

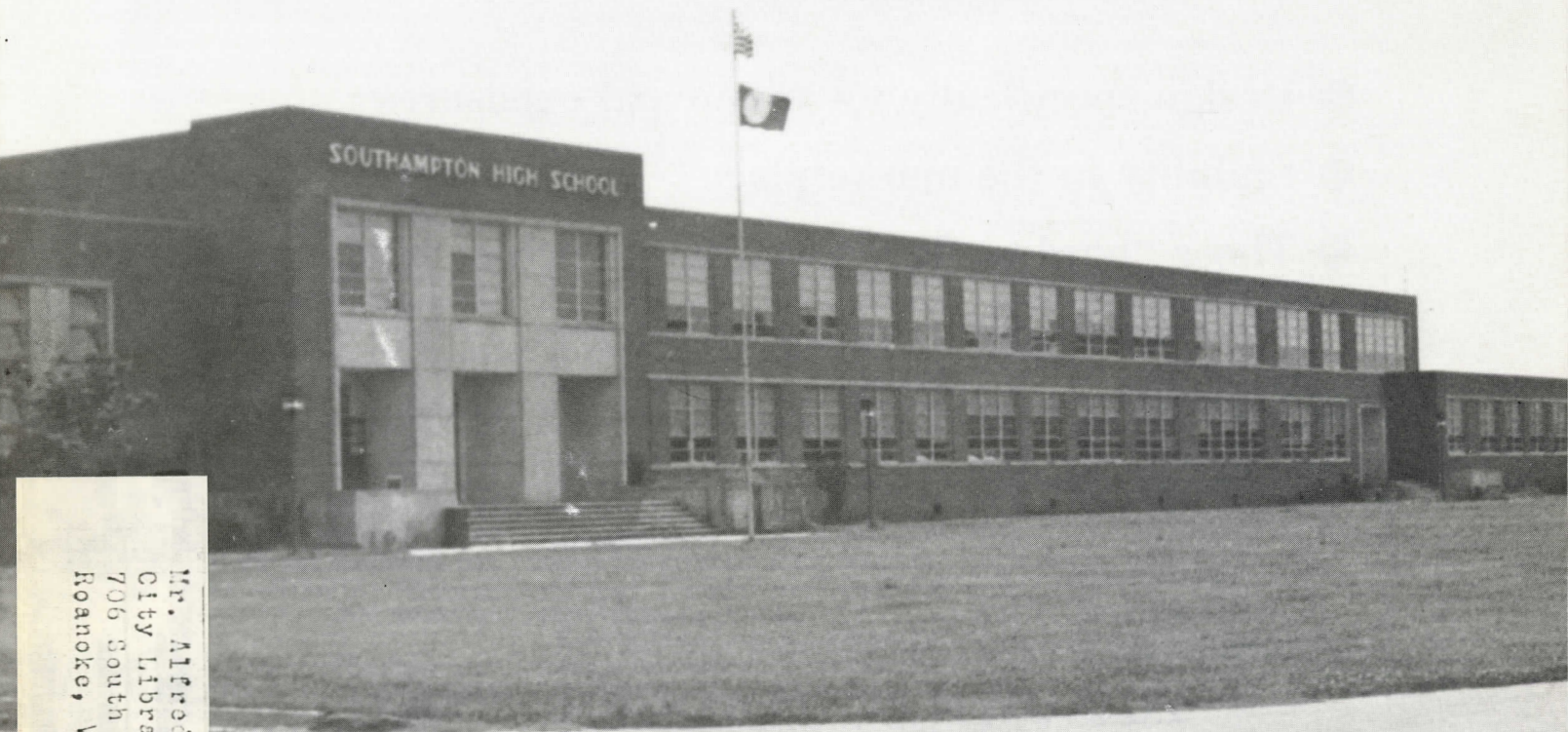
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Number 8
August 1985

ROANOKE CITY

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4 Richmond's Diagnostic and Prescriptive Center

By Gail Bingham

8 VML's Policy Committees

11 The Municipal Insurance Market: Highs and Lows

By Margaret A. Nichols

12 Energy Management Systems for our Schools

By Richard B. Fisher

18 Marketplace

19 Legal Guidelines: The Tort Liability of Local Governments

By Howard W. Dobbins

On the Cover

Southampton High School was among the first in Virginia to install a leased energy management system with insured third-party financing. With a system in place in the high school and the middle school, the annual savings in energy costs is expected to be more than \$46,652. You can learn about this innovative program on page 12.

