richmond Times-Dispatch* C5 (July 4, 1993).

Board of Education from taking any action in 1993-94 that will increase the Commonwealth's share of costs for Governor's Schools.¹⁸

Residential Schools for Gifted Students

The residential school concept has been supported and implemented in several states, including North Carolina, Indiana, Illinois, and Louisiana. Although the Commonwealth has not established a residential school for gifted pupils, the issue has been the focus of numerous legislative and administrative studies in the last decade. In 1980, HJR 164 requested the Rouse Education Committee and the Senate Education and Health Committee to study programs for gifted and talented children.¹⁹ The joint subcommittee agreed that "the time has come for an emphasis on gifted education" and recommended that the Department of Education study the feasibility of establishing residential schools for the arts, humanities, and science for gifted students.²⁰ At the request of the 1981 Session of the General Assembly, the Board of Education was to "consider seriously" the recommendations of the joint subcommittee.²¹

The legislature revisited the issue in 1982, specifically requesting the Department of Education to study the feasibility of establishing one or more residential schools for the arts, humanities, and sciences for gifted public school pupils. In a report reviewed and endorsed by the Board of Education, a special subcommittee recommended the creation of a year-round residential school "to meet the needs of the Commonwealth's highly gifted and talented students by providing an extended opportunity for an appropriate in-depth educational program."²²

¹⁸1993 Acts of Assembly, c. 994, § 146, Item 138.

¹⁹1980 Acts of Assembly, House Joint Resolution No.164.

²⁰*Report of the Joint Subcommittee Studying the Status and Needs of Gifted and Talented Children*, House Document No.26 at 11 (1981) [hereinafter referred to as House Document No.26].

²¹1981 Acts of Assembly, House Joint Resolution No.288.

²²1982 *Acts of Assembly* House Joint Resolution No.46; *Report of the Department of Education on the Feasibility of Establishing a Residential School for the Arts, Humanities and Sciences*, House Document No.22 at 2-5 (1983) [hereinafter referred to as House Document No.22]; *Final Report from Consultants and Feasibility Task Force, Establishment of Residential School for Gifted Students*, House Document No.23 at 2, 3 (1985) [hereinafter referred to as House Document No.23].

1993 Governor's Schools--Academic Year Programs

- ◆ Central Virginia Governor's School for Science & Technology (Lynchburg)
Participating School Divisions: Amherst, Appomattox, Bedford, Campbell, Lynchburg
Grade Levels: 11-12 Enrollment: 97
- ◆ Governor's School for the Arts (Norfolk)
Participating School Divisions: Chesapeake, Franklin, Isle of Wight, Norfolk, Portsmouth, Southampton, Suffolk, Virginia Beach
Grade Levels: 9-12 Enrollment: 300
- ◆ New Horizons Governor's School for Science & Technology (Hampton)
Participating School Divisions: Gloucester, Hampton, James City, Newport News, Poquoson, Williamsburg
Grade Levels: 11-12 Enrollment: 88
- ◆ Southwest Virginia Governor's School for Science, Mathematics, and Technology (Pulaski Co.)
Participating School Divisions: Bland, Carroll, Floyd, Giles, Grayson, Pulaski, Smyth, Wythe, Galax
Grade Levels: 11-12 Enrollment: 89
- ◆ The Roanoke Valley Governor's School for Science & Technology (Roanoke City)
Participating School Divisions: Roanoke, Craig, Franklin, Botetourt, Bedford, Roanoke City, Salem
Grade Levels: 10-12 Enrollment: 206
- ◆ Thomas Jefferson High School for Science & Technology (Fairfax County)
Participating School Divisions: Fairfax, Loudoun, Prince William, Falls Church, Manassas Park
Grade Levels: 9-12 Enrollment: 1637
- ◆ Thomas Jefferson High School for Government and International Studies (Richmond City)
Participating School Divisions: Charles City, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, King & Queen, King William, Powhatan, Colonial Heights, Petersburg, Richmond
Grade Levels: 9-12 Enrollment: 422
- ◆ Central Shenandoah Valley Governor's School for Science & Technology (Augusta Co.)
Participating School Divisions: Augusta, Staunton, Waynesboro
Grade Levels: 11-12 Enrollment: 100
- ◆ Governor's School for Global Economics and Technology for Southside Virginia (Greensville/multi-sites throughout region)
Participating School Divisions: Amelia, Brunswick, Buckingham, Charlotte, Greensville-Emporia, Lunenburg, Mecklenburg, Nottoway, Pittsylvania, Prince Edward, Danville, Cumberland
Grade Levels: 11-12 Enrollment 210

Source: Virginia Department of Education.

