

April 22, 2020

Scott Reiner
Executive Director
Office of Children and Family Services
1604 Santa Rosa Road, Suite 137
Richmond, Virginia 23219
Submitted via email to scott.reiner@csa.virginia.gov

**Re: Children's Services Act (CSA) Payment for Private Day Placements
During COVID-19 State of Emergency**

Dear Mr. Reiner:

On behalf our clients, many of whom are low-income students with disabilities, we at the Legal Aid Justice Center¹ are grateful to the Office of Children's Services (OCS) for its work to support systems of care and serve Virginia's families and youth. We appreciate the joint guidance issued by OCS and the Virginia Department of Education (VDOE) on March 30, 2020, clarifying that there are no barriers to reimbursement by localities for payment of services provided by private day schools during Virginia's extended public school closure due to the COVID-19 state of emergency.² Thankfully, many localities understand and support the efforts of private day schools to continue to provide educational services to their students and are continuing to honor their contracts with these providers.

We are concerned, however, that some localities have failed to honor contractual obligations and have ceased reimbursements to provide day providers that are ready and able to provide distance learning to their students.³ This hinders the ability of these providers to stay open and harms some of Virginia's most vulnerable families. **We ask the Office of Children's Service to issue a statewide directive to localities to honor their contracts with private day schools.**

¹ The Legal Aid Justice Center ("LAJC") is a non-profit organization that partners with communities and clients to achieve justice by dismantling systems that create and perpetuate poverty. Our JustChildren Program provides representation and advocacy on behalf of economically disadvantaged children attending Virginia's public schools, and we are committed to ensuring that all children have the tools they need to succeed in school and in their communities.

² Joint Guidance for Student Placements Reimbursed by the Children's Services Act, Virginia Department of Education and the Office of Children's Services, March 30, 2020, http://www.doe.virginia.gov/support/health_medical/office/covid-19.shtml#foster-care.

³ See, for example, Justin Mattingly, "Private day schools in Virginia continue to educate students during school closures. Some aren't getting paid." *Richmond Times Dispatch*, April 19, 2020, https://www.richmond.com/news/virginia/private-day-schools-in-virginia-continue-to-educate-students-during-school-closures-some-arent-getting/article_c173b304-9279-5621-8849-1ec389908bdb.html.

Students placed in private day settings have some of the most significant disabilities and educational needs; their Individualized Education Program (IEP) teams have determined that these students' needs cannot be met in local public schools. Without the security of continued funding throughout the state of emergency, private day providers are struggling to provide these children the educational continuity and supports to which they are entitled. Further, the lack of a statewide directive is resulting in inconsistent and inequitable application across Virginia. We are aware of a few concerning issues, outlined below.

1. CPMTs inappropriately weighing in on the contents of students' educational plans

We are aware of Community Policy and Management Teams (CPMTs) attempting to judge whether students can actually make progress in their education plans during the state of emergency and reducing rates accordingly (e.g., "We believe a student can really only do 50% of this plan, so we will only pay 50%"). Not only is this possibly discriminatory against students with disabilities, it mistakenly substitutes the judgment of the CMPT for the private day providers, who have been working with those students and with whom localities contract because of their expertise in delivering specially-designed instruction as outlined in the students' IEPs. CMPTs simply cannot make decisions about the contents of students' IEPs and judge whether they can make progress. This is solely left to students' IEP teams. Nothing about the state of emergency should change the nature of relationship between the CMPT and the IEP team.

2. Localities refusing to reimburse private day providers for services provided during the period of school closure

We are also aware of some localities determining that they have no obligation to reimburse private day providers for services to students with disabilities based on the faulty reasoning that localities have not provided services to any other students during parts of the extended school closure. This is contrary to the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) (IDEA).

There are many instances in the normal course of a school year when services to students with disabilities continue even while public schools are closed. For example, many IEP teams have determined that year-round services are required to ensure that a student receives a free appropriate public education (FAPE)—many students with disabilities receive services during the summer, for example, while other students are out of school.

Private day providers should not be penalized for continuing to provide educational services and attempting to provide FAPE.

Some of Virginia's private day schools are already laying off employees and are at risk of going out of business. We are concerned that if localities continue to ignore their contractual obligations to reimburse these schools for their services, there will not be sufficient services available to our most vulnerable students once the state of emergency is lifted. The Commonwealth has a legal obligation to ensure FAPE for every child. If these providers cease to operate, Virginia risks being unable to offer the full continuum of services contemplated by the IDEA.

While we understand that in typical times Local Educational Agencies (LEAs) and CMPTs drive CSA programs, this is not a typical time. We respectfully request statewide action directing all LEAs and CMPTs to honor their existing contracts with private day providers that are able to provide continuity of services through remote and distance options. Should you need to reach us regarding this matter, please contact me at 804-521-7304 or rachael@justice4all.org.

Sincerely,

A handwritten signature in black ink that reads "Rachael Deane". The signature is written in a cursive, slightly slanted style.

Rachael Deane, Legal Director, JustChildren Program

cc: Dr. James Lane, Superintendent of Public Instruction, Virginia Department of Education
(via email to james.lane@doe.virginia.gov)

Dr. Samantha Hollins, Assistant Superintendent for Special Education and Student
Services, Virginia Department of Education
(via email to samantha.hollins@doe.virginia.gov)