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Richmond's Diagnostic and

By Gail Bingham

At first glance the Katherine L. Johnson School in Richmond resembles any one of about 60 public schools in the city. Teachers make assignments; students attend classes and fill the halls with typical light chatter during breaks in the school day. But there is something distinctively different about the purpose of activity in this building which houses Richmond's Comprehensive Inter-agency Diagnostic and Prescriptive Center. The center works with problem children referred from their neighborhood schools by performing a battery of medical, psychological and educational tests designed to address difficulties hindering their achievement within the regular school structure.

Prior to creation of the Diagnostic and Prescriptive Center, children experiencing problems in school were often faced with a barrage of services administered by several agencies, each offering its particular professional skill with little or no sustained collaboration. Because the children's problems were typically complex and diverse, traditional intervention strategies frequently worked to compound rather than effectively resolve difficulties.

The center seeks to provide a comprehensive assessment of school-age children within nine weeks. Comprehensive refers to medical, social, psychological, educational and classroom assessments of a child's strengths and weaknesses. If there is need to have a psychiatric evaluation as well, that too is provided at the center. Students remain in the center on a full-time basis during the assessment period. Information obtained from evaluations assists staff of the center in finding what causes a student's difficulties and in determining appropriate solutions. A key concept underlying functioning of the center is the belief that studying and working with children in an intense or concentrated environment will enable evaluation specialists to obtain a realistic view of the child.

"Many children served by the center have experienced academic failure and have low self-esteem," explains Sandra Mitchell, administrator of the center.

She further explains that as a result, a significant amount of attention is placed on building self-confidence and expand-

ing a child's willingness to become engaged academically. According to Mitchell, acceptance not tolerance is the attitude that permeates the center.

Services are rendered by a multidiscipline staff consisting of an education diagnostician, psychologist, physician, occupational therapist, social workers and teachers adept at identifying and working with learning problems. These specialists observe the children in the clinical classrooms, teachers communicate individual differences to testing specialists and specialists assist teachers to identify learning styles and problematic behaviors. Short-term treatment and remediation are by-products of this diagnostic process.

The diagnostic process is expedited because the center serves as a central point of services. Children who are attending classes are more readily available for diagnostic assessments. In the clinical classrooms teachers have an opportunity to observe learning patterns and test teaching strategies within a small school environment. Support staff members are able to work with the child in the classroom, offices, cafeteria and playground. As a result, they get a more realistic view of the child and his or her interactional patterns.

Once assessments are completed, the staff meet to develop an individualized prescriptive plan and strategy which will best suit the needs of the total child. Staff meet once or more during each student quarter as a team to discuss preliminary evaluation results. Based upon these discussions, initial diagnostic plans are reviewed to determine whether new strategies should be implemented to obtain a more complete picture of the student's profile. When necessary, additional tests are recommended prior to a final staff meeting.

Agency representatives and members from the home school are invited to participate in the final staff meeting or treatment staffings to develop plans for remedial problems. Diagnostic reports are shared at this meeting and creative strategies are pulled together to work with the child in the home school, in the community and with the family.