More recently, the State Advisory Committee included the establishment of a residential school for gifted students in its 1988-89 Plan of Action.²³ The Board of Education has continued to study this concept, and in August 1989, retained a consulting firm to explore the degree of interest and potential private support for establishing a residential high school for gifted students.²⁴ On May 24, 1990, the Board of Education endorsed for the first time, by a vote of 5-3, the idea of establishing a residential school for gifted students.²⁵ A 1990 legislative study examined the feasibility of establishing a residential school for gifted students at Montpelier.²⁶

Academic Tracking

Tracking or ability grouping, practiced widely throughout the United States, has been praised for granting challenging learning experiences to high achievers and appropriate assistance for low achievers, and criticized for perpetuating "academic and social inequality."²⁷ Typically used to refer to the placement of students in separate classes based upon academic achievement or perception of abilities, the term "tracking" may also refer to a series of courses, such as an academic or a vocational track. In contrast, "grouping" may describe clustering students of similar ability within a class for specific instruction. An estimated 54 percent of Virginia school divisions track middle school students and 95 percent track high school students. While acknowledging studies that support tracking for high achievers, the Governor's Commission on Educational Opportunity for MI Virginians noted "strong evidence" that this practice hampers the educational progress and self-esteem of middle- and lower-ability pupils and urged further study of the issue. A 1992 study by the Department of Education recommended increasing opportunities for the enrollment of black and low socioeconomic status pupils in advanced mathematics and science courses by examining tracking and ability grouping practices in elementary and middle schools; establishing strategies for the "consistent assignment of students to the most challenging courses they can handle"; and enhancing access to a varied selection of advanced courses through electronic classrooms and partnerships between local education agencies and institutions of higher education.²⁸

Advanced Placement

The Standards of Accreditation require all public secondary schools to provide access to at least two Advanced Placement courses or two college-level courses for credit as part of "course work and experiences that prepare the student for college-level studies."²⁹ A 1990 survey

²³*SIC Report, supra* note 17, at 2.

²⁴*Consultant's Report, supra* note 20, at iii.

²⁵R. Walker, "Idea of state residential school for gifted survives on split vote," *Richmond Times-Dispatch* B-1 (May 25, 1990).

²⁶1990 Acts of Assembly, House Joint Resolution No.119; 1991 Acts of Assembly House Joint Resolution No. 322.

²⁷National Education Association, Report of the NEA Executive Committee. Subcommittee on Academic Tracking, *Academic Tracking* at 1(1990).

²⁸Governor's Commission on Educational Opportunity for All Virginians, *Final Report* at 48 (1991); Report of the Department of Education, A Study of Tracking and Ability Grouping in Mathematics and Science Courses in Virginia's Secondary Schools, House Document No.58 at iii, 9 (1992).

²⁹*Standards and Regulations, supra* note 12, at 17.

conducted by the Department of Education indicated that English 12, Calculus, and American History are the advanced placement courses most *commonly* offered in the public schools.³⁰

Special Education

The delivery of educational services for disabled pupils is largely guided by federal law. Having previously addressed special education services through piecemeal legislation, Congress enacted the Education for All Handicapped Children Act (P.L. 94-142) in 1975 (EAHCA), pledging the availability of federal moneys for states providing a "free and appropriate education" for handicapped children between the ages of 3 and 20. Renamed the Individuals with Disabilities Education Act (IDEA) in 1990, the Act covers those children who are mentally retarded, hearing or visually impaired, learning disabled, or emotionally disturbed, and those with orthopedic disabilities and other health problems. Eligibility for federal funding is contingent upon the implementation of a state policy that "assures all handicapped the right to an appropriate education." Judicial review of the statute has arguably resulted in a retreat from the initial intent of the Act--to expand educational opportunities; the U.S. Supreme Court has held that special education services need not maximize the pupil's potential, but rather should "permit the child to benefit educationally...."³¹ Prior to the enactment of EAHCA, the right to receive special education in the public schools was typically based on Section 504 of the Rehabilitation Act of 1973, which prohibited recipients of federal funds from discriminating on the basis of a handicapping condition, and on the Due Process and Equal Protection Clauses of the Fourteenth Amendment.³²

"Free and Appropriate Education" and Individual Education Plans

The requisite "free and appropriate education" (FAPE) must be provided at public expense, under public supervision, at no charge; must meet state educational standards; and must include preschool, elementary, and secondary education. Finally, the FAPE must be provided pursuant to an individualized education plan (IEP) tailored to meet the unique educational needs of the particular student (see Table 2). Subject to annual review and revision, the IEP is based on a written statement articulating the pupil's present educational level, annual goals, specific services to be provided, and objective evaluation criteria. The local education agency (LEA)--defined as public boards of education or other state agencies charged with administering public education--as well as the teacher, parents, and, when appropriate, the student, are involved in the development

³⁰Virginia Department of Education, Virginia Advanced Placement (AP) Task Force, *Advanced Placement in Virginia* (June 1990).

³¹Note, "The Education of the Handicapped Act: The Floor of Opportunity," 12 *J. Juv. L.* 26 at 26-31 (1991) [hereinafter referred to as *EHA*]; 20 U.S.C.A. ~§ 1400-1485 (West 1990); *Bd. of Education v. Rowley*, 458 U.S. 176 at 203, 102 S.Ct. 3034 at 3049 (1982); T. Glennon, "Disabling Ambiguities: Confronting Barriers to the Education of Students with Emotional Disabilities," 60 *Tenn. L. Rev.* 295 at 298-299 (1993) [hereinafter referred to as Glennon].

