



COMMONWEALTH of VIRGINIA
Department of Education

July 22, 2011

TO: Division Superintendents

FROM: Patricia I. Wright, Superintendent of Public Instruction

SUBJECT: Application of New *Code of Virginia* Requirements Regarding Students with Disabilities Placed in Foster Care

The 2011 General Assembly (Senate Bill 1038) revised §22.1-3.4 and enacted §63.2-900.3 of the *Code of Virginia* with respect to the enrollment and school placement of children in foster care. Both provisions, effective July 1, 2011, are founded on the federal *Fostering Connections to Success and Increasing Adoptions Act* of 2008 (Fostering Connections Act) and support the need to ensure the educational stability of the student while in foster care.

The Virginia Department of Education provided initial guidance on addressing enrollment and school stability for children in foster care through Superintendent's Memorandum No. 306, dated December 10, 2010. However, the new provisions and the Fostering Connections Act are either silent or ambiguous regarding which school division determines what educational services a student with a disability receives once placed in foster care across jurisdictional lines. On the other hand, the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* address the issue at 8 VAC 20-81-30 B.8 where the regulation specifically states that a student with a disability is deemed to reside in the school division where the student is placed in foster care or other custodial care. Subsequently, the **receiving school division** through the individualized education program (IEP) process determines the student's school placement and provides for a free appropriate public education (FAPE). Both the Fostering Connections Act and these new Virginia statutory provisions support the need for collaboration between the sending and receiving school divisions to ensure educational stability for the student. Please also note that the provisions of 8 VAC 20-81-30 E.2 still apply if the receiving school division determines that the student needs to be placed in a private day or residential special education facility for educational reasons. In that event, the responsibilities for special education return to the sending school division.

Senate Bill 1038 is available to review at:

<http://lis.virginia.gov/cgi-bin/legp604.exe?111+ful+CHAP0154>.

It is recommended that school division staff responsible for special education services and foster care services receive this information. Questions regarding this memorandum may be directed to Judy Douglas, Division of Special Education and Student Services, by telephone at (804) 225-2771 or at judy.douglas@doe.virginia.gov.

PIW/JD/stg