Children are returned to their home school program after various strategies have been tested in the clinical class-



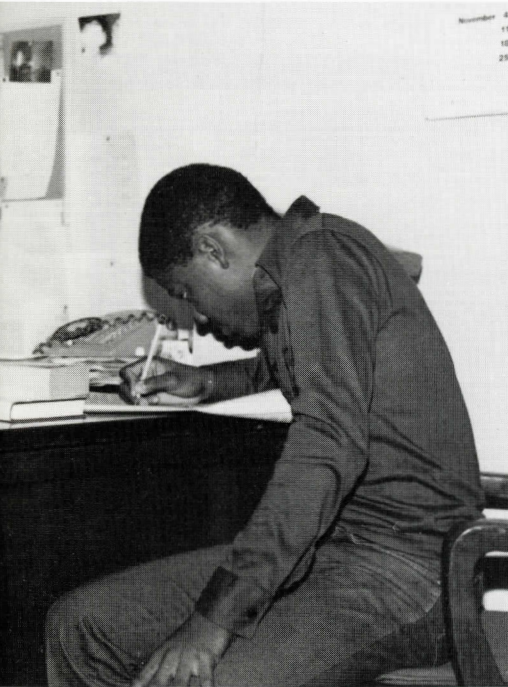
room. Consideration is given in all planning efforts to the child's health, family circumstances and other issues which might affect the ability to learn and function. Impediments to learning, the delivery of services and gaps in existing community resources are closely monitored by the center's staff.

Once the child has returned to the home school, the educational diagnostician works with the school's staff of counselors and teachers to implement recommended educational strategies. Intensive follow-up, monitoring and coordination services are provided by social workers in conjunction with representatives of other community agencies. Follow-up services are extended to schools and the family for a minimum of three to six months with some follow-up supervision extending to 12 months.

The Diagnostic and Prescriptive Center was created as a result of efforts of a mental health task force operating under Richmond's Youth Services Commission. The task force examined problems confronting youth between the ages of 11 and 16 and found that a

Prescriptive Center

Working Together for the Children



significant number of these youth had a multitude of problems. These youth were also served by several human service agencies, yet services were fragmented, duplicative and/or met with resistance.

In order to identify and discuss problems arising from situations like these, primary agencies generally involved with youth experiencing problems were called together for a concentrated meeting which became known as The Summit. Present were representatives from Richmond Public Schools, Department of Public Welfare, Department of Public Health, Department of Mental Health and Mental Retardation, Juvenile and Domestic Relations Court and the Youth Services Commission. A series of meetings followed and the concept for development of a new agency evolved.

The new agency was established from existing agency resources. Participating agencies contributed staff, supplies and other resources to the development of the center. The center was given charge to gather intake information, to diagnose and assess problems,

to develop a prescription and to coordinate and monitor the implementation of prescription. Emphasis was placed on client outreach. The center was conceived to maintain a full complement of multi-disciplined staff that would be involved with each child and family. This model was similar to a full work-up provided to persons entering institutional care or receiving services at an institution.

A memorandum of understanding was developed and sent to each agency participating in the summit with a specific request for the assignment of professionals, supplies, operating contributions and/or other resources. Contributions received included four teachers, five instructional aides, a lead teacher and administrator as well as a building space, instructional and office supplies, telephone service, copying equipment, educational and learning specialists,

many human service agency budgets, and the center shared in the losses. A grant through the Division of Justice and Crime Prevention which had previously provided major support to the program was due to expire. The city of Richmond in anticipation of severe federal budget cuts reduced staff citywide. As a result, nine staff at the center were moved to other city positions or chose to resign.

The center lost three social workers, a social work supervisor, an occupational therapist, an educational diagnostician, two clerk typists and a psychologist. The assistant administrator remained on staff on a part-time basis. A part-time consultant psychologist, social workers and clerk typists were hired to offset the vacancies.

In the winter of 1981, the center received a \$25,000 Memorial Foundation grant and in July 1982, a \$75,000 award from the city, funds which were used to

A social worker takes a student's social history as an intervention strategy in the comprehensive approach.

social workers, clerical staff and consultation staff.

The center, now in its sixth year of operation, opened in June 1980 under sponsorship of the Richmond Public Schools. An 18-member advisory board was established that consisted of two members from each of six participating agencies, representatives from the PTA and the city manager's staff and four at-large members.

Three standing committees monitor center activities. The evaluation committee measures the effectiveness of services. The program committee assists in the basic design and implementation of program objectives, and the policies and procedures committee monitors the staff and resource contributions of sponsoring agencies. Also, an annual report is produced each year which serves to assess the center's service results and provide information for participating agencies and the community.