³²Virginia Department of Education, *Superintendent's Memorandum No. 1* at 2 (October 2, 1991); D. Huefner, "Judicial Review of the Special Education Program Requirements Under the Education for All Handicapped Children Act: Where Have We Been and Where Should We Be Going?" 14 *Harv. J L. & Pub. Pol.* 483 at 484 (1991) [hereinafter referred to as Huefner].

of this statement. Parents disagreeing with a proposed IEP are entitled to a due process hearing and an appeals procedure.³³

TABLE 2
Percent Distribution of Disabled Persons 6 to 21 Years Old Receiving Special Education Services, By Educational Environment: 1989-90

Type of disability	All environments	Regular class	Resource room	Separate class	Public separate school facility	Private separate school facility	Public residential facility	Private residential facility	Homebound/hospital environment
1	2	3	4	5	6	7	8	9	10
All disabilities	100.0	31.7	37.5	24.8	3.2	1.3	0.6	0.3	0.6
Mental retardation	100.0	6.9	19.6	61.5	9.1	1.1	1.0	0.4	0.3
Speech or language impairments	100.0	76.9	17.7	3.8	0.3	1.2	0.1	(*)	0.1
Visual impairments	100.0	39.9	22.9	21.3	3.4	1.2	9.2	1.6	0.5
Serious emotional disturbance	100.0	14.9	28.5	37.1	8.7	5.2	2.0	1.6	2.0
Orthopedic impairments	100.0	29.7	18.9	35.0	8.1	1.4	0.4	0.6	3.9
Other health impairments	100.0	31.3	22.2	24.5	6.2	1.6	0.4	0.7	13.2
Specific learning disabilities	100.0	20.8	56.0	21.7	0.9	0.4	0.1	(*)	0.1
Deaf-blindness	100.0	8.2	16.3	30.4	12.1	2.7	27.2	2.2	0.8
Multiple disabilities	100.0	6.0	14.4	44.1	22.9	6.9	2.5	1.4	1.8
Hearing impairments	100.0	27.3	17.9	31.6	7.1	3.4	11.6	0.9	0.2

* Less than 0.05 percent.

resu of Indian Affairs. Data for 3- to 6-year-old children are no longer collected by type of handicap. Because of rounding, details may not add to totals.

NOTE.—This table reflects a compilation of data reported by the states. There are some reporting variations, e.g., estimated or incomplete data and nonstandard definitions, from state to state. Data exclude U.S. territories and schools operated by the Bu-

Source: U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics 1993* at 66 (October 1993).

Placement of Students; Mainstreaming and Inclusion

The Act states that the disabled child should be educated in the "least restrictive environment"; these students are to be separated from their peers only when the appropriate education cannot be provided satisfactorily with supplemental services. In addition, these students are to be educated in the same public school they would otherwise have attended, and as close to home as possible. Should the pupil's IEP include placement in a private facility, the local education agency must absorb this cost.³⁴

A growing trend toward returning special education pupils to the general education classroom has received renewed focus as courts have construed the IDEA to require school divisions to justify decisions to educate disabled pupils outside the general classroom environment.³⁵ Although often used interchangeably, "mainstreaming" and "inclusion" address different practices. More often associated with traditional methods of special education service delivery, "mainstreaming" typically refers to the placement of special education students in one or more general education classes; the pupil must "earn" the opportunity to return to the general

³³ *EHA*, *supra* note 31, at 26-31; Glennon, *supra* note 31, at 299-302; *see also*, Huefner, *supra* note 32, at 484-488.

³⁴ Glennon, *supra* note 31, at 301; *EHA*, *supra* note 31, at 28.

³⁵ "Appeals Court Puts Burden of Inclusion on Schools," *Education Daily* (June 2, 1993), describing *Oberti v. Bd. of Education* (92-5462)(3d Cir. 1993).

classroom through demonstrated ability to achieve. "Inclusion" denotes the incorporation of the pupil into the classroom he would otherwise attend, to the greatest extent possible, supplemented by various support services. Advocates of "frill inclusion" contend that appropriate instruction is available for all pupils in the general classroom and support additional training for "regular" classroom teachers.³⁶

Special Education in the Commonwealth

The early identification and enrollment of disabled pupils in appropriate instructional programs is the responsibility of local school boards pursuant to the Standards of Quality. Echoing this requirement is § 22.1-215 of the Code of Virginia, which directs each school division to "provide free and appropriate education, including special education, for the handicapped children residing within its jurisdiction in accordance with regulations of the Board of Education." The *Code* defines "handicapped children" as those children between ages two and 21 who are mentally retarded, physically handicapped, seriously emotionally disturbed, speech impaired, hearing impaired, visually impaired, multiple handicapped, other health impaired including autistic, or having a specific learning disability, or "otherwise handicapped" as defined by the Board of Education, and require special education due to these impairments (see Table 3).

