January 9, 2021

TO: Virginia House of Delegates, Education Committee

Senate of Virginia, Education and Health Committee

FROM: Teri Morgan

RE: JLARC Recommendations in its *K–12 Special Education in Virginia* report (December 2020) and its *Children’s Services Act and Private Special Education Day School Costs* report (November 2020)

On behalf of the Virginia Board for People with Disabilities, we write in support of the Joint Legislative Audit and Review Commission (JLARC) recommendations in its *K–12 Special Education in Virginia* report (December 2020) and its *Children’s Services Act and Private Special Education Day School Costs* report (November 2020). Many of these recommendations echo those VBPD put forward in our 2017 *Assessment of Virginia’s Disability Services System* focused on Education. Three years later, JLARC's studies affirm the continuing need to change policy and practices to ensure students with disabilities have appropriate services and supports in integrated, inclusive settings. Both VBPD and JLARC have identified the need to reform funding, increase information sharing with families, and improve assistance to school districts that serve a higher percentage of students with disabilities in segregated settings.

In 2018, JLARC asked staff to review the K–12 special education services. The study resolution required staff to examine enrollment in special education, determination and provision of the services needed by students with disabilities, and to review the supervisory role of VDOE in these activities. In 2019, JLARC also requested a review of the Children’s Services Act (CSA) program, focusing on the cost effectiveness of services, especially private special education day school. The two reports contain a total of 45 recommendations for the General Assembly and VDOE to consider.

As Virginia's designated Developmental Disabilities Council, VBPD engages in advocacy, capacity building, and systems change activities that contribute to a comprehensive system of services, individualized supports, and other forms of assistance that enable individuals with disabilities to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life. The Virginians with Disabilities Act § 51.5-33 requires VBPD to submit an annual report to the Governor, through the Secretary of Health and Human Resources, that provides an in-depth assessment of at least two major service areas for people with disabilities in the Commonwealth. In 2017, the VBPD Assessment of Education services highlighted five areas for improvement: inclusion; exclusionary discipline; informed educational decisions; and post-secondary employment and educational opportunities.

Many of VBPD’s recommendations address the same issues raised in the 2020 JLARC reports. Below is a summary of key, overlapping recommendations in the two reports. A chart listing the similar recommendations is attached to this letter. We have enclosed a copy of our [2017 Education Assessment](https://sharepoint.wwrc.net/VBPDdocs/Shared%20Documents/VBPD%20Assessment%20of%20Virginia's%20Disability%20Services%20System%20-%20Education.pdf), which provides further detail on these recommendations.

* **Support inclusion in and out of the classroom:** Both VBPD and JLARC recommend that Virginia take affirmative steps to ensure that students with disabilities receive educational services in general education classrooms in their neighborhood schools and receive meaningfully inclusive educational experiences. Inclusive education includes supporting participation in nonacademic and extracurricular activities. (VBPD Rec. 1; JLARC Special Ed Recs. 13, 14, 15)
* **Incentivize integrated general education**: To support inclusive education, public school districts need adequate funding to provide supports to students with disabilities in general education settings. Both VBPD and JLARC recommend the General Assembly allow state funds currently reserved for children requiring placement in a private special education day school to pay for services delivered in public schools. (VBPD Rec. 1A; JLARC CSA Recs. 3, 4)
* **Increase technical assistance (TA) to low-performing schools:** Both VBPD and JLARC note that the rate of students with disabilities served in segregated settings varies by school district, with the rate of students enrolled in special education doubling in certain districts. By implementing the increased monitoring recommended in both of JLARC reports, VDOE can better train and support school districts to increase their capacity to serve students with disabilities in general education settings. (VBPD Rec. 1B; JLARC CSA Rec. 13; JLARC Special Ed. Recs. 7, 8, 24, 26, 27)
* **Minimize restraint and seclusion disciplinary practices:** JLARC’s recommendation to establish the same requirements for restraint and seclusion as those in public schools echoes VBPD’s recommendation to adopt regulations that ensure restraint and seclusion are used only as a last resort and only when necessary to prevent serious bodily harm, injury, or death to students or others. (VBPD Rec. 2D; JLARC CSA Rec. 9)
* **Improve communication about the long-term impact of educational decisions:** Both VBPD’s Assessment and JLARC’s Special Education study found that parents often do not understand the long-term impacts of educational decisions on their child’s opportunities in school, employment and post-secondary education. Both VBPD and JLARC recommend that school divisions provide clear guidance on how different IEP decisions can narrow a student’s future options. (VBPD Recs. 3, 3A; JLARC Special Ed Recs. 4, 6, 10, 11, 23)
* **Improve transition planning:** The goal of Virginia’s education system is to prepare all students to transition to employment, higher education, or other meaningful participation in their communities. Both VBPD and JLARC found that school districts need more oversight, guidance and training in how to incorporate meaningful employment, post-secondary and other transition-related goals into transition planning and services. By providing adequate supports, school districts help students succeed into adulthood. (VBPD Recs. 4, 4A, 5; JLARC Special Ed Recs. 3, 9, 12)