The spring of 1981 was devastating to

expand staff. Additional grants and awards enabled the center to continue to expand its staff. Two graduate psychologists interns were hired to augment psychological evaluation capabilities. Two foster grandparents were added to the educational component to provide individualized attention to the elementary students, and staff positions were maintained through assignments from participating agencies. For example, in January 1984 the Richmond Department of Public Health assigned a part-time physician and two public health nurses to the center's operation. Throughout the 1984 operating year, budget allocations received from the city enabled the center to continue functioning through a series of staff changes and adjustments.

During the 1984-85 program year approximately 157 students were referred to the center. Students are referred by parents, counselors and agencies through the pupil personnel services

-continued, page 17

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The Municipal Insurance Market Highs and Lows

By Margaret A. Nichols

Hardly a day has passed at VML in the past three months that we have not received numerous phone calls from local governments relating experiences concerning the renewal of insurance coverages.

Virginia localities are faced with significant increases in premiums, reduced limits of coverage, non-renewal of policies and midterm cancellations. Some coverages vital to the existence of local governments such as pollution liability are not available at any price.

Many larger municipalities have full time risk managers who are in constant communication with the insurance marketplace and prepare their localities, at least initially, for the shock of market change. Unfortunately a great many municipalities rely solely on local insurance agents to handle their insurance needs. Because of this relationship, localities have not been aware until the "last minute" that they were facing a problem.

The problem is specifically a "hard" insurance marketplace. For the last five years localities have been in a "soft" insurance marketplace. By "soft" we mean a buyer's market. Localities could purchase the coverages they needed, with the limits they wanted and at a price they could afford. This situation no longer exists.

Several factors have caused this drastic change from a "soft" to a "hard" or sellers' marketplace. Insurance companies income is derived from investment earnings and underwriting profit. When interest rates rose to higher levels insurance companies relaxed their underwriting guidelines to allow more premium to flow into the company for investment. The increased investment earnings were intended to offset the reduced underwriting gains. When interest rates declined and losses increased, insurance companies were faced with losses greater than investment earnings and underwriting profits. The premium increases now being experienced are the results of the insurance industry's adjustment of reduced premiums immediately rather than gradually.

Another factor responsible for the recent change in the marketplace is the availability of reinsurance. Reinsurance companies insure primary insurers against excessive losses or liability, allowing primary carriers to spread their risk of excessive losses. Reinsurers using the same strategy as primary car-

riers look to investment earnings to offset underwriting losses.

Another factor contributing to the hard insurance market is the increasing number and severity of lawsuits against municipalities, public officials and law enforcement officers. This experience is applied across the board to municipalities with little regard to actual loss experience in Virginia. No longer able to depend on sovereign immunity which shielded Virginia localities in the past, municipalities are viewed by the insurance carriers as high risk.

Additionally and finally insurance carriers follow a procedure called "class" underwriting. Since municipalities unfortunately fall into that class not traditionally viewed as good or low risk, they are one of the first to be eliminated when the market hardens.

Municipalities and their risk managers have little influence to change the status of the insurance marketplace. Nevertheless, it remains the responsibility of the risk manager to ensure that the necessary measures are taken to protect the locality from possible loss.

There are several steps that will make your encounter with the insurance marketplace progress more smoothly.

START YOUR RENEWAL PROCESS EARLY—Thirty to sixty days was plenty of time to renew your coverages in the soft market. Now a minimum of 90 to 120 days is a must to ensure that your agent or consultant has ample time to find the coverages you need. When bidding, set the bid date at least two weeks before renewal to allow time to review bids and handle emergencies. You may also want to increase your cancellation clause from 30 days to 60 days or 90 days to avoid last minute notification from the insurer.

DEVELOP ACCURATE SPECIFICATIONS—Your specifications should be well prepared, easy to understand and allow options such as several deductibles and limits when possible. Be sure to include accurate loss experience as this plays a major role in premium.

CHECK THE FINANCIAL SECURITY OF THE CARRIERS—Local government's greatest potential for loss is in law enforcement and public official liability. Such claims are usually long tailed, that is, they may not be reported for two or three years and then not settled for another three to five years. You will want to make sure the company from which you purchased the coverage will be around to pay those claims.