Designed to meet the unique needs of the handicapped pupil, special education programs in Virginia are delivered at no charge to the parent and may include classroom and home instruction as well as instruction provided in hospitals and institutions, and instruction in vocational and physical education. School divisions may provide special education directly or under contract with other school divisions or other public or private nonsectarian schools or agencies approved by the Board of Education. Today, over 110,000 disabled students receive special education services in Virginia's public schools; according to the Department of Education, about 67 percent of these students receive over 40 percent of their instruction in the general education classroom.³⁷

³⁶J. Rogers, "The Inclusion Revolution," Phi Delta Kappa Center for Evaluation, Development, and Research, *Research Bulletin* (May 1993).

³⁷Va. Code §§ 22.1-253.13:1; 22.1-213; 22.1-215; 22.1-216 (1993); *Report of the Department of Education on the Special Education Model Curriculum for Regular and Vocational Educators and Recommendations for Its Use*, House Document No. 23 at 2 (1992).

TABLE 3
Children 0-21 Years Old Served in Federally-Supported Special Education Programs, By Type of Disability, Nationwide 1976-77 to 1990-91

Type of disability	1976-77	1979-80	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90	1990-91
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Number served, ¹ in thousands													
All disabilities	3,692	4,005	4,142	4,198	4,255	4,298	4,315	4,317	4,374	4,447	4,544	4,641	4,771
Specific learning disabilities	796	1,276	1,462	1,622	1,741	1,806	1,832	1,862	1,914	1,928	1,987	2,050	2,130
Speech or language impairments	1,302	1,186	1,168	1,135	1,131	1,128	1,126	1,125	1,136	953	967	973	987
Mental retardation	959	869	829	786	757	727	694	660	643	582	564	548	536
Serious emotional disturbance	283	329	346	339	352	361	372	375	383	373	378	381	391
Hearing impairments	87	80	79	75	73	72	69	66	65	56	56	57	58
Orthopedic impairments	87	66	58	58	57	56	56	57	57	47	47	48	49
Other health impairments	141	106	98	79	50	53	68	57	52	45	43	52	55
Visual impairments	38	31	31	29	28	29	28	27	26	22	23	22	23
Multiple disabilities	—	60	68	71	63	65	69	86	97	77	85	86	96
Deaf-blindness	—	2	3	2	2	2	2	2	2	1	2	2	1
Preschool disabled ²	(³)	(³)	(³)	(³)	(³)	(³)	(³)	(³)	(³)	363	394	422	445
Percentage distribution of children served													
All disabilities	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Specific learning disabilities	21.6	31.9	35.3	38.6	40.9	42.0	42.4	43.1	43.8	43.4	43.6	44.2	44.6
Speech or language impairments	35.3	29.6	28.2	27.0	26.6	26.2	26.1	26.1	26.0	21.4	21.1	21.0	20.7
Mental retardation	26.0	21.7	20.0	18.7	17.8	16.9	16.1	15.3	14.7	13.1	12.7	11.8	11.2
Serious emotional disturbance	7.7	8.2	8.4	8.1	8.3	8.4	8.6	8.7	8.8	8.4	8.3	8.2	8.2
Hearing impairments	2.4	2.0	1.9	1.8	1.7	1.7	1.6	1.5	1.5	1.3	1.3	1.2	1.2
Orthopedic impairments	2.4	1.6	1.4	1.4	1.3	1.3	1.3	1.3	1.3	1.1	1.1	1.0	1.0
Other health impairments	3.8	2.6	2.4	1.9	1.2	1.2	1.6	1.3	1.2	1.0	1.0	1.1	1.2
Visual impairments	1.0	0.8	0.7	0.7	0.7	0.7	0.7	0.6	0.6	0.5	0.5	0.5	0.5
Multiple disabilities	—	1.5	1.6	1.7	1.5	1.5	1.6	2.0	2.2	1.7	1.8	1.9	2.0
Deaf-blindness	—	(⁴)	0.1	(⁴)	(⁴)	0.1	(⁴)	(⁴)	(⁴)	(⁴)	(⁴)	(⁴)	(⁴)
Preschool disabled ²	(³)	(³)	(³)	(³)	(³)	(³)	(³)	(³)	(³)	8.2	8.7	9.1	9.3
Number served as a percent of total enrollment ⁵													
All disabilities	8.33	9.62	10.13	10.47	10.75	10.95	11.00	10.95	11.00	11.11	11.30	11.44	11.57
Specific learning disabilities	1.80	3.06	3.58	4.05	4.40	4.60	4.67	4.72	4.81	4.82	4.94	5.06	5.17
Speech or language impairments	2.94	2.85	2.86	2.83	2.86	2.87	2.87	2.85	2.86	2.38	2.41	2.40	2.39
Mental retardation	2.16	2.09	2.03	1.96	1.91	1.85	1.77	1.68	1.62	1.45	1.40	1.35	1.30
Serious emotional disturbance	0.64	0.79	0.85	0.85	0.89	0.92	0.95	0.95	0.96	0.93	0.94	0.94	0.95
Hearing impairments	0.20	0.19	0.19	0.19	0.18	0.18	0.18	0.17	0.16	0.14	0.14	0.14	0.14
Orthopedic impairments	0.20	0.16	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.12	0.12	0.12	0.12
Other health impairments	0.32	0.25	0.24	0.20	0.13	0.13	0.17	0.14	0.13	0.11	0.11	0.13	0.13
Visual impairments	0.09	0.08	0.08	0.07	0.07	0.07	0.07	0.07	0.07	0.05	0.06	0.06	0.06
Multiple disabilities	—	0.14	0.17	0.18	0.16	0.17	0.17	0.22	0.24	0.19	0.21	0.21	0.23
Deaf-blindness	—	0.01	0.01	(⁶)	0.01	0.01	(⁶)	0.01	(⁶)	(⁶)	(⁶)	(⁶)	(⁶)
Preschool disabled ²	(³)	(³)	(³)	(³)	(³)	(³)	(³)	(³)	(³)	0.91	0.98	1.04	1.08