The issues found in JLARC’s 2020 reports reflect the concerns raised by VBPD’s 2017 Education Assessment. Students with disabilities and their families are entitled to an inclusive, integrated education that prepares them to participate fully in their community through work, higher education, and meaningful community engagement. These recommendations are an opportunity for the General Assembly and VDOE to strengthen supports and expand opportunities for students with disabilities. We welcome the opportunity to discuss VBPD’s Assessment findings if you would like more information.

Sincerely,



Teri Morgan

cc: Matthew Shapiro

Phillip Caldwell, Chair Policy Subcommittee  
Samantha Hollins, Assistant Superintendent Department of Special Education and Student Services  
Henry Millward, Director, Department of Special Education and Student Services, Office of Specialized Education Facilities and Family Engagement

| **VBPD RECOMMENDATIONS** | **JLARC RECOMMENDATIONS** |
| --- | --- |
| **INCLUSION** | |
| **Recommendation 1**: Take steps to improve rates at which students with disabilities receive educational services in general education classrooms in their neighborhood schools and receive meaningfully inclusive educational experiences throughout the Commonwealth, especially in districts identified as including students with disabilities in regular education classrooms at exceptionally low rates | **JLARC Special Ed #13, 14, 15**  RECOMMENDATION 13 VDOE should, as part of its reviews of school divisions’ individualized education programs (IEPs), determine whether the special education and related services, supplementary aids and services, and program modifications that will be provided to enable students with disabilities to participate in nonacademic and extracurricular activities are sufficient, and include its findings and required corrective actions in the summary reports it provides to the reviewed divisions’ superintendents, special education directors, and school board chairs and vice chairs. (Chapter 6)  RECOMMENDATION 14 The VDOE should issue a superintendent’s memo clarifying school divisions’ responsibility to (i) provide the special education and related services, supplementary aids and services, and program modifications necessary to provide children with disabilities an equal opportunity to participate in nonacademic and extracurricular activities; and (ii) include a description of these aids, services, and program modifications in students’ individualized education programs (IEPs), as appropriate. (Chapter 6)  RECOMMENDATION 15 The General Assembly may wish to consider including language in the Appropriation Act directing the Board of Education to review and update its regulations of general education K–12 teacher preparation programs to ensure graduates are required to demonstrate proficiency in (1) differentiating instruction for students depending on their needs, (2) understanding the role of general education teachers on the IEP team, (3) implementing effective models of collaborative instruction, including co-teaching, and (4) understanding the goals and benefits of inclusive education for all students. (Chapter 6) |
| **Recommendation 1A**: Realign Virginia’s funding of special education services, including CSA funding, to eliminate incentives to segregate students with disabilities and ensure that schools have adequate funding to provide supports to students with disabilities in general education settings; | **JLARC CSA Recommendations 3-4**  RECOMMENDATION 3 The General Assembly may wish to consider amending §2.2-5211 and §2.2-5212 of the Code of Virginia to allow state funds currently reserved for children requiring placement in a private special education day school to pay for services delivered in public schools to help transition students from residential or private day school placements back to a public school setting. (Chapter 3)  RECOMMENDATION 4 The General Assembly may wish to consider amending §2.2-5211 and §2.2-5212 of the Code of Virginia to allow the use of state funds currently reserved for children requiring placement in a private special education day school for services delivered to students with disabilities in public schools if the public school’s individualized education program (IEP) team has determined that the services may prevent a more restrictive placement. (Chapter 3) |