REVIEW YOUR COVERAGES—Consider retaining those predictable, affordable losses that can be financed out of the operating fund. Use insurance to cover those larger risks that could result in catastrophic losses.

USE COMPETITIVE NEGOTIATIONS RATHER THAN SEALED BIDS WHEN POSSIBLE—This is not the year to bring in a consultant or bid insurance if you can avoid it. You may be shocked that few or no bidders show up. In addition to increased premiums, you will have the added cost of the consultant. If you must bid your insurance, the competitive negotiation process allows you more flexibility in negotiating your coverages, limits and premium.

INCREASE YOUR INSURANCE BUDGET—Many localities increased their insurance budgets by the 10 percent to 30 percent increases they anticipated. We are seeing increases as high as 300 percent! Hopefully, this will not be the case for the majority of localities, but a sufficient budget amount can help the risk manager to put together the best insurance program possible.

DEVELOP LOSS CONTROL PROGRAMS—An important method to control municipal insurance costs is an effective loss control program. The lower your risks, the lower your premiums. This is especially true in a "soft" market. During a "hard" market, insurance carriers look more favorably on municipalities which have effective loss control programs.

A major advantage in loss control programs is that they can be instituted with little or no money and increased annually until you have a full scale loss control program. Your program can be started with:

- establishment of personnel policies instituting proper employment and termination procedures,
- municipal vehicle inspection program,
- defensive driving courses for municipal employees, and
- property safety inspections

CONTACT THE VIRGINIA MUNICIPAL LEAGUE—VML began offering an all-lines property, casualty insurance program on July 1, 1984. We are currently insuring over 40 localities that in most instances could not find any other market to quote on their business. The program is a fully insured product offering comprehensive liability and property coverages.

—continued, page 17

Energy Management Systems For Our Schools

By Richard B. Fisher, AIA

In less than a year the installation of computerized energy management systems in two Southampton County schools has resulted in a 30 percent to 35 percent reduction in energy use, according to William F. Grizzard Jr., director of auxiliary services for the county's public schools. Southampton County is among a number of Virginia public school systems now able to meet their goals of reduced energy cost through the use of third-party financed, insured funding programs permitting no-risk leasing of energy conservation services and equipment.

Like officials in many other school systems, Southampton County's school officials had been working for some time to determine methods of lowering exorbitant energy expenditures which were draining a large portion of the system's budget. Close to 5 percent of the budget, or more than \$320,000 in 1983, had been allocated for heating and lighting the nearly 30-year-old high school, the middle school originally built in the 1940s and five elementary schools.

At a school board meeting in October 1983, a Richmond electrical contractor presented a concept for energy conservation systems in the high school and middle school that guaranteed a savings of more than \$46,000 a year in heating and lighting costs, or 14 percent of the total energy budget.

As one of the greatest obstacles to the county's search for an energy-efficient system had been the lack of funding sources, the school board was pleased to learn implementation of the systems, estimated to cost a total of \$170,000, could be funded by developing a no-risk insured contract with a leasing firm. This firm would arrange financing for the equipment and services through private investment sources and would organize the contractor and the architectural/engineering firm. The funding program would not involve public funds, and insurance guaranteed that monthly energy savings would be as great or greater than payments for the system.

School Board Superintendent J. W. Harville felt the no-risk program was "something we can't let pass by" and led the board in its unanimous decision to become one of the first public school systems in Virginia to take advantage of the third-party-financed funding opportunity. The anticipated annual savings of \$46,652 for the two schools in Southampton County is now likely to be surpassed, and positive reception to the

program's success has resulted in the recent approval of Phase II.

For Phase II the county has hired the leasing company that managed the original contract, the electrical contractor and the architectural/engineering firm to design and implement energy conservation systems in all of the county's elementary schools. The project will involve replacement of boilers in three of the schools and is estimated to save \$252,000 in energy costs during a five-year period.