¹ Includes students served under Chapter I and Individuals with Disabilities Education Act (IDEA), formerly the Education of the Handicapped Act.

² Includes preschool children 3-5 years and 0-5 years served under Chapter I and IDEA, respectively.

³ Prior to 1987-88, these students were included in the counts by handicapping condition. Beginning in 1987-88, states are no longer required to report preschool handicapped students (0-5 years) by handicapping condition.

⁴ Less than .05.

⁵ Based on the enrollment in public schools, kindergarten through 12th grade, including a relatively small number of prekindergarten students.

⁶ Less than .005.

—Data not available.

NOTE.—Counts are based on reports from the 50 states and District of Columbia only (i.e., figures from U.S. territories are not included). Increases since 1987-88 are due in part to new legislation enacted fall 1986, which mandates public school special education services for all handicapped children ages 3 through 5. Some data have been revised from previously published figures. Because of rounding, details may not add to totals.

Source: U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics 1993* at 65 (October 1993).

The Board of Education prepares and supervises the implementation of special education programs in each school division. The program requires hearing testing for each handicapped

child prior to placement in a special education program as well as complete audiological assessments for pupils identified as hearing impaired or failing the initial hearing test. The Departments for the Visually Impaired and for the Deaf and Hard- of-Hearing, the Department of Health, and local school boards are to assist the Board in the development of this program. The Board also supervises educational programs for handicapped children by other agencies and must ensure that the identifications, evaluation, and placement of these children by other agencies is consistent with Board of Education regulations for special education. Board regulations also prescribe assessment procedures that include the opportunity for parental involvement in the determination of assessment components. The Board may not require the school divisions to exceed federal requirements for the identification and evaluation of handicapped children.

To ensure eligibility for federal funding, the Board must establish procedures affording parents and pupils due process in resolving disputes regarding placements, tuition eligibility, and individualized education programs. Final decisions regarding these issues may be made by a hearing officer, who is empowered to issue subpoenas for testimony or for the production of books, papers, and other evidence. Parties aggrieved of the decision are entitled to appeal to the appropriate circuit court. Contingent upon an appropriation by the 1994 Session of the General Assembly, jurisdiction for these appeals will be shifted to the family courts in 1995.³⁸

Visually Impaired Students

Special education for visually impaired pupils provided in the public school is established and operated jointly by the local school board and the Virginia Board for the Visually Handicapped, subject to Board of Education regulations. When appropriate, consideration shall be given to including Braille instruction in the pupil's 'EP. Currently, Braille instruction is available in all school divisions, either through a vision teacher employed by the division or purchased from the Department for the Visually Handicapped. Students for whom more intensive services are deemed necessary may be placed in one of the Virginia Schools for the Deaf and the Blind at either Staunton or Hampton (See Chapter 1, Administration of Public Education in Virginia).

Supplementing the special education programs in the public schools is a program of services prepared and operated by the Board for the Visually Handicapped to meet the educational needs of visually impaired children between the ages of birth and 21; the Board is authorized to prepare and operate programs for individuals of all ages. Programs for visually impaired pupils may incorporate special materials or services as well as itinerant or resource room teachers.³⁹

Transportation

While school divisions need not supply transportation for its students in general education programs, they must provide transportation services for special education pupils. School boards have the option of allotting funds for the reasonable cost of arranged transportation services or

³⁸Va. Code §§ 22.1-214; 22.1-214.1(1993); 1993 Acts of Assembly, c. 929.

³⁹Va. Code § 22.1-217 (1993 Supp.); *Report of the Board of Education and the Department for the Visually Handicapped A Study of Braille Literacy in Virginia's Public Schools*, Senate Document No. 31 at 2, 7 (1991).

providing transportation directly. The Board of Education must reimburse the school division for 60 percent of the costs of arranged services from available funds; the cost of operating approved school buses used exclusively for transporting disabled children is reimbursed pursuant to Board of Education regulations from appropriated funds.⁴⁰

Programs by Other Agencies; Residential Facilities

The education of disabled children residing in state institutions falls under the aegis of two agencies. While the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) is responsible for providing education and training for school-age residents in its institutions, the Board of Education supervises the education of school-age residents in state mental retardation facilities and provides for and directs the education of school-age residents in state mental health facilities in cooperation with DMHMRSAS. Promoting consistency between treatment and education, ensuring the availability of adequate resources for services in all institutions, providing a mechanism for direct contact and sharing of ideas and innovations between education directors and teachers, and monitoring the quality of instruction are among the duties of DMHMRSAS.