| **Recommendation 1B:** Increase targeted technical assistance and training for schools with high rates of students with disabilities served in segregated settings to increase the capacity of these schools to serve students with developmental disabilities in general education settings; | **JLARC CSA Recommendation #13**  RECOMMENDATION 13 The General Assembly may wish to consider amending §2.2-2649.B.1 of the Code of Virginia to direct the Office of Children’s Services (OCS) to provide for the effective implementation of the Children’s Services Act program in all localities by (i) regularly monitoring local performance measures and child and family outcomes; (ii) using audit, performance, and outcomes data to identify local programs that need technical assistance; and (iii) working with local programs that are consistently underperforming to develop a corrective action plan that will be submitted to OCS and the State Executive Council. (Chapter 6)  **JLARC Special Ed #7, 8, 24, 26, 27**  RECOMMENDATION 7 The General Assembly may wish to consider amending the § 22.1-214 of the Code of Virginia to require that the VDOE conduct structured reviews of a sample of individualized education programs (IEPs) from a sufficiently large sample of school divisions annually to verify that the IEPs are in compliance with state and federal laws and regulations and are of high quality. VDOE should provide a summary report of the reviews’ findings and required corrective actions to the reviewed divisions’ superintendents, special education directors, school board chairs and vice-chairs, and local special education advisory committee. (Chapter 4)  RECOMMENDATION 8 The General Assembly may wish to consider including language in the Appropriation Act directing the VDOE to (i) conduct a one-time targeted review of the transition sections of a random sample of students’ individualized education programs (IEPs) in each school division; (ii) communicate its findings to each local school division, school board, and local special education advisory committee; and (iii) ensure local school divisions correct any IEPs that are found out of compliance. The superintendent of public instruction should be directed to submit a letter to the Senate Education and Health and the House Education committees certifying that school divisions have corrected all instances of non-compliance identified through these reviews, which should occur no later than the end of the 2021–22 school year. (Chapter 5)  RECOMMENDATION 25 The VDOE should develop and implement a process for systematically auditing and verifying school divisions’ self-determinations of compliance with all Individuals with Disabilities in Education Act performance indicators. The verification process should include a random sample of divisions each year and ensure that all divisions’ self-determinations are reviewed and verified no less frequently than once every five years. (Chapter 8)  RECOMMENDATION 26 The VDOE should review and revise, as appropriate, its federal indicator-based public reports on school divisions’ special education services to ensure they accurately and clearly articulate (i) the extent to which the school division’s self-reported performance or compliance has been independently validated by VDOE and (ii) what each performance or compliance indicator is actually measuring. (Chapter 8)  RECOMMENDATION 27 The General Assembly may wish to consider including language in the Appropriation Act directing the VDOE to develop and implement a clear and comprehensive plan to improve its approach to monitoring Virginia’s special education system on an ongoing basis. At a minimum, the plan should clearly describe VDOE’s procedures for effectively determining whether school divisions are complying with state and federal requirements pertaining to (i) identification and eligibility determination processes; (ii) individualized education program development and implementation, (iii) post-secondary transition planning; (iv) inclusion in academic and non-academic experiences and the use of discipline; and (v) special education staffing. The plan should also propose actions to increase monitoring capacity and onsite visits with existing resources and by leveraging available federal funding. VDOE should present its plan to the Senate Education and Health Committee, the House Education Committee and the Joint Legislative Audit and Review Commission no later than November 1, 2021. (Chapter 8) |
| **RESTRAINT AND SECLUSION** | | |
| **Recommendation 2D:** Adopt regulations that ensure restraint and seclusion are used only as a last resort and only when necessary to prevent serious bodily harm, injury, or death to students or others; | **JLARC CSA RECOMMENDATION 9** The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Board of Education to develop and promulgate new regulations for private day schools on restraint and seclusion that establish the same requirements for restraint and seclusion as those established for public schools. (Chapter 4) |
| **COMMUNICATION WITH STUDENTS AND FAMILIES** | | |