No-Risk Funding

Energy conservation systems such as those implemented in Southampton County can enable municipalities to realize, often immediately, cost savings greater than monthly funding payments. Systems are usually paid for within five years and are expected to last 20 to 25 years. Investments are paid back out of monies saved by reduced energy consumption resulting from the installed equipment which is monitored by the designer and builder. Savings are calculated on a basis determined by historic energy consumption patterns of heating and cooling degrees during a set period for the facility concerned, with current energy unit costs applied to determine dollar values. Savings are estimated prior to installation of the equipment and become the basis of the funding contract.

Energy calculations and estimated savings are examined by an engineering review board established by the insurance underwriter. The board requires an architectural/engineering firm to be involved as the system's designer for projects costing more than \$100,000 to implement. Following the board's approval of the program, the energy savings included in the contract are insured for payment by the insurance underwriter. Should the monthly funding payment be higher than the savings, the insurance company pays the difference.

Computerized Energy Management

While the availability of the funding resource was a significant attraction in plans for Southampton County's first energy efficiency projects, the success of the systems themselves is now the focus of pleased county officials and is drawing the attention of municipal officials throughout the state.

Implemented measures at the county's two schools included the installation

of fluorescent lighting, regulated lighting schedules, heating sequence control, tamper-proof thermostats and pipe insulation. Boilers were checked for efficiency, and temperature valves were installed as necessary on radiators. System development followed an extensive study of existing conditions and requirements including traffic patterns, lighting, heating and cooling needs and general operational concerns.

A small computerized controller is the centerpiece in each of the new systems, and associated printers provide details of energy use and adherence to regulated schedules throughout the system. Detailed operation manuals were developed by the contractor for the schools' maintenance staff, and the contract includes extensive training and service.

"Prior to installation of the systems, we had a lot of trouble with individual thermostats," states Grizzard. "Trying to regulate temperature controls in the schools was very difficult. Now we have much better control of the range of temperatures."

Grizzard adds that while there were skeptics within the county at first, the system has since proven itself to be a "no-loss situation."

Other Virginia public school systems and municipalities also have begun to take advantage of third-party funding programs for energy efficiency systems. In its high school, junior high school and one primary school, the Buckingham County school system adopted conservation measures similar to those in Southampton County, and savings were realized within the first quarter.

Energy costs were estimated to have been reduced by more than \$5,500, or 20 percent, from October 1984 through December 1984.

"The savings were more than enough to cover the funding payment," cites School Superintendent Mercer Kay, who points to continued significant savings since December.

Modifications at the three schools focused on reducing wattage in the lighting by as much as 40 percent through replacing incandescent light fixtures with fluorescent fixtures, regulating lighting sequences and installing air distribution systems in the gymnasiums.

"We've been very pleased with the program," states Kay. "The improved lighting is not only energy efficient, it has substantially improved lighting in the

-continued, page 14

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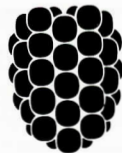
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work areas throughout the schools. We're now looking at improving the quality of outdoor lighting as well.

Examining the Marketplace

Frustration regarding mounting energy expenditures, which added up to nearly \$80 million for public schools in 1984, has inspired officials throughout the state to examine the potential advantages of implementing energy conservation measures within the buildings in their areas. A seminar focusing on financing such energy efficiency projects was held in Richmond last December and attracted more than 100 participants including local government administrators and public school officials.

Sponsored by Virginia's Department of Mines, Minerals and Energy, Division of Energy, the seminar was held in response to many officials who had, according to organizer Mary Lynne Bailey, "expressed an interest in meeting energy conservation goals, but stressed not having the funds to begin. Third-party financing is one option, and we thought the school systems may not have been aware of this."

A session on "Virginia Experiences with Innovative Financing" included a

discussion of Southampton County's success story by J. W. Harville.

Bailey adds that the seminar presentations included "what to look for and what to avoid" in implementing and financing large-scale energy management systems.

"There is a danger in having a contractor install a computer and then not take part in the follow-up training and service," she states. "It is necessary to retain a company that is willing to continue service after installing the product and willing to train your employees to operate the system properly."