The development of guidelines for the evaluation of education directors and the implementation of programs ensuring the appropriate education and treatment of dually-diagnosed children are shared by the Board and the Department of Education. In its supervisory capacity, the Board of Education is to provide "active support" and "consistent oversight" in these educational programs and must ensure that the "expertise of the Department of Education is utilized... in the areas of selection and acquisition of educational materials, curriculum development including vocational education, when appropriate, and applications for federal grants."

The Department of Education develops curricula for school-age residents in state training centers for the mentally retarded and curriculum guidelines for school-age residents in state mental health facilities in cooperation with DMHMRSAS and teacher representatives. Subject to review and revision every three years, these curricula and guidelines are to provide a range of programs and sequences for various functioning levels and handicaps. The curriculum guidelines are to include not only academic programming but also physical education and independent living. The curricula and guidelines are subject to Board of Education approval.

The Commissioner of Mental Health, Mental Retardation, and Substance Abuse Services is responsible for the transfer of school-age residents identified for placement in public school programs and may negotiate with other school divisions to mitigate the impact on divisions in which a state mental health or mental retardation facility is located. Board of Education regulations govern the identification of children residing in DMHMRSAS facilities who are eligible for placement in public school programs.⁴¹

Special Placements and Tuition Reimbursement

⁴⁰Va. Code §§ 22.1-176; 22.1-221(1993).

⁴¹Va. Code §§ 37.1-10.01; 37.142.1 (1990); 22.1-214.2; 22.1-214.3; 22.1-215 (1993).

Each school division is responsible for providing a free and appropriate education for the handicapped children residing in its jurisdiction, including those school-age children identified for placement in public school and residing in DMH~SAS facilities located in the division, and school-age children who are Virginia residents either placed or living in a foster care or child-care institution and within the custody of a local department of social services, or privately placed, not simply for school purposes. The cost of the education of pupils residing in state institutions and identified for public school placement is borne by DMHMRSAS, while the agency or person placing a child in foster care or group home must cover the cost of education for a child who is not a Virginia resident.⁴²

If the requisite free and appropriate education cannot be provided in the school division or in a state facility other than the Woodrow Wilson Rehabilitation Center, the school division must offer to place the child in the Woodrow Wilson Center or a nonsectarian private school for disabled children approved by the Board of Education or other designated licensing agency. School boards may also place pupils in partial, half- day, or tutoring services in nonsectarian private schools if consistent with the student's individualized education plan. The school board is responsible for "reasonable tuition cost and other reasonable charges" and may, from its own funds, pay additional charges as it deems appropriate. Local governing bodies are granted express authority to appropriate and expend funds for these special placements. The school board is entitled to a 60 percent reimbursement from state funds as are appropriated. In addition, if a school board enters into a tuition agreement with another school division, the Woodrow Wilson Center, or another school for special education, the Board of Education may reimburse the school board at 60 percent of its reasonable costs. Finally, the Board may also reimburse school boards operating preschool special education programs for disabled children ages two through four, through the Standards of Quality Special Education account. Placements of students in out-of-state special education facilities must be processed through the Interstate Compact on the Placement of Children.⁴³

Clarifying reimbursement practices for nonresident pupils is the Comprehensive Services Act for At-Risk Youth and Families, adopted by the General Assembly in 1992 as an interagency effort to deliver coordinated services and reduce the costs of residential care. School divisions are entitled to reimbursement for educating a nonresident handicapped pupil when the child has been placed in foster care or other custodial care in the school division by a state or local agency, when the child has been placed in the division in an orphanage or children's home exercising legal guardianship, and when a Virginia-resident child has been placed in the division in a child-caring institution or group home licensed by the Commissioner of Social Services.⁴⁴

Pursuant to the 1993-94 biennial budget, the Department of Education may make no more than \$24,983,711 available for the state's share of tuition rates for approved public school regional and private school special education programs, The state's share of the tuition rates is

⁴²Va. Code §§ 22.1-5; 22.1-215 (1993 Supp.); *see also*, 1993 Acts of Assembly, c. 994, § 146, Item 133(K).

⁴³Va. Code §§ 22.1-281; 22.1-218.1; 22.1-220 (1993).