| **Recommendation 3:** Ensure that students with disabilities and their parents receive clear and accurate information about the future impact of current educational decisions:  **Recommendation 3A:** Continue to develop and continuously update information for parents to understand the long-term impact of educational decisions made early in a child’s educational career; | **JLARC Special Ed #4, 6, 23**  RECOMMENDATION 4 The General Assembly may wish to consider amending the Code of Virginia to direct the VDOE to develop a required training module for individuals participating in individualized education program (IEP) meetings that comprehensively addresses and explains in detail (i) each team member’s respective role in the IEP meeting; (ii) the IEP development process; and (iii) components of effective IEPs. (Chapter 4)  RECOMMENDATION 6 The General Assembly may wish to consider amending § 22.1-214 of the Code of Virginia to require that school divisions provide a draft individualized education program (IEP) to parents at least two business days before the scheduled IEP meeting, if a draft IEP is developed in advance of the meeting. (Chapter 4)  RECOMMENDATION 23 The VDOE should develop a one-page, easy-to understand, and comprehensive summary of the roles and responsibilities of the parent ombudsman, the specific supports the parent ombudsman can provide to parents, and how to contact the parent ombudsman. VDOE should make this one-page summary available in multiple languages and ensure it is easily accessible on its website. (Chapter 8) |
| **Recommendation 3B:** Develop written material that can be provided to parents at critical decision points during the IEP development process to ensure that they understand the potential impact of a present decision on the student’s ability to graduate with a regular diploma, and coordinate this with decision-point reminders in the statewide IEP; | **JLARC Special Ed #10, 11**  RECOMMENDATION 10 The General Assembly may wish to consider including language in the Appropriation Act directing the VDOE to develop clear and simplified guidance, in multiple languages, for families conveying (i) the limitations of the applied studies diploma; (ii) key curriculum and testing decisions that reduce the likelihood their student will be able to obtain a standard diploma; and (iii) pursuit of an applied studies diploma may preclude a student’s ability to pursue a standard diploma. (Chapter 5)  RECOMMENDATION 11 The General Assembly may wish to consider amending section §22.1-253.13:4 of the Code of Virginia to require local school divisions to provide guidance from the VDOE regarding the applied studies diploma and its limitations to parents of students with disabilities, at a minimum, (i) at the first IEP meeting and (ii) when curriculum or testing decisions are being made that will negatively impact a student’s chances of obtaining a standard diploma. (Chapter 5) |
| **Recommendation 3C:** Continue to provide ongoing technical assistance and training to implement the state systemic improvement plan to increase the number of students with disabilities who obtain a standard diploma. | JLARC Special Ed RECOMMENDATION 12 The General Assembly may wish to consider amending § 22.1-253.13:4 of the Code of Virginia to require the Virginia Board of Education and the Department of Education to develop and implement statewide standards, such as curriculum standards, for earning the applied studies diploma and require school divisions to implement these standards by the beginning of the 2022–23 school year. (Chapter 5) |
| **TRANSITION PLANNING** | | |
| **Recommendation 4:** Increase the number of students with disabilities who have access to employment-related education and real-world experiential employment opportunities both during and immediately after high school:  **Recommendation 4A:** Develop guidance on the development of effective employment-related IEP goals, which should include a non-exhaustive list of employment-related skills matched with potential activities to aid in developing those skills, as well as information on appropriate points in transition process to address these skills; | **JLARC Special Ed #3, 9**  RECOMMENDATION 3  The VDOE should revise and improve the training and guidance documents it provides to school divisions on the development of individualized education programs for students with disabilities, incorporating more specific examples of high quality present level of performance descriptions, annual goals, and post-secondary transition sections. (Chapter 4)  RECOMMENDATION 9 The General Assembly may wish to consider including language in the Appropriation Act directing the VDOE to develop and maintain a robust statewide plan for improving (i) its ongoing oversight of local practices related to transition planning and services and (ii) technical assistance and guidance provided for post-secondary transition planning and services. At a minimum, the plan should articulate how VDOE will reliably and comprehensively assess the compliance and quality of transition plans for students with disabilities in Virginia on an ongoing basis and communicate findings to local school division staff and local school boards. VDOE should submit its plan to the Senate Education and Health and the House Education committees no later than December 1, 2022, and update those committees annually on its progress implementing the plan. (Chapter 5) |