Stephen Walz, energy conservation supervisor with the Division of Energy, also emphasizes the need to "examine the marketplace and the many options within this type of system implementation." He points to the many different contract considerations such as how maintenance will be affected, how service will be worked into the contract, exactly what kinds of guarantees companies offer and how energy escalation rates will be used as bases for comparison.

"Look at the individuals behind the contracting companies," he adds, "and examine both their reputations and their stability. These contracts last several years."

Walz points out that the third-party-

financed funding opportunity is "a good option for school systems to look into when the capital affording this opportunity cannot otherwise be raised." He stresses that beyond the savings, the installation of energy management systems is also frequently an opportunity to upgrade existing equipment.

"We're willing to work with any school system that wants to look into this." Walz adds, "There are other alternatives, but this can work well for many public systems."

"We certainly would not have been able to implement any of these energy management systems without the availability of the leasing program," states Mercer Kay. His comments are echoed by William Grizzard, who says that "the guaranteed savings is a key point—its insurability. Without this opportunity, we would have had to proceed on a very small basis. It would have taken a long time to realize savings."

About the Author

Richard B. Fisher, AIA, is with Dewberry & Davis, an architectural/engineering firm based in Fairfax with offices in Richmond, Danville, Marion and Woodbridge. He is project designer for the Phase II implementation of energy conservation systems in the Southampton County schools and works in the Richmond office.

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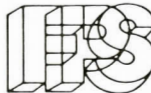
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Center, from page 5

team in the child's home school. The majority of cases referred to the center involve multiple issues, and more than half of the student families referred to the center are involved with multiple agencies at the time of referral. Of the students entering the center more than half are on the sixth grade to ninth grade level and between 14 and 15 years old.

Academic issues among students referred to the center involve repeated grade failure, lack of academic progress, lack of motivation and attention problems. Emotional/behavioral issues involve acting out in the home, school or community, sexual acting out and substance abuse. Family issues include parental instability, neglect, lack of supervision and physical abuse. Medical issues include visual, auditory, allergies and asthma.

"I know this center can change some part of my life," said one student. "It gives you room to think and the teachers give you good advice about things. Since I have been here, I have been feeling better about myself."

"I think that I will become a better student because I have more time to study and get myself together," commented another student.

One student who found he liked school after attending class in the center said, "Since being at the D&P Center, I

have been going to my class on time and coming to school every day. I like the D&P Center because they help you and they listen to you."

The Diagnostic and Prescriptive Center has recently experienced yet another change. The center is now a division under the city of Richmond's Department of Human Development Services.

This year also finds the center at a crossroads. "No longer should it focus solely on diagnosis," said Mitchell. "It should use its diagnostic expertise to train and orient other human service staff."

Staff training sessions are planned to increase awareness of the interactive variables that must be addressed in effectively planning for high-risk children. Also, a research component is projected that will present clearly defined problems that must be resolved to ensure the development of productive and educationally and socially independent citizens. Through these goals the center will continue to work toward more coordination of diagnostic efforts and development of a spectrum of diagnostic services that blend together to help all children.

About the Author

Gail Bingham is media information specialist for the city of Richmond.

Insurance, from page 11

A couple of years ago, the position of risk manager was decidedly the "upcoming" position in local government. Who, at that time, thought they would be faced with the "restricted" insurance marketplace we are now experiencing. Certainly this is a challenging situation that will prepare localities and their risk managers for the worst of times as well as the best.

About the Author

Margaret A. Nichols joined the VML in 1975 and was appointed Finance Director in 1982. In 1983 she was appointed Administrator of the Virginia Municipal Group Self Insurance Association.

In 1984 Ms. Nichols was elected to the Board of Directors of the PRIMA Pooling Section, a national organization dedicated to the improvement of public risk management pools.

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Legal Guidelines

By Howard W. Dobbins,
VML Legal Counsel

The Tort Liability of Local Governments

Governmental immunity is a pot which seldom stops boiling. Even in periods of relative quiescence opponents of the doctrine are preparing fuel to bring the pot back to a boil.