⁴⁴Va. Code §§ 22.1-101.1(1993 Supp.); Virginia Division of Legislative Services, *1992 Session Summary & Review* at 24-25 (1992).

based on the composite index of local-ability-to-pay, computed at a state nominal share of 60 percent for public regional and private day programs and at a 55 percent share for private residential programs. The 1993-94 budget also included \$5,295,000 to support direct instructional costs for noneducational placements of disabled children in special education facilities or residential or day schools by public agencies. This funding constitutes the tuition portion of an interagency assistance fund; custodial care and related services for these placements are funded through appropriations for the Departments of Corrections and Social Services.⁴⁵

Funding for Special Education

The 1975 Education of the Handicapped Act contemplated federal support for 40 percent of the excess cost to the states for educating disabled students; however, in practice, the federal contribution has not topped 12 percent. The burden of funding special education has fallen largely upon state and local governments, with the states covering an average of 41 percent of these costs.⁴⁶ In the Commonwealth, \$117,110,611 in general funds were earmarked in 1993-94 for special education in the public schools. Should the Board of Education determine that a school division has failed to provide programs of free and appropriate education in compliance with special education regulations, the Board may withhold all special education moneys for that school division and instead use these funds to provide special education, either directly or by contract, as it deems appropriate.⁴⁷

Included in basic operation costs for each school division, funding for special education is based upon the number of required special education instructional positions, as determined by the number and types of handicapped pupils served.⁴⁸ while the Standards of Quality establish pupil-teacher ratios for general instruction, no similar ratios are specified in statute for special education. The Standards do, however, direct the Board of Education, in revising the Standards of Accreditation (SQA), to "seek to set pupil-teacher ratios for educable mentally retarded (EMR) pupils that do not exceed the pupil-teacher ratios for self-contained classes for pupils with specific learning disabilities."⁴⁹ In 1993, the Board adopted comprehensive regulations that included maximum caseload standards for self-contained (students in same disability category receiving special education services 50 percent or more of the instructional day), resource (students receiving special education services less than 50 percent of the instructional day), combined, and departmentalized (subdivided curriculum) programs.⁵⁰ (See Table 4.)

⁴⁵1993 Acts of Assembly, c. 994, § 146, Item 133 B.

⁴⁶A. Lewis. "Churning Up the Waters in *Special Education*," *Phi Delta Kappan* 100 (October 1991); R. McWilliams. "Special Education: Return to the Mainstream," *Governing* 40 at 42 (October 1991).

⁴⁷Va. Code § 22.1-214E (1993 Supp.); 1993 Acts of Assembly, c. 994, § 146, Item 135.

⁴⁸1993 Acts of Assembly, c. 994, § 146, Item 135 (A)(3), (C)(3), (C)(6); *Report of the Board of Education, A Study of the Preparation of Special Education Instructional And Administrative Personnel, Class Size Requirements and the Funding of Special Education Programs*, Senate Document No.13 at 19-20 (1990).

⁴⁹Va. Code §§ 22.1-253.13:2; 22.1-253.13:3 (1993 Supp.).

⁵⁰Virginia Department of Education, *Special Education Program Standards*, VR 270-01-0057.

TABLE 4
Special Education Maximum Class/Caseloads

Disability Category	Self Contained		Resource
	With 100% Paraprofessional	Without Paraprofessional	
Autism	8*	6*	24
Deaf-blind	8*	6*	
Developmental Delay: age 5-7 Non-categorical (K-2nd)	10	8	
Developmental Delay: age 2-5	8 Center Based 10 Combined**	12 Home Based and/or Itinerant	
Educable Mental Retardation:			
Primary	10***	8***	24
Elementary	12***	8***	24
Middle School	13***	8***	24
Secondary	15***	8***	24
Trainable Mental Retardation	10*	8*	
Hearing Impairment/Deaf	10	8	24
Multihandicaps	8*	6*	
Orthopedic Impairment	10	8	8
Other Health Impairment	10	8	8
Serious Emotional Disturbance Severe and Profound	10	8	24
Disabilities	8*	6*	
Specific Learning Disability	10	8	24
Speech and/or Language Impairment	10	8	75 (itinerant)
Traumatic Brain Injury	May be placed in any program, according to IEP.		
Mixed Category (SLD, ED, EMR, HI, OHI, TBI)			20 points

* Maximum caseload when integrating students into general classroom.

** Combined includes center-based preschoolers plus home based and/or itinerant preschoolers

*** Per 1993 General Assembly Budget.

Source: Virginia Department of Education, Special Education Program Standards, VR 270-01-0057 (1993).

To improve education and training for disabled children placed in state mental health and mental retardation facilities, the General Assembly established a grants program in 1985 for research and development of new methods of teaching mentally retarded, mentally ill, or emotionally disturbed children in residential settings. Available to educational directors and instructional staff at DMHRSAS facilities, the grants are awarded by the Board of Education on the basis of recommendations of an advisory committee.⁵¹

⁵¹Va. Code § 22.1-217.1(1993).

Vocational Education

Providing primary support for vocational education in the public schools is the Carl D. Perkins Vocational Education Act (P.L. 98-524), which provides federal aid to states to increase accessibility to vocational education programs for all persons, including disabled, disadvantaged, and incarcerated students. Enacted by Congress in 1984, the Perkins Act replaced the Vocational Education Act of 1963, which had increased federal funding for vocational education schools, work-study initiatives, and research and training.