In 1981 the Virginia General Assembly adopted the Virginia Tort Claims Act (Virginia Code §8.01-195.1 *et seq.*) which abolished sovereign immunity for the commonwealth in cases of property loss, personal injury or death caused by the negligent or wrongful act or omission of any state employee while acting within the scope of his employment and under circumstances where the commonwealth, if a private person, would be liable to the claimant for such damage, loss, injury or death. The commonwealth's liability was limited to the greater of 25 percent or the maximum limit of any liability policy intended to insure against negligence or other tort. Punitive damages and interest prior to judgment were specifically disallowed.

The costs of this legislation to the commonwealth have been assessed and reports published by the Virginia Department of General Services, Office of Risk Management. The 1982 legislature clearly exempted local governments from the act, however, Senate Bill No. 556 introduced in the 1985 session of the General Assembly was an effort to bring counties, cities and towns under the act. This bill was referred to the Senate Courts of Justice Committee but was not reported out of that committee as the result of a tie vote.

Apparently because of the close margin by which the bill was defeated, Sen. William F. Parkerson Jr., chairman of Senate Courts of Justice, has appointed a subcommittee to study the subject of local government immunity. The subcommittee consists of Sen. Parkerson as chairman and Sens. Babalas, Bird, Goode and Mitchell. Recommendations of the subcommittee will greatly influence the success of any revival of SB 556 in 1986 or subsequent years.

Sen. Parkerson has requested input by local governments in connection with the subcommittee's study. VML, the Virginia Association of Counties and a number of city, town and county attorneys are collaborating to bring to the subcommittee all factors which mitigate against the extension of the Tort Claims Act to local governments.

The position of local governments is

that governmental immunity is a doctrine that is essential to the continued efficient operation and management of Virginia's political subdivisions, that local governments have greater need for sovereign immunity than state government, that governments are inherently different from private companies, that there is no public need to bring localities under the act and that to do so would cause serious problems for many local governments which are already undergoing difficulties in obtaining liability insurance coverages.

Very probably SB 556 or its progeny will reappear in the 1986 General Assembly. If it does, it will unquestionably be one of the most important pieces of legislation of the session for local governments, and local officials should be prepared to assess and react to such a bill.

In the meantime, however, tort liability of local governments continues to be a subject requiring much attention by the courts.

In Virginia, in the case of *Town of Crewe v. Marler*, 319 S.E. 2d 748 (1984), the Supreme Court held that the requirement of Virginia Code §8.01-222 of a written statement by a claimant within six months after an accident in order to maintain an action against a city or town is mandatory, and failure to give explicit timely notice in writing of the time and place of accident was fatal to the claimant's cause of action.

Even in states where governmental immunity has been abolished or waived, recovery is not always available to a claimant. For instance, the Circuit Court of Appeals for the Sixth Circuit decided in *Texas Investment Corp., N.V. v. Haendiges*, 761 F.2d 252 (6th Cir. 1985) that notwithstanding Ohio's abolition of that state's sovereign immunity and an Ohio city's adoption of a building code, the city remained immune from liability to an individual property owner for damage allegedly caused by negligent building inspection.

Similarly, the Florida Supreme Court held in April 1985 in *Tranon Park Condominium Association, Inc. v. City of Hialeah*, Florida's statutory limited waiver of sovereign immunity did not eliminate the city's immunity from liability to individual property owners for alleged negligent building inspection. The court ruled based on the rationale that there is

no duty for a governmental entity to enforce the law for the benefit of individual citizens nor a common law duty to prevent the misconduct of third persons. (See 53 U.S.L.W. 2522.)

On the other side of the immunity coin are decisions such as that handed down in *Irvin v. Town of Ware*, 395 Mass. 745, 467 N.E.2d 1292 (1984) holding that when a town's police officers fail to take into protective custody a drunk driver who later causes an accident, persons injured in the accident may sue the town for the negligence of its officers.

The Massachusetts court held that where the violated duty was owed to an individual because of a "special relationship" between the individual and the defendant, municipal tort liability can be established. The necessary special relationship in the *Irvin* case was found between the police officers and the accident victims because the officers should have foreseen that their failure to protect the driving public would impose an immediate threat of serious physical injury.

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