The Perkins Act was reauthorized and amended in 1990 (P.L. 101-392) to extend federal funding through fiscal year 1995. The 1990 Act emphasized stronger links with post-secondary training and improved integration of vocational education with academic curricula, and requires the states to develop core standards and evaluation measures for secondary and post-secondary programs.⁵² Today, the \$1 billion annual federal expenditure for vocational education comprises only about 10 percent of all vocational education funding; the states and localities shoulder the primary fiscal burden for these programs.⁵³

Designed to provide students with specific, marketable job skills, vocational education has enjoyed renewed focus and respect after witnessing declining enrollments nationally since 1984.⁵⁴ Pursuant to the Standards of Quality, public schools in Virginia are required to offer "competency-based vocational education programs" that combine academic outcomes, career guidance, and job-seeking skills for secondary school students.⁵⁵ In addition, the Standards of Accreditation require middle schools to provide instruction in "career and vocational exploration," while the high schools must offer "vocational education choices.. .that prepare the student for technical or pre-professional postsecondary programs."⁵⁶ The Board of Education, as the state agency designated to carry out the provisions of the federal Act, is statutorily directed to promote and administer the provision of agriculture, business, marketing, home economics, health, technology education, trade and industrial education in the public middle and high schools, regional schools, postsecondary institutions, and certain institutions for youth and adults. The Code of Virginia makes clear that the Board's duty to promote vocational education does not mandate the implementation of any additional programs.⁵⁷

⁵²U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics 1992* at 341, 344, 346 (1992); "Perkins Act Spurred Slight Voc Ed Improvements, GAO Says," *Education Daily* 5 (July 21, 1993); "Perkins Act Regulations Limit Scope of Evaluations," *Education Daily Special Supplement* (August 26, 1992).

⁵³A. Lewis, "Dealing a New Hand to Vocational Education?" *Phi Delta Kappan* 260 (December 1989).

⁵⁴J. Wirt, "A New Federal Law on Vocational Education: Will Reform Follow?" *Phi Delta Kappan* 424 at 426 (February 1991); K. Gray, "Vocational Education in High School: A Modern Phoenix?" *Phi Delta Kappan* 437 at 439, 441 (February 1991).

⁵⁵Va. Code § 22.1-253.13:1(1993 Supp.).

⁵⁶*Standards and Regulations*, *supra* note 10, at 16-17.

⁵⁷Va. Code § 22.1-227(1993).

Regional Centers

Through their statutory authority to operate joint schools, 35 school divisions participate in regional vocational education centers. These 11 centers not only supplement courses offered in high schools but also permit participating school divisions to provide a wider range of programs. The centers may also offer day, evening, and adult education classes, community college courses, driver education, and other programs. Responsibility for center operations is shared by the superintendents of participating divisions, with one superintendent in charge on an annual or biennial rotating basis. Before 1985, the Department of Education funded regional centers as if each were a separate school division. Today, the centers are funded through participating school divisions with a mix of state and local dollars. A portion of each participating division's basic aid is calculated to support regional centers. The 1990-92 biennial budgets directed the Department of Education to "develop a procedure to ensure that state funding for regional Vocational Centers is calculated separately, within the current Standards of Quality methodology." A state supplemental payment for these centers was reduced in 1991 and subsequently eliminated.⁵⁸

Funding

Because vocational education is required by the SOQ, the Commonwealth and local school divisions share fiscal responsibility for these programs. The 1993-94 budget allotted over \$35.5 million in general fund moneys for occupational-vocational education. Like special education, vocational education is included within the basic operation costs for each school division; over \$71.5 million in basic aid payments was dedicated to vocational education in 1993-94. The Department of Education must make additional payments to local school divisions to support the state share of the 25-to-1 pupil-teacher ratio required by the SQQ.⁵⁹

Vocational Education Projects

School boards are authorized to establish vocational education "projects" designed to supplement the regular vocational education program through voluntary student participation in various construction projects. School boards may establish these projects directly or by contract with nonprofit corporations or foundations whose articles of incorporation and bylaws have been approved by the insert map showing location and names of regional centers (see Figure 1) approved by the Board of Education. School boards may acquire property for project construction; the project must be sold within a reasonable time following completion. The Board of Education must review and approve all vocational education projects and may regulate the awarding of academic credit.⁶⁰

⁵⁸*Report of the Joint Legislative Audit and Review Commission on State Funding of the Regional Vocational Education Centers in Virginia.* House Document No.45 at 1-3; 8; 21(1991); 1990 Acts of Assembly, c. 972, § 149, Item 172C)(6)(c). 1991 Acts of Assembly, c. 723, § 149, Item (C)(6)(c).

⁵⁹1993 Acts of Assembly c. 994, § 146. Item 135; Va. Code § 22.1-253.13:1(G) (1993 Supp.).

⁶⁰Va. Code §§ 22.1-228; 22.1-229; 22.1-230; 22.1-231; 22.1-234; 22.1-237 (1993).

Department was to submit its findings, including specific recommendations for persons for whom English is a second language, to the Chairmen of the House Appropriations and Senate Finance Committees no later than November 1, 1993.⁶²

⁶²1993 Acts of Assembly, c. 994, § 146, Item 137.

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